IN THE STATE OF SOUTH CAROLINA
SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Unpublished Opinion No. 2023-UP-011 (S.C. Ct. App. Filed Jan. 11, 2023)

Therese Hood, Petitioner,

v.

United Services Automobile Association, Respondent.

PETITIONER'S APPENDIX - VOLUME VI

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A. Um, I would have -- I would say my lights were on because they're always on, and I never turn them off. I have no reason to turn them off. I don't even use that little button on the vehicle. So, yes.

Q. And you mentioned a habit of turning your bright lights on. Tell me about that.

A. Um, it wouldn't apply in this case.

Q. Okay. Um, now, are you suing USAA because of its selection of Jack Daniel as an attorney?

A. No. No.

Q. Are you suing USAA for Jack Daniel's behavior in the litigation?

A. No.

Q. Okay. Are you suing USAA for the distress that you had as a result of Jack Daniel's behavior?

A. No. I'm suing USAA for I believe your negligence on fulfilling my claim in a timely manner and to -- choosing sides that best suited USAA, and it was untruthful. And how can a company exist if it doesn't treat its people honestly and be able to support them in times of need? And this was the first accident I'd ever

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been in -- the first that I've had to file a claim. So it's not like I'm a habitual lawsuit person.

Q. Um, and when you say that -- when you say that USAA was negligent in fulfilling the claim, I think you said --

A. Yes.

Q. -- basically, are you saying they should have paid the money sooner?

A. Yes.

Q. Okay. And when you say that they were choosing sides, what do you mean by that?

A. Um, the Kucks eventually filed a lawsuit against me. And in that lawsuit, I don't know who represented USAA, but whoever it was, went with the persons, um, who did the light inspection -- the professional expert who did the light inspection and said that my lights were on. And when it actually -- throughout the whole rest of the case, it was determined that my lights were off. And then that caught you in a lie. What I could say is, you can't be in the same accident and have your lights on and off at the same time.

Q. Okay. Do you need a break? Are you good to keep going right now? It's up to you.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case No.: 2019-001943
Case No.: 2018-CP-10-00666

Therese Hood .....Appellant,

v.

United Services Automobile Association .....Respondent.

RECORD ON APPEAL – VOLUME 6

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MR. WILLEY: I'm fine.

THE WITNESS: You're fine?

A. No, I think I'm okay.

Q. If you have any doubt about it, let's just take a break. This isn't a race; it's not a contest. I want you to be comfortable. Okay?

A. Okay.

Q. Do you want to take a break?

A. Yeah.

MR. WHELAN: Okay. Let's go off the record.

THE VIDEOGRAPHER: Off the record at 10:54.

(The deposition went off the record.)

THE VIDEOGRAPHER: This is media No. 2 in the deposition of Therese Hood. We're on the record at 11:03.

BY MR. WHELAN:

Q. Okay, Ms. Hood. We took a short break. Are you ready to keep going?

A. Yeah. I'm just in pain right now. I've just got to work this out here, I think.

Q. Okay. Well, let's just take a break and -- what is bothering you?

A. My leg.

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MR. WHELAN: Okay. We'll take a break and let you work that out.

THE VIDEOGRAPHER: Off the record at 11:03.

(The deposition went off the record.)

THE VIDEOGRAPHER: On the record at 11:04.

BY MR. WHELAN:

Q. Okay. So, Ms. Hood, you just had a leg spasm. Are you feeling good to go?

A. I'm okay.

Q. Okay. And like I said, we're here to make you comfortable, and I want your best testimony today. If there's any reason that you can't give it, let us know and we will find a way to either make you more comfortable, or we'll just come back another time. Okay?

A. Okay.

Q. Thank you. Um, now, we were talking, I think, about what you -- what you described as USAA choosing sides. And, basically, that concerns the expert opinion, right, concerning the lights on? Is that what you're talking about?

A. Um, yes.

Q. And the expert was a Mr. Woody Poplin,

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who went and looked at your car and your light assembly?

A. I -- I never was told who it was.

Q. Okay. What were you told?

MR. WILLEY: I'm going to object. So you --

Q. Well, let me ask you this: Can you tell me -- were you told anything by anyone other than your attorneys?

A. No.

Q. Okay. Do you know what Mr. Poplin said?

MR. WILLEY: So -- just so I'm on the record and you know, anything that you were told by your attorneys, you should not testify to. Okay? So if someone else told you, it's fine. But if you only got the information from your attorneys, you should just say that.

MR. WHELAN: Well, I'm not sure that's correct. Let -- if you need to instruct her not to answer, that's fine. But I'm just trying -- I need to get to the bottom of this whole expert issue.

BY MR. WHELAN:

Q. So did you ever read Mr. Poplin's report?

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A. No, sir.
Q. Did you ever meet Mr. Poplin?
A. No, sir.
Q. Did you ever talk to Mr. Poplin?
A. No, sir.
Q. Um, do you know what it was that Mr. Poplin did?
A. It's attorney privilege -- attorney-client privilege.
Q. But my question, ma'am, is, do you know what he actually did?
A. Yes.
Q. Okay. What is it that he did?
A. What I was told he did was to investigate -- investigate the accident, and specifically the mechanics that caused the accident, which, in this case, were the lights.
Q. Okay. Do you know how he did that investigation?
A. No, sir.
Q. Do you know what his findings were?
A. Uh, I was told that the findings were based on the Kucks' case, that my high lights -- my high beams were on.
Q. Now, prior to that, had you ever thought

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that your high beams were on in the accident?

A. I knew my lights were on.

Q. Right.

A. I didn't know which part of my -- I knew they were going to find my lights on.

Q. Right.

A. But I didn't know which part they would find.

Q. Right. And --

A. And this is after the accident.

Q. Sure. But you do not recall turning -- having your high beams on on 278?

A. I don't recall.

Q. All right. And so when you were told he found your high beams were on, that was a surprise to you; true?

MR. WILLEY: Object to the form.

A. Um, he didn't say anything. My attorney --

Q. Right.

A. -- said something.

Q. But when you were told that your high beams were on, that was a surprise to you --

MR. WILLEY: I'm going to object to the form.

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Q. -- fair?

A. No, not really. Because I knew my lights were on. It didn't matter which ones were on. I knew lights were on. And the whole case was based on my lights being on or off. So it didn't matter if it was high beams or lights are on -- you know, daytime running lights. But I don't use daytime running lights. I don't -- you know, I don't touch that thing. So -- but I knew my lights were on and he should have seen me.

Q. So before you were told that Mr. Poplin found your high beams on, you had no idea that your high beams were on, although you knew your low beams were on; is that fair?

MR. WILLEY: Object to the form.

A. What does that mean?

Q. It does not -- it's nothing you need to worry about.

A. Oh. What was the question?

Q. So before you heard what Mr. Poplin found, you knew that your low beams were on, correct?

A. Right.

Q. You did not have any information that your high beams were on at that point, correct?

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MR. WILLEY: Object to the form.

A. No.

Q. Okay. Why not?

A. Why?

Q. Yes, ma'am. What information did you have that your high beams were on before you were told what Mr. Poplin found?

MR. WILLEY: Object to the form.

A. None.

Q. So before you were told what Mr. Poplin found, you had no information that your high beams were on; true?

MR. WILLEY: Object to the form.

A. Yes.

Q. Okay. Now, did you believe that Mr. Poplin's finding was beyond dispute?

A. I relied on my attorney for all that information.

Q. Did you understand, then, that there was no doubt whatsoever, based on what Mr. Poplin found, that your high beams were on?

A. No, sir.

Q. Okay. Did you believe that anyone who saw or heard Mr. Poplin's opinion would have to find that you had zero percent fault in causing

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the accident?

MR. WILLEY: Object to the form.

A. Yeah. I'd never seen him; I'd never heard (sic) him. I don't know who he's talked to. I don't know anything about that.

Q. Okay. So, obviously, people can say things.

A. Correct.

Q. And things they say aren't always true, right?

A. That's true.

Q. And sometimes somebody can say something, and it's a hundred percent certain. For example, I could say the sun rose in the east this morning, right?

A. Okay.

Q. And sometimes some people can say things and it's not a hundred percent certain; like when the weather guy says, it's going to rain today, right?

A. Right. But this was your own professional expert that you -- that USAA hired to find that information. So -- and he's got that in a statement. So that alone is proof that he believes in his own words and that -- you know,

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who are we to judge the expert?

Q. Well, putting aside who hired him, ma'am --

A. Oh. Oh, okay.

Q. If we can do that, this is what I'd like to focus on. You know, we just talked about there's a -- some sort of scale between no certainty and complete certainty, right?

A. Okay.

Q. Do you know where on that scale Mr. Poplin's opinion fit?

A. No, sir.

Q. Did you believe that it was 100 -- if Mr. Poplin said it, it was 100 percent true?

A. I didn't have an opinion.

Q. Um, did you believe that -- do you believe today that since Mr. Poplin said it, it's 100 percent true?

A. I believe what I'm told, basically. Because everybody has the information. I just have to rely on the information I receive.

Q. From your attorneys?

A. Yes.

Q. Now, my question, though, is, do you believe today that because Mr. Poplin said it,

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it's a hundred percent true?

MR. WILLEY: Object to the form.

A. Back step.

Q. Sure.

A. I was told that he was going to be here to the deposition and be able to testify at some point.

Q. That Mr. Poplin would?

A. Yes.

Q. Okay.

A. But why would USAA question their own expert?

Q. Well, ma'am, I'm just trying to answer this question, which is, do you believe today that because Mr. Poplin said your high beams were on, it's a hundred percent true that your high beams were on?

MR. WILLEY: Object to the form.

A. I believe so.

Q. And you do you base that on anything other than what your attorneys have told you?

MR. WILLEY: Object to the form.

A. (Inaudible.)

Q. I'm sorry?

A. I said, I don't believe so.

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Q. Okay. And you believe that anybody who heard Mr. Poplin say that, that your high beams were on, would conclude that your lights were on and that you weren't at fault; is that fair?

A. Yes.

Q. Okay. Explain to the jury why you did not call Mr. Poplin to testify at trial in this case.

MR. WILLEY: I object to the form.

A. That was my attorney. And that has nothing to do with this case, I don't believe.

Q. Well, you know, you went to the trial in the underlying case?

A. Right.

Q. And that was about what caused the wreck, right?

A. Right.

Q. And you did not call Mr. Poplin to testify, correct?

A. My attorneys handled that.

Q. Okay. Well, they're working for you, right?

A. Right.

Q. But did they talk to you about what would happen and what wouldn't?

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MR. WILLEY: And she's not going to testify to anything that we discussed with her about witnesses to call or not to call.

MR. WHELAN: You can instruct her not to answer.

MR. WILLEY: Well, I am instructing -- that's why I'm instructing her not to answer anything about --

MR. WHELAN: Just focus on the question I asked, please.

MR. WILLEY: -- what we told her respecting trial strategy or what witnesses we were going to call or not call. It's perfectly acceptable to ask her why she made that decision. She's already told you that her attorneys decided that, not her.

MR. WHELAN: Okay.

BY MR. WHELAN:

Q. And why didn't you read Mr. Poplin's deposition to the jury?

A. Again, I didn't know there was one.

Q. Okay. Did you leave that up to your attorneys?

A. Yes.

Q. But you believe that if the jury had

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heard Mr. Poplin, they would have found you to be zero percent at fault, correct?

A. Um, they should have.

Q. Right.

A. But -- no.

Q. Have you ever asked -- well, I was going to say, have you ever asked your attorneys why they didn't -- let me ask you: Have you ever asked your attorneys why they didn't call Mr. Poplin?

MR. WILLEY: And for purposes of this question, you can say, Yes, I have, or, No, I haven't, but don't get into the substance of anything that we would have told you. Okay?

A. Um, no. There was -- at my attorney (sic), a witness that was a Judge that was behind me, and he had his lights on. He has those neon lights, and he could see my lights and he could see Antoine.

Q. Now, it's -- you're suing USAA because they had this report of Mr. Poplin, right?

MR. WILLEY: Object to the form.

A. No. I'm suing USAA because USAA lied to me and, um, I don't know why USAA is playing these games with, you know, information that is or is

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not, since it's all in the case, and why they keep insisting that my lights were off to protect their interest, and I believe I was wronged by that.

Q. Well, don't you believe that when USAA got Mr. Poplin's report, that at that point they should have realized you had no fault and paid you the money?

A. Yes.

Q. All right. But you cannot explain why you did not have the jury hear from Mr. Poplin?

MR. WILLEY: Object to the form.

A. No.

Q. Um, what settlement negotiations occurred between you and USAA before the trial?

A. Before the trial? The settlement was the personal injury.

Q. Well, I'm actually talking about the -- well, yes. But I'm talking about in the context of the underinsured motorist coverage.

MR. WILLEY: Are you asking about any negotiations she personally had? Because she's already told you she didn't talk to USAA after the lawsuit was filed personally.

BY MR. WHELAN:

Q. Well, let me back up a second. Do you

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know what Underinsured Motorist Coverage is?

A. Yes. It's to cover the person that hits you if they don't have enough insurance.

Q. Okay. Um, and did -- you went to trial, and a jury determined the damages that Mr. Johnson owed you, right?

A. Right.

Q. You understand that's what that trial was about?

A. Yes.

Q. And then did you know that the policy covers damages that Mr. Johnson is legally obligated to pay you?

MR. WILLEY: I object to the form.

A. Yes.

Q. And Mr. Johnson was not -- did not -- Mr. Johnson was not legally obligated to pay you any money before the trial ended, was he?

MR. WILLEY: Object to the form.

A. I don't know.

Q. Okay. Now, before you tried the case, do you know whether any settlement negotiations occurred between you, through your attorneys, and USAA concerning the Underinsured Motorist Coverage?

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A. I don't recall.

Q. Okay. Do you recall USAA ever offering you any money under the Underinsured Motorist Coverage?

A. I don't recall.

Q. Okay. Do you recall you, through your attorneys, ever telling USAA that you wanted a certain amount of money from USAA for the UIM coverage?

A. No.

Q. Can you speak at all to whether there were any negotiations between you and USAA before the trial?

A. There was none.

Q. And what did you do with -- I'm just looking at Exhibit 2, I think, which is the check. So there's a check for a million dollars and then about $24,000 in interest.

A. Right.

Q. And that looks like it was dated December 21st of 2017.

A. Right. And the case had been solved September the 7th.

THE COURT REPORTER: I'm sorry?

A. The case had -- the court case had been

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solved, I believe, September 7th. I believe. Or right around there. And so the fact that USAA hadn't paid me, they accrued the interest and the interest they had to pay me, and that was their fault. Because they should have paid me a long time before then; then they wouldn't have incurred the cost. And that went towards defraying the costs of my additional attorneys, video settings, all the additional things I needed at the trial that I would not have had needed had USAA paid in a timely manner.

Q. Um, and what did you do with the money?

MR. WILLEY: I'm going to object to the form.

A. Yeah. I don't think this has nothing to do with the case, what I did with the money.

Q. What did you do with it? Do you know?

A. Yes, I know. I just told you that more than half of it went towards attorney fees, documentation they had to have, witnesses.

Q. Okay. So let's see. That a million-23,993. So how much of that did you actually get? Was it less than 500,000?

A. It was right at 500,000 -- $500,002.

Q. Oh, wow. Okay. And so where did the

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rest of the money go?

A. I used it -- part of it again to pay some of the bills I had incurred. I paid off my vehicles. I had to have continued medical support. I eventually -- I had to have surgery for my back. And so a lot of it went towards medical or paying bills, like paying off my new vehicle that's insured through USAA and my husband's and, um -- and I gave some to my daughter.

Q. That's nice.

A. That's it.

Q. Were you able to save any?

A. Yes. And we put that in a savings account --

Q. Okay.

A. -- um, for an investment.

Q. And is it in an investment -- I know these are personal questions, and I'm sorry. Is it in an investment account or like a bank savings account?

A. No. An investment account.

Q. Okay. And how much were you able to save of that 500,000?

A. Around 200,000.

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Q. And how much were you able to give your daughter?

A. 25. I just gave her 25.

Q. Okay. And do you know how much went to pay for medical treatment?

A. I'm -- I'm not exactly sure. I recently had -- based on the accident, I recently had to have spinal surgery. I did that like just about four months ago.

Q. Okay.

A. So I'm still -- my spine is still recovering. And I've had to have continued medical for my neck before the spinal surgery and for my leg. And I, you know, continue -- as the doctors said, I would have issues and be needing medical care for the rest of my life. And that's where the money -- the 200,000 is going to go towards my spinal surgery, which was close to a hundred thousand.

Q. Wow. And how much are you going to have to come out-of-pocket for that?

A. Um, it hasn't been approved by TRICARE yet. And Medicare didn't acknowledge the surgery because I had the option of getting -- what do you call those? -- epidurals that numb something,

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every three months. And that was not an option I wanted to entertain, so I elected the surgery.

Q. So your insurance claim is pending?

A. Well, Medicare won't pay for it. And so TRICARE is paying for it. But, meanwhile, I have to pay in advance, because, you know, they want their money. It's been four months. So...

Q. And how much was that?

A. 114,000.

Q. Wow. So you had to pay $114,000?

A. The surgery was five and a half hours. And they -- two of my discs had collapsed where they had fractured before during the accident. And they had to take a bone from my hip and then go through my throat, which has a scar and, um, put a titanium plate, fuse it with the bone, and use a nerve specialist who ensured that the nerves that were being damaged, you know, wouldn't be damaged. So that was probably, you know, a lot of the cost. But, um, I was in the hospital for three days and, um, then I went home with a brace. And for six weeks I couldn't turn my head this way or that way. And at my three-month visit, which was three weeks ago, I could start bending my head back a little bit and a little bit down. Other

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than that, the motion still has to heal. So they gave me a fuse -- fusion neck brace that you wear. It has a magnetic plate in the front and it, I guess, produces enough energy to fuse the bone to the titanium plate, and I have to wear that four hours a day.

Q. Okay. So you had to put 114 down on that?

A. Right.

Q. And you're hoping that TRICARE pays it back?

A. Right.

Q. And are you suing USAA for the $500,000 that went to your attorneys and the costs?

MR. WILLEY: Object to the form.

A. No.

Q. Okay. So the -- let me ask you, then, how you were damaged by USAA. Is it basically that you should have got the million sooner than you got it?

MR. WILLEY: I object to the form.

A. I think so, because I could have had the interest from -- as soon as it was disclosed that I was not at fault, and then that amount would have accrued interest over the years.

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Q. Uh-huh.
A. And I've already mentioned the other things that were -- that had affected me.
Q. The mental anguish?
A. Yes.
Q. And I'll -- we'll get to that. But just from a financial standpoint --
A. Oh.
Q. -- are you seeking anything -- putting the mental anguish aside, besides the interest on not receiving the million dollars sooner?
A. I left that up to my attorneys.
Q. But are you aware of any other way that you've been damaged financially?
A. Financially, no.
Q. Okay. Now, you --
MR. WHELAN: Are you writing notes over there?
MR. WILLEY: Don't look at mine. No; don't look at mine.
A. Oh, I haven't been looking at -- I'm looking at this thing.
Q. Yeah, I just noticed that too. Um --
A. I couldn't see -- I need glasses for close up, so...

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Q. All right.

MR. WILLEY: I'm taking notes just like Mr. Whelan is taking notes.

MR. WHELAN: Mine are in a different location.

Q. Now, um --

A. Oh.

Q. -- the -- would you have ever accepted less than a million dollars to settle your claim?

MR. WILLEY: Object to the form.

A. Um, I don't know. I mean, it was never offered to me. USAA contested every opportunity we gave them to work out something before going to trial, and I guess USAA was confident they would win at trial, so they weren't willing players.

Q. Okay. Um, do -- did you ever ask them for any amount less than a million dollars, to your knowledge?

A. To my knowledge, no.

Q. Okay. Were you present at the mediation in the underlying case? That's when the parties get together and negotiate.

A. At the very beginning?

Q. I am --

A. I believe, from what I know, there was

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only one mediation, and that was at the very beginning. And Mr. Daniels had the offer of $2,000, and he wouldn't go any higher.

Q. And what was your -- what was your offer, if you remember?

A. Oh, I don't know. We definitely were shocked by $2,000, since I had over $200,000 worth of medical bills. But we just didn't negotiate. You know, that was unacceptable.

Q. Do you recall demanding $650,000 from USAA?

A. My attorney handled that part. I don't -- I don't know what the amount was.

Q. So you left the amounts up to your attorneys?

A. Yes.

Q. Okay. And are you aware of any settlement offer made by USAA other than $2,000?

A. No, sir.

Q. And just to be clear, we're not talking about -- we're talking about 2,000, not 20,000, not 200,000?

A. No. 2,000.

Q. Okay. Um, did you go --

A. Crazily.

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Q. Did you go to any of the focus groups that your attorneys did in the case?

A. No.

Q. You didn't? Um, what were the -- were amounts discussed at the focus groups?

MR. WILLEY: Object to the form.

A. I don't know.

Q. Do you have any knowledge of the -- do you know how many focus groups there were?

A. No, sir.

Q. You know there were more than one, right?

A. Yes. I believe so.

Q. They had them at the library in Ridgeland, right?

A. I have no idea where they took place.

Q. Okay. And do you know what the jury's -- or the focus groups that you guys presented your evidence to, do you know what they determined they thought the case was worth?

A. I wasn't there. I had no idea. I mean, my attorney said he was going to hold focus groups. I don't know how many. I didn't know where. I don't know what was discussed. I have no knowledge.

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Q. Do you know whether those groups were told that your lights were on or off?
A. I have no idea, sir. I wasn't --
Q. Do you know whether -- do you know whether they were shown the Poplin report?
A. I have no idea.
Q. Do you know whether they found any fault on your behalf?
A. Again, sir, I have no idea.
Q. Okay. Now, did you talk to any jurors after the trial?
A. No, sir.
Q. Did any approach you after the trial?
A. No, sir.
Q. All right. Are you aware of anything that any juror said after the trial?
A. After the trial?
Q. Yes, ma'am.
A. No. I was -- the end was the end --
Q. Okay.
A. -- is how I saw it.
Q. And -- all right. Well, the reason I'm asking is, there's a -- this is something that was filed in this case.
MR. WHELAN: I guess we can mark it as

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an exhibit.

Q. Well, I'm just going to show you. On page 12 of this --

MR. WILLEY: Are we marking it? What is it?

MR. WHELAN: I'm going to hand you a copy of it, Roy.

MR. WILLEY: Oh, I probably have it. Is this the memo --

MR. WHELAN: Yeah.

MR. WILLEY: -- in opposition? Okay. I have it.

BY MR. WHELAN:

Q. Yeah. So on page 12 of this memo, ma'am, it said -- it says, After the trial, it was made clear by a juror, who approached Plaintiff after the verdict had been entered and the jury excused, that Plaintiff's comparative negligence, which was a benefit to Defendant USAA, was assigned due to Defendant USAA's continually alluding to or referencing Plaintiff's headlamps throughout the trial, despite the trial Court's instruction to refrain from such assertions or allusions?

A. I don't remember talking to anybody

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except Roy and Kevin when I walked out. And as soon as it was over, I went to thank the Judge for having done such a good job. But that person may have talked to somebody else other than me. I didn't talk to Mr. Johnson. I know we went outside for a group picture. But I don't recall anyone approaching me to talk about the amount or --

Q. Okay.

A. -- you know, who was at fault or -- I thought that was already decided by the 49, 51 percent rule.

Q. Okay. Is it possible that you'd just forgotten that a juror approached you?

A. It's possible. It was a busy day.

Q. All right. Do you have any -- any idea of why this says that a juror approached you after trial?

A. No, sir.

Q. Okay.

A. Are you sure it was a juror and not one of my witnesses?

Q. I'm just reading what this says, ma'am. I didn't write it. And it says, It was made clear by a juror who approached the Plaintiff after the

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verdict, that that is the reason they found you at fault, was for your headlights. Did somebody -- has anybody told you that the reason the jury found you at fault was because of your headlights?

A. Um, I know that was the case all along.

MR. WILLEY: Before you ask your next question, whose pen is that?

MR. WHELAN: It might be yours. Is this yours, Eve?

MR. WILLEY: It looks like one of ours. Can I have it?

MR. WHELAN: Sure.

MR. WILLEY: Because this one is out of ink. Great. Okay.

MR. WHELAN: I have a --

THE WITNESS: I have another pen.

BY MR. WHELAN:

Q. What did you say?

A. I said, I have another pen.

Q. Okay. Um, how are you doing, ma'am? Do you need to take a break? Do you want to walk around and use the restroom, or are you good?

A. No. I think some of this is getting to be repetitious, like I don't recall or I -- you know, things that happened, um, but I sincerely

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don't recall nobody coming up to me.

Q. Okay. Um, was it -- do you think it was reasonable for the jurors in the case to have found you 49 percent at fault?

MR. WILLEY: I object to the form.

A. I don't think they should have found me at fault at all. I attribute the fact to them finding 40- -- me at 49 percent fault, by Mr. Daniels' cross-questioning of me on the -- on the witness stand and putting me in a -- I guess in a negative light, still with that accusatory tone of voice and manners and -- you know, if I had -- if I had sat on that jury, I would have questioned the Plaintiff myself because of how he was treating my witnesses. I mean, who -- who in their right mind won't allow a witness because they're Catholic? And I'm Catholic, and most of my friends are Catholic. And that's not even -- that's plain not only harassment but -- I don't even know what else to call it. That, I think, hurt me a lot. Because there's my friends sitting there, and they're being badgered by him, trying to get them to say something that they either don't know or twist the question enough that they would be questioning themselves like he so oftenly

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does.

And I'm sorry this attributes a lot to Mr. Daniels. But to be honest, he's the only one I dealt with from USAA. And had I dealt with other people, I could have been a little bit more -- maybe a little bit more understanding or objective. But that's not the case. It seemed like USAA wasn't interested in my case at all, or else they would do as they say, you know, they would be there for the person.

Q. Ma'am, I was asking you about the jury. And let me put it this way -- okay? So given the evidence that was put up by Mr. Daniel, all right --

A. Okay.

Q. -- do you think it was reasonable for the jury to find some fault for you?

MR. WILLEY: Object to the form.

A. I -- I believe so.

Q. Um, and you think that if Mr. Poplin had been -- had been put on the witness stand by your attorneys and had talked to the jury, they would have found you zero percent at fault, correct?

MR. WILLEY: Object to the form.

A. I have no way of knowing that, sir. To

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be honest with you, I have no way how the jury would vote based on somebody else's deposition or paperwork, other than -- because I know nothing of him; I know nothing of the paperwork; I know nothing. So I have -- I have no reason how that would have affected the jury one way or the other. I would just think that that would have helped in my case.

Q. Okay. So it's possible that had your attorneys put Mr. Poplin up, the jury still would have found you at fault?

MR. WILLEY: Object to the form.

A. I was told by my attorney that I believe they might have, um, tried to do that. But I don't recall exactly.

Q. But, ma'am, my question is, if Mr. Poplin had been put up at trial --

A. Right.

Q. -- you agree it's possible the jury still would have found you 49 percent at fault --

MR. WILLEY: Object to the form.

Q. -- fair?

A. I'm not going to say that. That's not how I see it. I would see it as they would have not found me at fault at all.

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Q. Okay. So you believe, then -- and tell me if I'm wrong. You believe if your attorneys had put up Mr. Poplin, the jury would have found you zero percent at fault; true?

A. That's opinionated, sir. You know, you're asking me to form an opinion on something that is not factual, that I'm guessing about into the future of what would be said and try to answer for the jury, which I can't do. I know what you're getting at. And, um, I think that the -- it would have helped make their decision a little easier. I can't say that it would have. I don't know.

Q. Okay.

A. Because you just don't know people.

Q. Right. So in other words, it is possible that even if you had put up Mr. Poplin, they still could have found you at fault?

MR. WILLEY: Object to the form.

A. Yes, it's possible.

Q. Okay. Um, and if your attorneys had some evidence that would prove that you were free of fault, you would expect them to present that at trial, wouldn't you?

MR. WILLEY: Object to the form.

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A. Um, I trust the attorneys completely that are in my case.

Q. Right.

A. So I trust that they would show me whatever I needed to see or inform me of whatever I needed to know.

Q. Right. And you also trust that if they had some evidence that would prove 100 percent that you weren't at fault, they would have presented it at trial, correct?

MR. WILLEY: Object to the form.

A. I can't speak for the attorneys, sir.

Q. Well, I know you can't speak for them, and I'm not asking you to.

A. Okay.

Q. I'm just asking you, because they work for you, right?

A. Correct.

Q. And you -- your expectation is that they would put up any evidence that would prove to the jury you weren't at fault, correct?

A. And they did.

Q. Okay. So you don't believe they had any other evidence, that would have proved 100 percent that you were free from fault, that they didn't

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put up?

MR. WILLEY: Object to the form.

A. Um, I don't recall anything like that.

Q. Okay. Now, you told us, that based on the way that Mr. Daniel presented the case, that the 12 people sitting in that jury box -- the way he presented the case, it would -- you can see how they found you some fault, right?

A. By his questioning methods, even the Judge had to stop him several times by his questioning.

Q. Okay. And if USAA had been sitting in that box with the jurors, okay, it would be reasonable for them to find you at fault too, right?

MR. WILLEY: Object to the form.

A. I -- I don't know. I really -- I can't recall why they -- USAA would make a difference sitting in the box. Because I had no idea who the people were in the box.

Q. Right. In other words, you wouldn't hold them to a different standard than you would hold those people that heard all the evidence, would you?

A. Oh, no.

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MR. WILLEY: Object to the form.

Q. Um, you don't have -- the suits that were brought against you by the Kucks, you know that they sued you, right?

A. Yes.

Q. And they're asking for damages against you, right?

A. Right.

Q. And they're probably asking for punitive damage against you, right?

A. I wasn't aware of that.

Q. Okay. But you know that the Kucks are saying you were at fault and they're trying to get money from you, right?

A. Yes. At their deposition, they -- they lied. They didn't even acknowledge they were there.

Q. Hmm. And you also know that Antoine Johnson filed a counterclaim against you and wanted to get money from you as well --

A. Right.

Q. -- right? And did you ask USAA to hire a lawyer for you to represent you in all three of those cases?

A. No. I kept the same lawyers I had.

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Q. That would be Mr. Smith and Mr. Willey?
MR. WILLEY: Object to the form.
A. Yes.
Q. And did you also -- did you know that USAA retained a firm called Clawson & Staubes and Chris Nickels to --
A. Right.
Q. -- represent you and defend you in those three cases?
A. Um, no. I knew he was there at my deposition.
Q. Well, who is defending you right now in the suits by the Kucks?
A. By the Kucks?
Q. Yes, ma'am.
A. My --
Q. Is Mr. Willey?
A. I'm not sure.
Q. Mr. Willey isn't, is he?
A. Sir, at this point, I don't -- I don't recall. I don't know.
Q. And do you know that USAA paid Mr. Johnson to get a release for you so that he couldn't sue you anymore? Did you know that?
MR. WILLEY: Object to the form.

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A. No, sir.

Q. Did you know that USAA paid -- I might be wrong about this number, but I think they paid $10,000 to Mr. Johnson to get a release for you. Did you know that?

A. No, sir.

Q. And you didn't know that they hired an attorney to defend you from his claims?

MR. WILLEY: Object to the form.

A. I believe Mr. -- all I can tell you is I've seen Mr. Nickels once -- he wasn't even there at my trial -- and that was when I did my deposition. And he didn't advise me, like, Hey, we're with USAA and I'm supportive of you and we'll try to work through this, or anything like that.

Q. The only time you ever saw him was at the deposition that Mr. Daniel was at?

A. Uh-huh.

Q. Yes?

A. Yes. Or, you know, he wasn't just sitting there.

Q. Okay. Did you know that USAA paid money to Mrs. Kuck so -- to get a release from her so she couldn't sue you anymore?

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MR. WILLEY: Object to the form.

A. I have no idea, sir.

Q. Do you think that USAA should have paid money to these people to get a release for you so they couldn't sue you anymore?

MR. WILLEY: Object to the form.

A. I can't answer that. I don't --

Q. Because you believe that this Poplin report showed that you were not at fault, right?

A. Right.

Q. And, um, would -- do you think it would have been better if USAA had just said, okay, we're not going to defend Mrs. Hood because the Poplin report shows she's not at fault?

MR. WILLEY: Object to the form.

A. To be honest --

Q. Yes, ma'am.

A. To be honest with you, sir, had it been resolved as soon as the accident had been found that I was not guilty, none of those actions would have come into play.

Q. Okay.

A. Because it came over the last year, like 2017. The accident was in 2014. It could have been solved a lot sooner than that. And by then,

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you know, people start thinking, people start making decisions. But it would have never gotten to the point where the Kucks sued me or Johnson sued me had it been resolved from the beginning.

Q. And when do you contend it should have been resolved?

A. Within at least a year. I mean --

Q. Okay.

A. -- to me, that is kind of reasonable. Because, you know, every -- the reports showed that I wasn't guilty, that I was hit. My vehicle inspection -- I was hit -- I was t-boned from the passenger's side. Antoine hit me in the right wheel -- right driver's (sic) side wheel well. So it immediately turned my tire to the left.

And so the median is here; it's full of grass. The impact of the accident, I could not turn any other way than the way the car was going to go, and it went towards the Kucks.

Q. Okay. Well, ma'am, do you recognize that there was some evidence that your lights may not have been on at the time of the accident?

MR. WILLEY: Object to the form.

A. No, sir.

Q. Okay. So is it your belief that there

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was no evidence that your lights were off at the time of the accident?

A. Yes. I believe there was no evidence showing that they were off.

Q. All right. If there had been some evidence that your lights --

A. You like the ifs.

Q. Right.

A. We've got to be cutting (sic) and dry: Yes, no, maybe.

Q. So let's just say that there was some evidence --

A. Okay.

Q. -- that your lights were off. Do you agree it would be reasonable for USAA to consider that evidence?

MR. WILLEY: Object to the form.

A. I believe that's why they did the investigation of the vehicle, to preclude (sic) the fact that the lights were on or off. I mean, if -- some eyewitnesses, they saw the lights off. Some eyewitness said I rolled over in a ditch. I mean, how reliable is that eyewitness thing? So some witnesses said my lights were off; some said they were on. And to be honest with you, the

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police lady that came to give me the police report told me, Well, three people told me that your lights were off and two people said they were on, so I have to go with the three people that said your lights were off and that's what she put on the police report. And that's what she told me when I was still very wide awake, because I was awake through the whole thing in the trauma room.

Q. So you do acknowledge that some eyewitnesses said your lights were off?

MR. WILLEY: Object to the form.

A. I believe so.

Q. Okay. And you acknowledge that the jury in this case found that you were 49 percent at fault because they found your lights were off, correct?

MR. WILLEY: I object to the form.

A. I don't know if that's the reason, but they found me at 49 percent at fault.

Q. Okay. And, um, you -- is it your contention that because of the Poplin report, USAA was required to ignore all evidence showing that your lights were off; is that what you contend?

MR. WILLEY: Object to the form.

A. No.

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Q. Okay.
A. I don't contend that.
Q. So you agree that it would be reasonable for USAA to consider eyewitness -- eyewitnesses who said that your lights were off, right?
MR. WILLEY: Object to the form.
A. Um, I suppose.
Q. Okay. And do you know, ma'am, that if -- that the jury -- they found you 49 percent at fault, but if they had found you just 2 percent more at fault, you couldn't have recovered anything? Do you know that?
A. Okay. No, sir.
Q. Do you think it would be reasonable for USAA to think that you may be found 49 percent at fault in the accident?
MR. WILLEY: I object to the form.
A. Sir, you're referring to a court case that has been recorded in public record.
Q. Yes, ma'am.
A. If there was any question about the court case, then you could look it up in public records. As a matter of fact, all you have to do is look outside the wall. My case is posted in the Lawyers Weekly on the wall back there.

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Q. Yeah. They have it posted a lot of places around their lobby, actually.

A. Oh, really?

Q. Yeah.

A. So, um, I think the questions you're asking me, that I have to assume something or guess at something, versus a question that's direct, like, did this happen? Did this happen? What did you do in this instance? Or what should we do in this instance? Because it just sounds like going in a roundabout way that USAA is not at fault for anything.

Q. Well, I guess what I'm trying to find out -- and, you know, you're suing USAA. You contend that they didn't --

A. Right.

Q. -- handle it the right way. So that's why I'm asking you these questions. Okay?

A. Well, let me turn this around and ask you the same question. What would you have done had USAA done to you what they've done to me?

Q. Well, I think that you've been paid -- you've been paid what was owed under the contract. But my question, ma'am --

A. But you didn't have to take two sides.

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You know, you would have owed me this money regardless, right? Because of the claim -- because I'm insured; I'm insured for, you know, 500,000, my husband is insured for 500,000. You know -- and you knew that I was innocent. So you would have had to pay this regardless.

Q. When you say "innocent," do you mean --

A. That I had my lights on.

Q. -- zero --

A. Yeah.

Q. -- excuse me -- zero percent at fault, right?

A. And everybody that -- you know, friends or relatives couldn't believe that this would have to go to trial because it was cut and dry, and it was just lights on, lights off. But I have had to deal with people calling me a liar or, you know, ask -- questioning my own sanity at some point about what this was about. And when Mr. Smith told me about the Kuck lawsuit, that I was -- I was surprised at. But it just -- it just would not have happened.

Q. Okay. So what you said is that USAA should have paid you because they knew you were innocent, right?

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A. Yes.

Q. And innocent means zero percent at fault, right?

A. Right.

Q. But if there was some information that you were not zero percent at fault, that maybe you were 50 percent at fault or 51 percent at fault, that would be a different story, wouldn't it?

MR. WILLEY: Object to the form.

A. Yes.

Q. Okay. And if it hadn't have been for this Poplin report -- let me ask you a different question.

A. Okay. I was -- I was told that there were several, um, inspections of my vehicle, you know. I don't know by -- who all the people were, but I was told there were several that found things. But the one that stuck out, I guess, was Mr. Whelan's (sic). But I know -- I believe, anyhow, that perhaps there were other people involved in checking the vehicle, more than likely for damages.

Q. Who else checked the vehicle?

A. I think USAA checked it for damages. They had it towed to a lot. I don't know where,

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but they kept it protected with plastic or something so that they could go back and look at, you know, what caused the accident, what damages were done, how they came about to say that it was a total wreck -- a total loss, rather.

Q. Well, that would pertain to your property damage.

A. Yes.

Q. Let me ask you this, are you aware of anybody inspecting it and determining that the lights were on or off besides Mr. Poplin?

A. No, sir.

Q. Now, um, if you had received the million dollars earlier than you got it, would you have spent the money the same way?

A. I don't think I would have had to spend it the same way, simply because I wouldn't have kept incurring medical issues. I mean, I have life damaging -- I can't walk; I can't wear heels. As you saw, I have spasms to this very day. My shoe -- my whole left side of my leg, from my ankle up to the mid-calf, was split in half. So this whole half has arthritis. Um, my shoes are turning inside out. I have pain in my leg, obviously my neck and back daily. That's why I

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said I could tolerate the pain when it's a spasm. But it's -- I think a lot of that would have been, you know -- would have continued, the medical bills and so forth. But I think with that money earlier, I could have probably planned the bill and my attorneys' fees wouldn't have been as high as having to get the focus groups and the extra lawyers, which, you know -- and the videotaping of the Kucks' deposition and all this -- other things that had to happen in the middle of the time, had it been resolved earlier. And now I'm just wondering, do you do this to everybody?

Q. Well, ma'am, my question was, if you had received the million dollars earlier than you got it, would you have spent the money the same way?

MR. WILLEY: Object to the form.

Q. The -- you told me about your medical treatment, right?

A. Right.

Q. Now, your medical treatment would -- your injuries would not be any different regardless --

A. Right.

Q. -- of when you got the million dollars?

A. Right.

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Q. Your medical treatment would not be any different regardless of when you got the money, correct?

MR. WILLEY: Object to the form.

A. I'm not sure how that would have impacted it, you know, because there could have been different avenues that I could have maybe sought. I don't know.

Q. Can you -- I mean, other than anything is possible, can you tell me anything that you didn't have done that you would have had done or anything else?

MR. WILLEY: Object to the form.

A. Um, I'm trying to think. I can't think of anything.

Q. Okay. If you think of something, will you please let me know?

A. Okay.

Q. Thank you. Um, let's see. And you said that the attorneys' fee was different. Tell me about that.

A. The attorneys' fee, uh, would have been -- okay. You're talking a million dollars. The attorneys' fee was 40 percent.

Q. Okay.

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A. Okay. So had I received it earlier, the amount would have still been 40 percent. Yes, it would have been -- how do I say this? -- the money would have gone a longer way.

Q. Okay.

A. Because it would have gained interest, and that could have deferred the attorneys' fees. And the fact that he didn't have to spend all this additional time and documentation and all the other stuff he had to do and the specialists he had to hire and all these other people he had to hire to support the case, which turned out to be like around $300,000.

Q. Wow.

A. Because he did the best. I mean --

Q. Who?

A. Kevin Smith, he did the best. Mr. Wiley (sic) came in at the ending. He did a super job in the -- dealing with our friend. And he came in at the end but did the court case.

Q. Okay. So you were told that your -- that the costs were $300,000?

MR. WILLEY: Object to the form.

A. I believe so.

Q. Okay. And as far as what Mr. Smith was

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paid, he was paid 40 percent, right?

A. Right.

Q. And that would have been the same if they had paid you earlier or if they paid you after trial?

A. Right.

MR. WILLEY: Object to the form.

Q. Now -- and you said costs for extra lawyers. That wouldn't have -- you didn't have to pay anything more for Mr. Willey, did you?

A. Um, I don't believe so.

Q. Okay. Um --

MR. WILLEY: Free of charge.

Q. So the --

A. But there were other -- there was other attorneys involved. Kevin had two.

THE WITNESS: Then there was you.

A. Then there were experts; then they did all this research on his phone --

Q. Yeah.

A. -- on --

Q. So I assume --

A. There was so much that they presented at the court case. I can't believe that they -- they didn't find me innocent.

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Q. Yeah.
A. But --
MR. WILLEY: I think we've got you everything that we spent, if you need anything else --
A. This --
MR. WILLEY: I think she's a little confused about --
A. Yeah. I --
MR. WILLEY: -- the cost versus the fees.
BY MR. WHELAN:
Q. Well, let's do this --
A. Okay.
Q. -- so Exhibit 3 are the costs.
A. Okay. This is the cost for this case; you're not referring to the cost of the accident?
Q. No, ma'am. What I'm talking about is you had a million-24,000 --
A. Right.
Q. -- right? And then it went to the attorneys?
A. Right.
Q. And then you had $500,000, right?
A. Right.

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Q. Okay. You were given a breakdown to show where that other $500,000 went, correct?

A. I never got it in paper. I briefly saw a paper --

Q. Uh-huh.

A. -- um, but, no, I didn't see the actual document like you have it here so I can study it, no.

Q. Okay. So other than looking at that document, is there any way for you to sit here right now and tell me what was spent for who, when and why?

A. Um, no. It's more based on information I received.

Q. Okay. So we need the document to actually see what it was, right?

A. Okay. I don't have that.

Q. Okay. The only thing I've been given is Exhibit 3, which totals $49,052 in costs. Do you see that?

A. Yeah. I just don't recognize it.

Q. Okay. So you saw something different than this that broke down the costs?

A. Yes.

MR. WHELAN: All right. Can you all

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produce that to me?

MR. WILLEY: What?

MR. WHELAN: The -- well, I asked you for the retainer agreement and anything specifying her damages.

MR. WILLEY: That's the costs --

MR. WHELAN: So to the extent that you have any -- that you're seeking anything other than this, you need to produce it to me.

MR. WILLEY: That's the costs in the case. Whatever we produced are the costs in the case.

MR. WHELAN: Okay.

MR. WILLEY: I think she's confused --

THE WITNESS: This is a separate case.

MR. WILLEY: Yeah, I think she's confused about the distinction between attorneys' fees and costs, which we're talking about freely.

THE WITNESS: Because I'm talking about the other case.

MR. WILLEY: And there's multiple cases. I mean, the case we're here about is Therese versus Antoine Johnson, right?

MR. WHELAN: Uh-huh.

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MR. WILLEY: Okay. These are the costs for that case.

MR. WHELAN: Right.

MR. WILLEY: That's what we produced.

MR. WHELAN: All right.

MR. WILLEY: We haven't produced any other costs related to any other case, including this case, which is the bad faith, negligent adjustment case, whatever.

BY MR. WHELAN:

Q. But you're saying you have costs in other cases?

A. Yeah. Well, the case --

MR. WILLEY: We're here at this moment incurring costs.

MR. WHELAN: You're talking about the costs in the bad faith case? Are you talking about anything -- we're just speaking in riddles here. What other costs do you have?

MR. WILLEY: This case. The costs in this case.

MR. WHELAN: Okay.

THE WITNESS: But you're referring to the million dollars I received for the other case?

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MR. WHELAN: Correct.

MR. WILLEY: Right.

MR. WHELAN: Right.

THE WITNESS: And so you're asking where that money went. And that's where I'm giving you the information that I received about the breakdown --

MR. WILLEY: Yeah.

THE WITNESS: -- that I saw.

BY MR. WHELAN:

Q. Okay. Um, and are you seeking attorneys' fees for this case?

MR. WILLEY: Object to the form.

A. I pass that on to my attorney.

Q. Okay. Do you know what you're being charged in this case? Do you know what the fee is?

A. No, sir.

Q. Do you know whether it's a percentage of the recovery?

A. No, sir.

Q. Do you know whether it's hourly?

A. No, sir.

Q. If you had -- okay.

A. I will just put it like that way: I

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know nothing --

Q. Okay. So --

A. -- about this stuff.

Q. You're leaving that up to your attorneys as far as what they want to charge?

A. Yes. I'm sure Mr. Wiley (sic) is very honest and discreet and he will treat me justly.

Q. Okay. Are you seeking any damages for mental health or mental anguish in this case?

A. I would say yes.

Q. Okay.

A. Because I've had to deal with mental anguish for the whole time of the accident. And then with this procedure, um, not as much, but the fear of having to deal with one other person, um, the anxiety that presents in itself. But this case is not nearly, um, as anguishing -- causing more anguish than the other one. That's for sure.

Q. Okay. So just to be clear, what you're talking about is you had some anxiety before this deposition today, correct?

A. A little. Because I didn't know what the deposition was about, mostly. And I told you. I thought it was Mr. Daniels. I didn't want to face him again.

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Q. Okay.

A. That's bad, I know, and definitely not Christian.

Q. All right. So tell me -- so you had anxiety about coming to your deposition today, correct?

A. Yes.

Q. And you knew when you filed this lawsuit you would have to be deposed at some point, didn't you?

A. No. I was not aware of that.

Q. Okay.

A. But, then, I don't remember exactly when this lawsuit started, but it started a long time ago.

Q. Yeah. Um, and are you claiming as part of this suit mental anguish caused to you by Jack Daniel?

A. Um, I can't really say it's him, because USAA appointed him. And when I asked that they remove him, they left him there. So I blame USAA mostly for the mental anguish.

Q. Okay. And I'm going to talk to you about that, and I told you an hour ago that I would, so we're almost there. But before I get

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there, other than the anxiety about this deposition and the anguish that you had as a result of Jack Daniel's conduct, is there anything else that causes you mental anguish that we're here for today?

MR. WILLEY: Object to the form.

A. Um, I said that earlier, anger. Because I wasn't fairly treated. I don't believe I was fairly treated.

Q. Anything else?

A. I mean, what more could there be to say than someone that you've trusted in all your -- basically your life let you down like this? You know, there's nothing else to say.

MR. WHELAN: Um, why don't we do this, why don't we take a little break?

THE WITNESS: Okay.

THE VIDEOGRAPHER: This is the end of media No. 2 in the deposition of Therese Hood. We're off the record at 12:11.

(The deposition went off the record.)

THE VIDEOGRAPHER: This is media No. 3 in the deposition of Therese Hood. We're on the record at 12:20.

BY MR. WHELAN:

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Q. Okay, Ms. Hood. We just took a little break. We talked about lunch; you had a late breakfast, so it's your preference that we push through with the deposition?

A. Okay.

Q. All right. But if you get hungry or feel distracted or whatever, just let me know and we'll take a break and fix whatever is wrong. Okay?

A. Okay.

Q. Excellent.

A. I just don't want this to take as long as it took for you guys to resolve the case three years ago, four years ago.

Q. Well, I can tell you this deposition will take less than three years.

So we were talking before we broke about the mental anguish that you had. And you said that you were angry because you wanted to be treated better?

A. I say angry. Probably hurt would be -- saddened by the beliefs that I had. And I was disappointed in those beliefs.

Q. Okay. So you were hurt and disappointed that USAA did not pay you when they thought --

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when you thought they should have paid you, correct?

A. Um, I was disappointed by the whole unfair treatment of -- and the unfair relate back to the fact that in one case my lights were on and in another case the lights were off, which happened to be in the court case that my lights were off. And knowingly -- at least Mr. Daniels, working for USAA, would have known about the headlights, I would think. He would have known about the expert testimony. And that was never acknowledged. So I can't say it's all one thing; it's a compilation of things.

Um, my relationship with USAA has always been strong. I stand behind it, because I'm a veteran. And like, you know, the other veterans, they stand behind it too. And, like I said, if I would have put anything in the newspaper or out in the public or anything about what had happened to me as far as the dual decision -- and to me, that's a breach of faith or lying -- that people would have a totally different outlook on USAA. But I didn't say anything.

Q. Um, and the dual decision, do you understand who it was who got the Poplin report?

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Do you know who that was?

A. No, sir.

Q. Have you ever taken any steps to find out -- so you've been told that USAA got the report; is that right?

A. I believe so.

Q. Okay. Have you been told who from USAA supposedly got this report?

A. No. No, sir.

Q. All right. And have you taken any steps to talk with anyone other than your attorneys about where this report came from?

A. No. Like I said, I trusted them completely and --

Q. Um --

A. -- um --

Q. Did the attorneys -- well, let me ask a different question. Were you ever told that the person who got that report or who hired Mr. Poplin was an attorney who was defending you from the claim of Mr. Johnson, where he was trying to get money from you?

A. No, sir.

Q. Okay. And you -- were you -- were you ever told or do you know that Mr. Nickels was your

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attorney, who had an attorney-client relationship with you, whose job it was to protect you? Did you know that?

A. Yes.

Q. Okay. Did you believe that Mr. Daniel also had an attorney-client relationship with you?

A. Yes.

Q. And did you believe it was Mr. Daniel's job to protect you?

A. Well, if you're told by an insurance company that they've assigned two attorneys for you, most people would assume that they were there to defend you, not to turn against you.

Q. Okay. So it was your belief that Mr. Daniel's job was to protect you, right?

A. Yes.

MR. WILLEY: Object to the form.

Q. And to fight for you, right?

MR. WILLEY: Object to the form.

A. Uh-huh.

Q. And not to question whether your lights were on or off, right?

MR. WILLEY: Object to the form.

A. Well, I can't speak for him.

Q. Right.

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A. So I don't want to shed opinions or things that are gonna go into my deposition that I don't have factual answers for. But I do -- my assumption is that if you have an attorney representing you, then they find all of the documentation or all -- everything they need to do to protect you. And in this case, that didn't happen by either one of them. Neither one of them went -- my husband drove to the site where the accident was, made a map of the whole thing. Neither attorney did that. Neither attorney ever went to Hilton Head, that I believe of. Um, so how could they investigate in my faith if they don't know? And they've not been there and not seen, and, you know, they could have immediately disclosed the -- quelched (sic) the idea that my vehicle was turned over in the median and my lights were off, when the median is flat.

Q. But, ma'am, back to Mr. Daniel, okay, you believed he was representing you, and you believed Mr. Nickels was representing you too --

A. Yes.

MR. WILLEY: Object to the form.

Q. -- right? And when you say that you were hurt and you thought that there was this dual

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decision going on, that's because you thought both of these guys were representing you, right?

MR. WILLEY: Object to the form.

Q. Right?

A. No, no. Because I didn't know who was representing the Kucks.

Q. But that's somebody completely different.

A. Okay. So the person who was representing the Kucks, that was a completely different person but from USAA, was, um, Mr. -- Mr. Whelan (sic) provided them with the document of expert testimony that my high beams were on.

Q. Now, hold on.

MR. WILLEY: Object to the form. This is Mr. Whelan.

THE WITNESS: Oh.

Q. That's okay.

A. You're the expert person?

Q. Oh, you're talking about Mr. Poplin?

A. Poplin.

Q. Poplin, yes. Yeah, okay.

MR. WILLEY: I think we're getting the whole thing confused here, but go ahead.

A. Okay. So that person, um, knew, I

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guess, or had the paperwork that showed that my high beams were on and presented that to the court case for the Kucks against me. And in that court case, they used that document to prove -- to find me guilty because I didn't have my lights -- or, rather, to find me innocent because I didn't have my lights on, but yet I did. Now, when it actually came time for trial, Mr. Daniels had all along assumed that I was lying about my lights, I was lying about direction -- everything, and he said that my lights were off.

Q. Uh-huh.

A. So my whole thing about that is, how can one USAA attorney say that, Oh, she had her brights on, to dismiss the Kucks' case, and then to turn around and say that I'm at fault for the actual accident because I didn't have my lights on?

Q. All right. So let me just be clear about something, make sure I'm clear.

A. Okay.

Q. So Chris Nickels --

A. Uh-huh.

Q. -- who had the Poplin report, right, along with your attorney Mr. Smith --

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A. Oh, okay.
MR. WILLEY: Object to the form.
A. I don't know. Okay.
Q. -- they said your lights were on, right?
A. I don't know, sir.
Q. You don't know?
A. I don't know.
Q. Okay. Um, well, is it -- you're saying that somebody from USAA took the position that your lights were on? That's what you just told me?
A. Yes.
Q. And who is that person that you're talking about?
A. I'm not sure. That's what I was told, that the person -- that that is how the case had gone with the Kucks, the result of the case with the Kucks.
Q. Who told you that?
A. My attorney.
Q. In this case?
A. No, no. In the other case.
Q. Mr. Smith?
A. Yes.
Q. So Mr. Smith told you that --

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A. This isn't about my lights being on or off. This is about whether you did a bad faith case. So my lights should not even come into this discussion, I think. Because what does that have to do with the fact that -- how else to put it? That in one instance I had lights on, one instance I didn't have, and that protected USAA from paying any money. And that's my thought of what this deposition is about.

Q. Right. The lights. Right?

A. Okay.

Q. I mean, I don't understand what you just said, Ms. Hood, when you said this case isn't about the lights and then you told me it is about the lights.

A. I guess -- yeah. I guess it's looking at that. But the reason I'm saying it's about the lights is because of the positions that USAA took --

Q. Yes.

A. -- about the lights.

Q. Okay.

A. So it doesn't really have to do with lights being on or lights being off. It has to do with the position that USAA took.

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Q. And you're talking about the position taken by Mr. Daniel, correct?

MR. WILLEY: Object to the form.

A. I -- Mr. Daniels was paid hourly, I believe, by USAA; in my opinion -- this is going to sound bad -- to let the case go as long as it could so he could continue to get paid and put a stop on every single thing my attorney tried to present to him, but Mr. Daniels got his information or passed on his information to somebody, some attorney at USAA, so that it still is USAA's responsibility, I feel. Um, I'm not absolving Mr. Daniels. Like I said in my e-mail, that was, you know -- nobody, nobody on this earth deserved what he did to me and to my witnesses. Nobody.

Q. All right. So let's talk about that.

A. Okay.

Q. And if you need to take a break, you just let me know. Okay?

A. Okay.

Q. What did Mr. Daniel do to you and your witnesses? Give me a list and then we'll go through it. Okay?

A. Okay. When we first went in -- when I

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first went in for my deposition, which was the first time I met him, I was informed by Mr. Nickels that he was an attorney for me, and then introduced Mr. Daniels and said that he also was an attorney for me and would be handling a different part of my case.

So when it came for Mr. Daniels to question me, he -- how could I put it? He had a bunch of books in front of him and was flipping back and forth, back and forth the pages and asking questions and stuck on the idea of whether my wheels turned right, my wheels turned left. Where were you looking? And then he -- he said, Oh, you said this in this sentence, and you said this in this sentence. When, in fact, he had asked me three questions since that sentence, and I was replying to the first one, and then he alluded to the fact that I was lying. And I said, No, I'm replying to this question that you -- he said, Well, that's not what I just asked. And he was very antagonizing.

And -- you know. And then he said, Well, you don't know what you're talking about. And I said, Well, you know, I was there; I know what I'm talking about. He said, Well, you've got

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all your facts confused. And my thinking was, how can this man say this to me, who is supposed to be defending me? And then he continued with his line of questioning, which is bizarre, to -- to everybody that's ever heard him.

And then, finally, he looks at me and he says, Well, it seems to me that you just can't handle this anymore. So we need to end this deposition because you're not prepared. You're -- you know, I feel that you're lying, basically, is how -- he probably didn't use "lying." But he used the word "untruth."

And, um, so I told him I was okay to go on. But I left there feeling stupid, feeling like I didn't know what I was saying; I had lied about something when I knew darn well I hadn't been lying about anything. And it's just -- it was a horrible experience to go there and somebody look at you -- when all the people in the room look at you like you're lying, like you're stupid, like you don't know what happened, you don't know your left from your right. All of that happened.

And so when I went home, I'm asking my family members, Do you think I lie? And they said, Why do you ask that? And I said, Because

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that's what I've been told. And they said, No, Mom, you don't lie. You know, you're the most honest person there is. I had a top secret clearance in the Army.

And so, you know, this went on. And I was really, really depressed. And I said, Maybe my sanity is going, I don't know. So I went to see my doctor and, you know, told her what happened. And she was -- I can't imagine the face that she had. And then she looked at me and she said, That was disgusting of anybody to treat another person like that.

And so she said -- I told them -- I told her, I said, Well, I believe I blew the deposition. She said, Well, I'll go do a deposition on your behalf because of what this has done to you. And, um -- but Kevin said that wouldn't be necessary. He said that, you know, he would accept a letter. And she wrote a letter to him explaining to him what happened.

Well, because the case wasn't resolved, of course, this anguish continued. And I'm still questioning -- you know, I questioned myself up until the accident -- the day of the court, September 7th, because I had no proof that my

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lights were on; nobody told me that. And so I had to go through this whole time, and I was so relieved when it was over. But in every instance where either Mr. Daniels was there present for somebody else's deposition or was there in the room with me, it's like he'd always give me these dirty looks or these "you're a nobody" look. And that hurt. And he did it every time, and I must have seen him like five times. And it got to the point where I asked Kevin, Is Mr. Daniels going to be there? I even asked Mr. Wiley (sic) today, Is Mr. Daniels going to be there? And he said, No. Because I told Kevin I didn't want to go anymore to anything where I would have to be subjected to that.

And my witnesses only got a few minutes with him when they were on the stand. And they -- and I told them before they even went on the stand -- I said, Be prepared for Mr. Daniels; he's abusive, and he will try to trip you up. And, sure enough, that's what he did. And they stuck to their knowledge of me as a person. And then he -- then he made that comment, Well, we can't use these witnesses; they're all Catholic.

And I had tried to explain earlier that

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my witnesses were not all Catholic, but most of them were, because I'm very involved in the church, and those are my friends, you know. Those are the people who have known me for the last ten years, who know my personality and who know who I am. And they all said, She is now not the person she was before this accident and before this happened. She's not that person at all. They said, She used to be so happy, always smiling, always giving and -- you know. And one of them said, She used to stay after church and be sociable. And she said, Now she can't wait to get out of church because she doesn't want to see anybody. And I didn't, because I didn't believe in myself, my self-esteem had been crushed.

And so if you don't think highly of yourself and you don't think of yourself as a good person, then you don't want to be around anybody else because you don't want them to see you like that. And that's why I stayed home all the time. Um, I still stay home. Not as much. I get out. I'm back doing things with my friends, but that's been after this -- after I've been found innocent of the accident.

Q. Okay. Okay.

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A. And I've been able -- you know, I still have -- if I don't have the mental anguish reminding me of everything, I have all the pain every day to remind me. So it's not like something that just goes away and -- like, I'm a very proud person. I guess that's the other thing. And to attack my mental state or me as a person is really hard on me. Because I am that perfectionist and I want everything to be perfect. And I want -- you know, and I'm honest. And to have somebody question that all the time and accuse you of things is I think harder on the person who is truthful and who takes everything to heart. And that's why it probably affected me more than some other people.

Q. All right. And it's obvious, Ms. Hood, that how you felt after that deposition still affects you deeply today, right?

MR. WILLEY: Object to the form.

A. Yes.

Q. And is part of that because you were told that Mr. Daniel -- or you felt that Mr. Daniel was supposed to be defending you at that deposition?

MR. WILLEY: Object to the form.

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A. I'm not sure. I'm treating him as a person versus an attorney, because I can't -- as the attorney who should be representing me, obviously, he didn't do that.

Q. Right. But you felt --

A. Um, but I had to rely on USAA's word that they had hired him to defend me, and that's what I was told.

Q. And so based on that, you believed that he was defending you, right?

MR. WILLEY: Object to the form.

A. Well, why -- he wasn't?

Q. But -- right. So even today, you believe he was defending you, right?

MR. WILLEY: Object to the form.

A. Yes.

Q. And that's why this hurts, right?

MR. WILLEY: Object to the form.

A. No.

Q. Well, that's why --

A. If you would have sat down and somebody accused you of lying and not being able to remember anything, not having your -- basically your right faculties, that you couldn't even stand for a deposition, that's not representing the

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person. It's -- you know, that's the person (sic).

And so the case -- even if I -- I don't blame this all on Mr. Daniels. I think it has had -- equal with my physical pain, I guess, it's had one of the longest effects because of my personality, because of who I am. But I also know that I was told that USAA hired him. And when you're deciding anything, you go back to the source. Who did what first? And you did -- hiring Mr. Daniels did first -- or USAA; not you personally, but USAA.

So -- and the fact that I had requested a different attorney and I got no reply and no results, and the fact that he continued his abuse, led me to believe that USAA just didn't care. And so that -- that's where USAA I blame.

Q. So you told me that after this deposition, you would tell Mr. Smith, you told Mr. Willey this morning, that you did not -- Is Mr. Daniel going to be there, right?

A. Yes, I did. I did.

Q. Because you didn't want -- they -- you wanted them to know you're uncomfortable around him, right?

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A. Well, they knew.
Q. Sure. And, um --
A. But I think both Mr. Smith and Mr. Daniels got into several face-to-faces.
Q. Yeah.
A. And everybody that has been involved in this case or that I have talked to have had words -- to put it politely, words with the other -- with him as an attorney. And --
Q. With Mr. Daniel?
A. Yeah.
Q. Okay.
A. And he, in my view, does not have a reputable -- no. I can't say that. He's not popular with other attorneys, I think, and this is an opinion, you know.
Q. Um, based on your conversations with your attorneys?
MR. WILLEY: Object to the form.
A. No. It was just --
Q. Let me ask you this --
A. -- based on observation.
Q. -- have you talked to anybody about Mr. Daniel's reputation beyond your own attorneys?
A. I don't even think I told them.

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Q. Okay. So you --
A. It's an observation that I've made by watching interactions -- you know, his interactions with people. And it's not -- you know, the reason I say I can't just blame him on the whole thing is because he doesn't -- as far as I've seen, at every deposition, at every place that I've been to that he's been to, he does it to the other people too. You know --
Q. So you have witnessed a style that he has with all witnesses that you've seen him interact with, correct?
A. Yes.
Q. Now, when you talked to Mr. Willey and Mr. Smith about your uncomfort with -- or your discomfort, I should say, with Mr. Daniel, did you -- did you talk with them about whether or not Mr. Daniel was defending you?
MR. WILLEY: Object to the form.
A. No.
MR. WILLEY: And don't -- you can't get into the substance of anything we've discussed. Okay?
BY MR. WHELAN:
Q. Um, now, let me ask you this: You said

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that you -- every time you met with Mr. Daniel you had this discomfort. I'd like to talk about those times, and I know it might be difficult for you, but we'll get through it. So we have -- I know we have the deposition, right?

A. Right. And then we had the mediation.

Q. Okay.

A. And then we had Mr. Johnson's deposition.

Q. Okay.

A. And then we had the Kucks' depositions.

Q. Both of them?

A. Hmm?

Q. Both depositions? You and him were at both of those?

A. Yes.

Q. Okay. All right.

A. And wherever the attorney had to go referenced my case and, of course, Mr. Daniels would be involved, I went too. But those are the ones that come off the top of my head, other than the day of the court date.

Q. Uh-huh. Okay. Um, so your deposition, Mr. Johnson's deposition, the Kucks' depositions. Do you recall going to any other depositions in

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the case?

A. Yes. The police officer was deposed. Um, I don't remember -- I don't remember -- I think there was another person that was deposed, but I'm not remembering right now.

Q. Okay. And, um, you also saw him at the mediation and you saw him at trial, right?

A. Yes.

Q. Have you seen him anywhere else besides those places?

A. No.

Q. And you said that you first met him at your deposition, right?

A. Yes.

Q. And did you also meet Chris Nickels for the first time --

A. Yes.

Q. -- that day? And you remember somebody telling you that Mr. Daniel would be representing you at that deposition?

MR. WILLEY: Object to the form.

A. Yes.

Q. Do you remember whether that was Mr. Smith or Mr. Nickels or Mr. Daniel?

A. I think it was Mr. Nickels.

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Q. Okay.

A. Because he made it specific to say that he was representing, um, me in the property damage, and that Mr. Daniels would be, um, representing me in the personal injury.

Q. And, of course, you just met Mr. Nickels, but you've known Mr. Smith for a while?

A. Yeah. That's -- yes.

Q. You spent some time with Mr. Smith, and you trusted Mr. Smith?

A. I trusted him very completely.

Q. And was he there when you discussed this with Mr. Nickels and Mr. Daniel?

A. Yes.

Q. Okay. Kevin Smith was there?

A. Yes.

Q. Do you remember --

A. It was the deposition, so the attorneys were like you are.

Q. So when you remember somebody saying that Mr. Daniel was representing you, Mr. Smith was there at that time, correct?

A. Yes.

Q. Okay.

A. I believe so.

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Q. Um, and -- let's see. You said that, um, Mr. Daniel said some things to you that you took to mean that you were a liar, right? And when he was talking to you, there was a court reporter just like Ms. Wilbanks writing down what was being said, right?

A. Right.

Q. Do you remember him saying anything to you that was improper, other than when you were going through the deposition and the court reporter was typing it down?

MR. WILLEY: Object to the form.

A. I don't remember. I know when I got my copy of that deposition, I went through it with a fine-tooth comb and highlighted everything, um, that was said to me. Um, and I replied to all those comments, and I gave it to Kevin, and he said that wouldn't help anything; that the deposition is a deposition, and you can't contest your own deposition.

So in that document, it was highlighted, all the instances.

Q. So all the things that you just told us about, you actually looked in your deposition and they're there?

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MR. WILLEY: Object to the form.

A. Yes.

Q. Okay. And let's see. And -- you mentioned that he -- I think your word was, abused some other witnesses.

A. I didn't say abused. I didn't -- that's a very sensitive subject. I said I felt like he accosted me --

Q. Okay.

A. -- by his look of disgust every time I saw him. And, um, obviously, he didn't say anything to me. He only looked at me like with disdain. When I caught his eye -- I avoided his eyes all of the time.

Q. So to be clear, then, the only time you actually -- putting looks aside, the only time you would have spoken to Mr. Daniel or he would have spoken to you would be during the deposition and during the trial, when he was asking you questions, correct?

MR. WILLEY: Object to the form.

A. I don't remember. I don't recall that.

Q. Okay.

A. I don't recall exactly.

Q. Let's just -- let me just maybe simplify

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it a little bit. So you remember he asked you questions in a deposition, right?

A. Uh-huh.

Q. Yes?

A. I remember he asked me questions there.

Q. You remember he asked you questions at trial?

A. Right.

Q. Okay. Do you remember speaking with Mr. Daniel at any time beyond those two times?

A. I want to say yes, but I don't recall, to be honest with you, exactly.

Q. Well, can you think -- and even if it's just general, can you think of any time, other than when you would have been under oath answering questions, that you would have spoken to Mr. Daniel?

MR. WILLEY: Object to the form.

A. The only thing is perhaps I said hello one time. But I don't -- didn't talk to him, like a conversation.

Q. All right. So there would have been no conversations other than hello besides --

A. Uh-huh.

Q. -- when you were under oath?

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MR. WILLEY: Object to the form.

Q. Is that a yes?

A. Yes.

Q. Thank you. Um -- all right. Now, you said that he did something to some other witnesses. And I don't know whether it was accosted or abused or what. But he treated some witnesses improperly, I believe?

A. Yes.

Q. What witnesses were those, besides yourself?

A. Oh, the names?

Q. Yes, ma'am.

A. Okay. Helen Hernandez.

Q. Okay.

A. Nilda Fowler.

Q. Melba?

A. Nilda --

Q. Nilda.

A. -- N-I-L-D-A, Fowler, F-O-W-L-E-R.

Q. Okay.

A. Rosa Olmeda, O-L-M-E-D-A.

Q. Okay.

A. Father -- I can't say his last name. Father Jason of Immaculate Conception Church. I

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don't -- I can't think of his last name. It's a weird long last name.

Q. That's okay.

A. And those were the four that were mostly the ones that he tried to twist their words by saying -- he was trying to decide -- they were character witnesses. So he was questioning them about what they knew about me and how long they'd known me. And then he'd say, Well, would that have anything to do with something -- he'd refer it back to the accident, which some of them were aware of and some -- obviously, some were aware of that could tell how I reacted towards that. But he, at one point -- I don't know. He twisted questions because they'd look at me, and I -- I couldn't say anything, you know; I had just prepared them that he would try to trump up their questions.

And when he got to the last witness -- I think Father Jason was the third witness. And when he got to Rosa -- Rosa was the last witness -- he said, Oh -- he was frustrated, and he started walking away instead of asking questions. And then he said, We need to discount -- I don't know what the word was -- these

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witnesses because, you know, they're Catholic; they're all her friends; they're gonna basically lie for her.

Q. And he said that to the jury?

A. Hmm?

Q. He said that --

A. He said that in front of the jury.

Q. Okay.

A. Um, and then the Judge I know stopped him on several questions with the way he was questioning the witnesses. And she corrected him several times. And she felt sorry for me. At the end of the court case, she said, I feel so bad that you had to go through this. And, um --

Q. And you felt she was talking about Mr. Daniel?

A. I don't know what she was talking about. But I thought that had a part in it.

Q. That Mr. Daniel did?

A. Yeah. But not totally the whole thing, obviously.

Q. So what was it that he said about Catholics?

A. Um, that they were Catholics and that, um -- he couldn't accept -- first of all, the

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Judge said that we could accept the testimony from my friends. And he -- he objected to the testimony because he said they were Catholic and they were my friends. And --

Q. And you thought that was based on religion?

A. Well, what would you think?

Q. I'm asking you. So I don't know.

A. Yeah, I thought it was -- I thought it was a dict- -- a direct affront to the Catholic religion.

Q. And that's caused you mental anguish?

A. Well, no, not so much that --

Q. Oh, okay.

A. -- as much as --

Q. Well, let's focus on what --

A. -- disgusted.

Q. Let's focus on what has caused you mental anguish. Did Mr. Daniel do anything else to any other witnesses that has caused you --

A. He --

Q. -- any pain, any suffering?

A. I don't know that it caused me pain, but when he questioned the Judge (sic), he tried to imply something about -- because the Judge (sic)

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was testifying to the lights. And I know -- I seem to recall the Judge correcting him on something that he asked.

Q. Okay. Anything else?

A. No. You're getting frustrated now.

Q. No, I'm not. It's okay. It's okay. I promise you.

A. I'm very sensitive to people's moods.

Q. Um, well, don't worry about my mood, please.

Um, let's see. So anything that Mr. Daniel did to cause you any suffering, putting aside the looks, okay --

A. Okay.

Q. -- would have been typed down by a court reporter, either in the depositions or at trial; is that true?

MR. WILLEY: Object to the form.

A. I have -- I don't know. I would assume so. But --

Q. Yeah.

A. -- for a fact, I don't know.

Q. Okay. Now, the court reporter --

A. She was always there, but --

Q. This is what I want to know: So did he

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do anything improper that was not in the middle of a court proceeding?

MR. WILLEY: Object to the form.

A. I don't recall.

Q. Okay. And if you do recall, will you let me know?

A. Yes.

MR. WILLEY: During the depo?

MR. WHELAN: Sure.

MR. WILLEY: Yeah.

MR. WHELAN: Um, and not --

MR. WILLEY: I'm not doing this again.

MR. WHELAN: This we might.

BY MR. WHELAN:

Q. This is my chance to ask you questions today. All right?

A. I understand.

Q. And you knew this was coming, right?

A. Yes.

Q. And you met with your attorney ahead of time, right?

A. Yeah.

Q. And so --

A. I'm not saying anything about you. You're very pleasant.

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Q. Well, thank you.
A. And, um, you seem to be very understanding, so that helps a whole lot with the stress level.
Q. I'm glad to hear that.
A. And it's treatment from a USAA member or representative that I would expect.
Q. Well, thank you very much for that. My only point is that this is my chance to ask you questions, and I don't know that we'll speak again. And so if there -- that's why I'm asking you now. So if you think that you -- that Mr. Daniel did something to you or did something improper that wasn't in a deposition or a trial where there's going to be a record of it, that's what I want to know.
A. No.
MR. WILLEY: Object to the form.
Q. Okay. So there was none?
A. No.
MR. WILLEY: Object to the form.
A. He didn't do anything to me (inaudible) --
THE COURT REPORTER: I'm sorry?
A. He didn't do anything to me physically,

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if that's what you were alluding to.

Q. Well, no. But even psychologically, um --

A. Oh.

Q. I mean, we can go and we can look at the transcript of the deposition and --

A. Right.

Q. -- see the things he said to you, right?

MR. WILLEY: Object to the form.

A. Right.

Q. And we can do the same thing at trial, right?

A. Right.

Q. But that's why I'm asking you, is there anything else, like out in the hallway or before the court reporter was there or anything like that, anything else? Because I want to know about that.

A. Okay.

Q. Can you think of anything else?

MR. WILLEY: Object to the form.

A. No, sir.

Q. Thank you. And you said that after the deposition, up until the -- I guess the verdict came back, that your self-esteem was damaged,

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right?

A. Yeah.

Q. And that was because you felt Mr. Daniel didn't believe you, correct?

MR. WILLEY: Object to the form.

A. Not just that. About he -- when he did all of that to me in front of all those other people in the deposition, and for some reason there was like 10 or 12 people at my deposition, um, they believed what he was saying. And I could look -- you know, I told you, I'm sensitive to feelings and faces. And I could look around the room, and I could see, you know, what they were looking at. And, you know, it wasn't like, I feel sorry for you. It was more like, You're lying. You don't even know what you're talking about, kind of thing, which is what he was saying to me.

Um, and, you know -- and that's what I think -- let's put it this way: After I retired from the Army, I was -- I went to college and got my master's degree in education, then taught for ten years at -- elementary school students. And then after that, I became a manager at Walmart for ten years. And, um, I left Walmart because my oldest daughter had a pregnancy -- a difficult

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pregnancy. But my -- you know, I was a happy-go-lucky person, just like my -- you know, my friend said I was. And then after that deposition, it just -- I had changed, you know, and I told you how I changed.

Q. Right.

A. So it's been since then that I -- I guess have been anguished or questioning myself and...

Q. So you -- you felt at the deposition that everybody -- all these people around the table, some who you knew and some who you didn't, just didn't think you were telling the truth, right?

A. Right.

Q. And that affected you deeply?

A. Yes.

Q. Okay. And I think what you're saying is you just -- after that point, until you got to trial, you just had this question that people didn't believe you, right?

A. Yes.

Q. And then you said it was such a relief when the jury came back, right?

A. Yes. Because then it proved I didn't

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lie.

Q. Okay. And did you feel vindicated at that point?

MR. WILLEY: Object to the form.

A. I don't really know how I was feeling. I felt the sense of relief. I wasn't out to hurt anybody. I wasn't out to get anybody. The relief came from me, because knowing that I hadn't lied.

Q. Yeah.

A. So it was not a vindication. It was just for me.

Q. And I don't really care about that word. I'm not trying to make it sound different than it is. But I guess my point is, you had -- it sounds like you had some self-doubt even perhaps until the jury came back --

MR. WILLEY: Object to the form.

Q. -- is that fair?

A. Because it was placed there --

Q. Right.

A. -- yes.

Q. But then when the jury came back, you were like, I was telling the truth?

A. Yes.

Q. Okay.

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MR. WILLEY: Object to the form.

Q. And was that therapeutic for you, the verdict?

MR. WILLEY: Object to the form.

Q. And you can say it however you like it, if you don't like that word.

A. I -- I think it was somewhat, because I started to regain some belief in myself. But then I was, you know -- I was disappointed that I had to go through all of this for three years -- or close to four years, really, because it was 2014 -- it was 2018 before I got the money, so that's four years that I had to go through this.

Q. Okay. And I know that you said you saw a doctor after the deposition?

A. Yeah.

Q. And you explained --

A. Yes, I told --

Q. -- explained how you felt?

A. -- her what happened. And, um --

Q. Let me ask you this, other than that time, have you ever consulted a physician or a medical professional specifically about Mr. Daniel's conduct or USAA's conduct?

A. Um, well, I don't know if I told them or

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if they knew. But besides Dr. Scott, who is the psychiatrist, Dr. Ann Hanlon is my family doctor, and she saw me and she did a deposition. And -- who was the other doctor? Dr. Jaskwhich. And he did a video deposition that was admitted at trial. And, um, I hate to say it, but they were all disgusted by the behavior that --

Q. By how they were treated?

MR. WILLEY: Object to the form.

A. Well, by Mr. Daniels, but that was allowed to happen to me. And that USAA hadn't done anything about it.

Q. Okay. Did you talk to anybody else about it, besides those doctors?

A. Those doctors, well, other than my husband. That didn't cause him to cancel policies, though.

Q. Um, did -- um, is there anything that Chris Nickels has done or Clawson & Staubes has done that you are suing about in this case?

MR. WILLEY: Object to the form.

A. I don't believe so.

Q. Um, do you know how much USAA has paid to Clawson & Staubes to defend you?

A. I have no idea how much USAA has paid

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anybody anything other than myself.

Q. Okay. Do you know whether USAA paid to fix the Kucks' car or Mr. Johnson's car for you?

A. No. I think we discussed that earlier and I said no.

Q. Okay.

A. And basically, I just cleared it by saying, the only money I knew that was spent on me was the money I was given at the end of the trial, other than my personal injury.

Q. Okay. Would you want USAA to pay money to release you from the claims against you by the Kucks and Mr. Johnson?

MR. WILLEY: Object to the form.

A. I would need counseling for that to advise me as to what I should do.

Q. And who would you seek that from?

A. Right now, I would see Mr. Wiley (sic).

Q. When you testified in your deposition, did you tell the truth?

A. Yes.

Q. And when you testified at trial, did you tell the truth?

A. Yes.

Q. Okay. And, of course, today you're

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telling the truth?

A. Yes.

Q. Um --

A. I couldn't have positive eye contact with you had I been lying.

Q. Um --

MR. WILLEY: She's not as good as you.

MR. WHELAN: Speak for yourself.

MR. WILLEY: I'm kidding. That was a joke. Let the record reflect that's a joke.

A. Yeah. What is it, your eyes reflect your soul?

Q. Okay. Um, I do have --

A. That's it, right?

Q. I don't know. You know better than I do, Ms. Hood. I hope so.

A. It's good, though, I can laugh about this.

Q. It is.

A. And it's interesting that all attorneys go back and ask you the same question three times. It's like taking the elementary school test to be an elementary schoolteacher. At different phases they will ask you the same question -- a couple of words differently, but the same question at least

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three times.

Q. It is an occupational hazard, and I apologize for that. But let me just make sure, I mean, I know we're sort of laughing around, but I want to be serious. Are you comfortable right now? Are you good to keep going?

A. Yes.

Q. Okay. And I'm not making you feel uncomfortable in any way, am I?

A. No.

Q. Okay. Am I behaving well?

A. Yes, you are.

Q. Thank you very much. Um, now, looking at exhibit -- just to prove what you just said, look at Exhibit 3 for me.

A. Now, remember, I haven't seen this until just now.

Q. Okay. Um, looking at the -- so there's a list of expenses that begin on December 22nd, 2014, which I think would have been a little after a month after your accident, I believe?

A. Yeah. Because it was on the 7th of November.

Q. And then they go up to November of 2017. Um, is it your contention that USAA owes you for

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all of the items on Exhibit 3?

MR. WILLEY: I object to the form.

A. I have no knowledge of that, no.

Q. Okay. It's your contention that at some point USAA should have just paid you the million dollars before trial, right?

A. Yes.

Q. Now -- and would you say, ma'am, that there was a point before that happened when it was reasonable for USAA to say, well, we're not going to pay the million at this time?

MR. WILLEY: I object to the form.

Q. Do you agree with that?

A. Um, I have to default to my attorney based on what -- you know, I look at him as the best interest -- has -- he has in me. So I would, um -- he would have told me if that was something we should do.

Q. True. Mr. Smith?

A. Yes.

Q. And do you know when it was that Mr. Smith for the first time asked USAA to pay a million dollars?

A. No clue.

Q. Okay.

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A. And weren't some of these expenses --

THE WITNESS: I think these are your expenses for this case, right?

MR. WILLEY: I can't answer any questions, Ms. Hood. I'm sorry.

Q. It looks like they were for the records.

MR. WILLEY: I can answer them after but not during.

A. For the records, yes. But the ones that USAA did, that was to protect themselves, right; all the inquisitions (sic) and the --

MR. WILLEY: Inquisitions.

A. -- costs incurred to not pay me would apply to USAA. So you're saying this is -- to me, you're saying it as it is gratuitous on USAA's part because, you know, you gave money to -- to the Kucks for their vehicle. Am I aware of the money that you have expended on my behalf?

Q. Well, I know you're not, right?

A. Right.

Q. But that's not what I was asking you. This is what I'm asking you -- I'm trying to get a timeframe. Okay?

A. Okay.

Q. So I assume that it's not your position

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that USAA owed you a million dollars on the day of the accident, right?

A. I never thought of that. That never came into my mind.

Q. Okay. So you don't contend that?

A. No.

Q. And, obviously, after the verdict occurred, you contend they owed you a million dollars, right?

A. Yes.

Q. Okay. And then you contend that sometime between the accident and the verdict, there was some time in there that it became -- at the beginning it was okay not to pay; but then there came some time when USAA should have paid you that million, right?

A. Right.

Q. Okay. What I'm trying to do, ma'am, is to find that time. And let me give you an example why. You were not asking the jury to give you costs that your attorneys incurred during the time that you would agree USAA shouldn't have paid you the million, right?

A. Can you like reword that question?

Q. Sure. Let's just write it down. So

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there's the wreck.

A. Okay.

Q. And that is on 11/7/14.

A. Okay.

Q. And then there's the trial. And I'm not sure when that was. September?

A. September 7th.

Q. Okay. So we'll say 9/7/17.

A. '17.

Q. So on 11/7/14, they did not owe you a million dollars at that point?

MR. WILLEY: I object to the form.

A. Well, to be honest with you, I was in the hospital, so my husband would have dealt with that. And he would have found out for -- from somebody what was owed. And like I said, at the very beginning of the accident (sic), I -- I couldn't talk because I had a brace from my chin all the way down to my chest.

Q. I understand that, ma'am. But I'm talking about today.

A. Oh, today.

Q. In 2019, looking back, you would acknowledge that on the day of the accident, um, it was reasonable for USAA not to write a check

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for $1,000,000 on the day of the accident, right? It would be reasonable to investigate what happened, correct?

A. It would be reasonable to investigate.

Q. So on November 7, 2014, they did not owe you the million dollars, correct?

MR. WILLEY: Object to the form.

A. I guess you had to investigate.

Q. Let's put it this way --

A. But I believe that you did --

Q. Yeah.

A. -- because I wasn't at fault. So my -- that's my belief.

Q. Okay. So let's say it this way --

A. But reality --

Q. -- on November 7, 2014, it was reasonable for USAA to investigate whether to pay you?

A. But it was also reasonable for them to not find me at fault.

Q. Okay. When between November 7th, 2014, and September 7th of 2017, did it become unreasonable for USAA not to pay you the million dollars?

MR. WILLEY: I object to the form.

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A. I would have no idea.
Q. Was it in 2014?
MR. WILLEY: Object to the form.
A. Personally, my attorney took care of that, and I have no idea.
Q. Okay. So you sort of left that up to your attorney?
A. Yes.
Q. Was it in 2015?
MR. WILLEY: Object to the form.
A. Like I said, sir, I left that up to my attorney, and I -- I -- first of all, I couldn't confirm any dates because that happened so long ago.
Q. Sure.
A. And, secondly, I don't know.
Q. Was it in 2016?
MR. WILLEY: Object to the form.
A. Sir, I just said I didn't know in 2015; I didn't know in 2016; I didn't know in 2017.
Q. But this is my question, ma'am: This is your lawsuit.
A. Okay.
Q. Okay? It's not my lawsuit. It's yours.
A. Okay.

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Q. And you had said that -- that USAA took this unreasonable action at some point. And what I'm trying to do is find out when that point was. Not necessarily a day, perhaps, but maybe a week or a month or even a year. Can you give me any day, week, month or even year when you contend it became -- it was time for USAA to pay the million?

MR. WILLEY: I object to the form.

A. No, I cannot give you that.

Q. Um, and can you tell me -- so is it your contention -- are you asking the jury to pay you for the costs you incurred in 2014?

MR. WILLEY: Object to the form.

A. I really don't know how to answer that. I mean, the case is resolved, except for the part where -- the part where the decision was made that my lights were on was during the case of the Kucks, when USAA took the position my lights were on. And I don't know when that date was.

Q. But the day -- okay. So it's your contention that the date when USAA contended that your lights were on --

A. Right.

Q. -- is when they should have paid you?

MR. WILLEY: Object to the form.

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A. Um, I don't want to answer that.
Q. Can you answer that? It looked like you were going to before Mr. Willey objected.
A. No. He didn't object -- I didn't even hear his objection.
MR. WILLEY: For the record, I did object. I don't know if it's on there. I can't read that far back.
MR. WHELAN: We heard you.
A. I'm not sure.
Are you going through these again?
Q. Perhaps.
A. Okay.
Q. And I want to look at Exhibit 4, please, ma'am.
A. If I had them in order. Oh, here we go. Oh, this is Mr. -- what's his name? This is Johnson's, uh --
Q. These --
A. -- Interrogatories.
Q. These, ma'am, are the -- are your answers --
A. Right.
Q. -- to our Interrogatories.
A. Oh, to yours?

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Q. Yeah, because that's against USAA. Um --

A. Okay.

Q. The -- I had Interrogatory No. 16 on page 4 that asks for a list of any consequential damages that you claim in this case. And there are none listed.

A. 16?

Q. Yeah, 16. And I've done my best to ask you about your damages in this case today.

A. Yes.

Q. And those would include any interest you could have earned on the million if it had been paid earlier, correct? Maybe?

A. Maybe.

Q. And you also want -- may or may not want some of the costs on Exhibit 3, correct?

A. I guess you could assume that.

Q. Okay. And are you seeking to be compensated for the mental anguish that you had to endure because of what you've described with Mr. Daniel?

A. Yes.

Q. Do you have any other damages that you're seeking in this case?

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MR. WILLEY: Object to the form.

A. Just disappointment.

Q. Anything else?

A. No.

Q. Okay. Are you okay?

A. No. I was just saying I put my tissue down here. Maybe I should have put it someplace else.

Q. Um, your Complaint alleges that USAA forced you to file a lawsuit. Let's see if I have it. Yeah. It says -- your Complaint says that USAA forced the Plaintiff to bring, prosecute and maintain an action of law in Jasper County with the intent to distress and harass you. Do you know what that is referring to?

A. No, sir.

Q. Do you know of any case that USAA forced you to file?

MR. WILLEY: Object to the form.

A. No, sir.

Q. Do you know of any case that USAA filed with an intent to distress or harass you?

A. I would say -- it would have to be the Kucks' case. Because that did distress me, that I was being sued. And then the outcome of that

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case, which was from USAA, was the outcome.

Q. And what was the outcome of the Kucks' case?

A. That, um, I was found innocent because I had my high beams on.

Q. And who told you that?

A. Hmm?

Q. And who told you that?

A. Can you rephrase that question?

Q. Sure, sure.

A. Who -- can you rephrase that question again? I'm sorry.

Q. Well, you said that the Kucks' lawsuit caused you some distress. That's when the Kucks --

A. Yes.

Q. -- sued you, right?

A. Right. And that I was found innocent in that case.

Q. And you know that case didn't go to trial, right?

A. Well, I -- no. I didn't know that. But in either case, I was found innocent as far as having my lights on.

Q. When you say you were found innocent,

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ma'am, are you referring to the fact that USAA hired a lawyer to protect you and to fight for you and to defend you against the Kucks' claim?

MR. WILLEY: Object to the form.

A. Well, if they did that -- if they did that, then why would they turn around and accuse me of not having my lights on in the trial?

Q. You mean by Mr. Daniel?

A. No. By USAA.

Q. Through Mr. Daniel?

A. Yes, through Mr. Daniels. And throughout the whole case.

Q. Well, the answer, ma'am, is that in the Kuck case, USAA hired an attorney to represent you, okay, and that attorney took the position that your lights were on. Because that's your position, right?

A. Yes.

Q. Okay. But in the -- um, Jack Daniel, he was not actually hired to represent you. Okay?

A. Okay.

Q. I'm representing that to you. All right? You have not known that until this moment, have you?

MR. WILLEY: Object to the form.

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A. I haven't known that.

Q. And so the reason that the two different positions were taken was because, on one hand, Mr. Nickels, he was representing you; he was -- you wanted Mr. Nickels to say that your lights were on because you believed they were on, right?

MR. WILLEY: Object to the form.

Q. Is that right?

A. I don't know that I expected anything from him, other than his, um, support, his -- you know, researching and finding out the facts and presenting them on my behalf.

Q. And he did that, right?

MR. WILLEY: Object to the form.

Q. To the best of your knowledge?

MR. WILLEY: Object to the form.

A. To the best of my knowledge, no. Because I told you, he didn't go -- he didn't go see the vehicle, number one, and he was supposed to be the person responsible for the physical damage to the vehicle. He never went to the site; he didn't question the police officer. The police officer didn't give her -- I told you what she told me, and she didn't give her report until four or five days after the accident; she didn't

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provide it until then. And then she did it wrong. She marked the roads wrong.

So from the beginning, this is -- you know, this has been bad. But had Mr. Nickels investigated that, the police officer -- where the things were done or what actually happened, that would have been supportive to me. But he didn't do that, you know. Basically, he told me to say my lights were on.

Q. Who told you that Mr. Nickels didn't do those things?

A. He did. It was brought up -- um, I don't remember where, but, um -- I'm not sure exactly where, but there was only -- well, Kevin went to see the accident and the vehicle, and Mr. Wiley (sic) wasn't involved at the time.

Q. Has Mr. Wiley (sic) gone to see the accident and the vehicle?

A. No, no. Because he wasn't involved at the time.

Q. So all of your -- so all of your attorneys don't need to go see the vehicle in the accident, right?

MR. WILLEY: Object to the form.

A. No. But he came -- towards the court

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case is when he came on.

Q. Mr. Willey?

A. Yes. My husband went and drew a map. My attorney went and -- during the sunlight time and driving the street and looking at the lights. So he went and investigated. Um, but Mr. Nickels never presented any facts that he had found to help me.

Q. Okay. And have you talked to Mr. Nickels, other than the time that you saw him at the deposition -- at your deposition?

A. Um, he was at somebody else's deposition, so I just, you know --

Q. Other than that?

A. No -- well, I had asked him for my records because he had notes that he took during my deposition that nobody else had. And I wanted those notes. And, um, I told him that they were my records, so I had a right to get the documents. And he didn't send them, refused to send them. And, um, so the interaction I had with him then was by e-mail. And as far as I know, he never sent them. Um, and that -- you know, to me, that would have helped, at least. But that's all I can say about that.

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Q. Okay. So other than the e-mails about your file and seeing him at one or two depositions, you have not had any communications with Mr. Nickels?

A. No.

Q. And did -- was Mr. Nickels working with Mr. Smith on your case?

A. Um, I didn't get that impression.

Q. Okay. Now -- you know what? We need to go off the record.

THE VIDEOGRAPHER: This is the end of media No. 3 in the deposition of Therese Hood. We're off the record at 1:29.

(The deposition went off the record.)

THE VIDEOGRAPHER: This is media No. 4 in the deposition of Therese Hood. We're on the record at 1:35.

BY MR. WHELAN:

Q. Okay, Ms. Hood. We just took a break. Are you comfortable to keep going with the deposition?

A. Yes.

Q. You mentioned, I think -- and I could have written this down wrong, but I have a note that says you may have said in the deposition

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that, quote, USAA lied to me.

A. You mean in this deposition?

Q. Yes, ma'am. And I'm --

A. You know, I -- no. I didn't say that.

Q. Okay.

A. I said that USAA took two different positions.

Q. Okay.

A. You know, and one of them I guess could be considered as lying because you -- because in that decision with the Kucks, which I explained to you, I had my lights on, and then in my own case, at trial, I didn't have my lights on. So, um, I think there's a law about this somewhere.

Q. Okay.

A. According to the South Carolina Rules of Procedures, I guess, you can't do that; it's a breach of contract. Let's see if I can find it.

Q. What are you looking for?

A. Well, I was just looking to see if I could find where it was written.

Q. No, I don't think it is written. I just had a note -- when I asked you about --

A. Oh.

Q. -- your complaints, I had a note that

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you said, USAA lied to me, and I wanted to follow up --

A. Oh, okay.

Q. -- on that. So just -- just to clarify that, when you say USAA lied to you, you're talking about the position USAA took --

A. Right.

Q. -- through Mr. Daniel that your lights were off?

A. Off.

Q. Okay. Um, you (sic) also had a note -- I also had a note that said -- you said, People called me a liar. Who called you a liar?

A. In -- what were we talking about at the time?

Q. Well, I believe I had asked you to go ahead and give me a list of the complaints that you had. And I believe one of them was that people called you a liar.

A. No. They looked at me like I was a liar. They didn't physically tell me I was -- you know, I was a liar. But there were -- at my deposition I think is what we're referring to?

Q. Okay. That's -- I'm not referring to anything. I'm just asking you --

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A. I don't know.
Q. So to be clear, nobody called you a liar?
MR. WILLEY: Object to the form.
A. No.
Q. But you felt that people were looking at you at your deposition like you were?
A. Yes. And pretty much throughout, um -- no, I can't say throughout this whole thing, but -- I'll leave it at that.
Q. Um, now, in your Complaint, um, you accused USAA --
A. Is that in here?
Q. No, it's not.
A. Okay. And that's fine. I was just knowing -- trying to see if I needed to pick up anything.
Q. Well, you're welcome to look at it. It's a copy of your Complaint.
MR. WHELAN: What exhibit are we on? 9? Or we don't even need to mark it as an exhibit. It's a copy of the Amended Complaint.
MR. WILLEY: I have one.
A. Okay.

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BY MR. WHELAN:

Q. And on page 12 of the Complaint, there's a cause of action -- it's the Fifth Cause of Action for Outrage. And if you look at paragraph 65, you allege that, "USAA intentionally or recklessly inflicted severe emotional distress on the Plaintiff."

And then in paragraph 66 you say, USAA's actions were "extreme, outrageous and atrocious." Do you see that?

A. Yes.

Q. What actions of USAA were "extreme, outrageous and atrocious"?

A. I'd have to defer that to my attorney.

Q. Okay. So sitting here right now, you can't think of that?

MR. WILLEY: Object to the form.

A. No. I can think of that. I probably -- I don't know what he was thinking when he used these words.

Q. Okay.

A. But I've already told you I felt that USAA had not been supportive of me. Here is yours back.

Q. Thank you so much.

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A. You're welcome.
Q. Um -- oh, I'm sorry.
A. I'm sorry.
Q. That's my fault. Are you okay?
A. Yeah. I'm --
MR. WILLEY: Did he kick you?
THE WITNESS: Yes, on my bad foot.
BY MR. WHELAN:
Q. Are you okay? I apologize.
MR. WILLEY: It could hurt more later.
BY MR. WHELAN:
Q. He may be back to -- he may have another lawsuit for you -- or you may have another lawsuit for you.
Um, on Exhibit 3, there are several costs related to focus group facilities and focus group participants. Those would have been the people that Kevin took the case to to evaluate the case?
A. That's correct.
Q. Okay. And you don't know how many times that was done, right?
A. Oh, no. I've never seen that document.
Q. Um, I think Exhibit 5, there's an Interrogatory that asks, "Prior to trial of the

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Plaintiff's case" -- it's on the first page --

A. Okay.

Q. -- "Prior to trial of the Plaintiff's case against Antoine Johnson, did the Plaintiff or the Plaintiff's counsel have any third party evaluate the case value?" And the answer is "No." Right? That's a mistake, correct?

MR. WILLEY: Object to the form.

A. I'll leave that up to my attorney.

Q. Well, that -- one of the answers would be focus groups looked at it several times, correct?

MR. WILLEY: Object to the form.

Q. Right?

A. Being that I've never seen that document and don't know about focus groups, I can't say yes or no.

Q. All right. I have printed out your testimony from the trial of the case.

A. Okay.

Q. And I just wanted to ask you about a few questions on that.

MR. WHELAN: I'm going to mark it as Exhibit 8.

(Deposition Exhibit No. 8, Section of

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trial testimony, was marked for identification.)
BY MR. WHELAN:
Q. Have you seen any portion of this transcript from the trial before today?
A. This, you mean?
Q. Any --
A. I have not seen any of this --
Q. Okay.
A. -- before today.
Q. Okay. Fair enough. Um, do you recall during the trial Mr. Smith asked you whether you would -- if all the other -- if several witnesses said that they did not see headlights on your car, whether you would disagree with them or whether you could accept that. Do you recall that? And I'll show you the testimony, but I'm just asking if you remember it.
A. How did you phrase that question?
Q. Um, whether -- so let me ask it this way: So before the trial, your consistent position was that your headlights were on, correct?
A. Yes.
Q. Is it true that at the trial you told the jury, Well, I might have been mistaken about

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that; maybe they were on and maybe they were off?

A. I don't recall that, but it's in here?

Q. I'm just asking you if you recall that.

A. No.

Q. So is it your recollection that you maintained at trial that your lights were definitely on?

MR. WILLEY: Object to the form.

A. Yes.

Q. And I'm going to ask you to turn to page 496 at this time.

A. How did we get to 400?

Q. Well, this is just your -- so this does not include anything before you took the stand.

A. Oh, okay.

Q. Does that make sense?

A. 496. Yeah, that makes sense.

Q. Okay. Um, and do you see --

A. There were -- (inaudible.)

THE COURT REPORTER: I'm sorry?

THE WITNESS: Oh, I'm just reading what it says.

Q. So if you want, you can just read out loud starting with line No. 5.

A. "All right. Mrs. Hood, we heard from a

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lot of people this week, people saying no headlights but running lights. Mrs. Hood, if that's the testimony and we have heard that over and over again, are you going to disagree with that?"

And I go, "No, I'm not."

And you know who was asking that question?

Q. Who?

A. Mr. Daniels.

Q. Okay. Um, but --

A. You know, and I'm --

Q. So do you think you were tricked into giving that answer?

MR. WILLEY: Object to the form.

A. Yes.

Q. And you think you gave that answer because you were scared of Mr. Daniel?

MR. WILLEY: Object to the form.

A. Well, to be honest, yes.

Q. And then the next question you were asked is, "Can you accept that?" Right?

A. Yes.

Q. What was your answer to that?

A. "Yes, I can."

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Q. And in other words, yes, you could accept that your lights may have been off, right?

MR. WILLEY: Object to the form.

A. Let me see how he asked that question.

Q. Sure.

A. First of all, I hadn't heard from a lot of people this week that they were saying no headlights but running lights. There wasn't a lot of people. I didn't talk to any people that week. This happened in Orangeburg or -- no.

Q. Jasper?

A. Jasper County. And I only went there the day of the trial. And I have the hotel bill to prove that I hadn't been there. So I hadn't heard anything --

Q. So --

A. -- by these people. So that was -- you know, now that I think -- now that I'm really looking at it on paper --

Q. Uh-huh.

A. -- that was -- that was his method of asking people things.

Q. Mr. Daniel's?

A. Yes.

MR. WILLEY: Object to the form.

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Q. So the question --

A. So, yeah, he said something about "we heard." Okay? And he says, "We heard." I'm assuming he means me in there too. Um --

Q. So the question that we're looking at on page 496 is just an example of the type of question --

MR. WILLEY: Object to the form.

Q. -- you were talking about earlier from Mr. Daniel, correct?

A. Yeah.

MR. WILLEY: I'm -- okay.

MR. WHELAN: I'm sorry. Hold on a second. She can leave -- she can leave --

MR. WILLEY: I'm going to object to the form.

MR. WHELAN: You don't -- don't say anything else.

MR. WILLEY: What you can do is mark this as an exhibit.

MR. WHELAN: It's marked as an exhibit.

MR. WILLEY: Well, no, it's not.

MR. WHELAN: Yes, it is. It's Exhibit 8. Now, hold on a second. I'm going to ask that we go off the record and the witness

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leave the room --

MR. WILLEY: That's fine.

MR. WHELAN: So you can make a statement on the record.

THE VIDEOGRAPHER: Off the record at 1:48.

(Following statements on stenographic transcript only.)

MR. WILLEY: You need to lay a foundation for what you're showing her. You're showing her documents that she said she has never seen before; she has no idea what they are. And you're making her guess and telling her what they are. So if you want to lay a foundation rather than try to trick her into saying things that you know are not correct and you know she's just confused, then you can do that. But we're not going to have a whole section hour-long of tricking -- "Mr. Daniel asked you that question, didn't he?" -- when you know it's not true, when you know she's confused.

We can just stipulate she's confused about it, if that's what we need to do.

MR. WHELAN: Do you have anything else

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to say?

MR. WILLEY: That's it.

MR. WHELAN: The record will reflect what was asked and what she volunteered. I never tricked her. I'm absolutely floored --

MR. WILLEY: The first two questions --

MR. WHELAN: I'm floored that she said that. Okay? It wasn't my intention, but it shows what we're dealing with here. So if you want to instruct her not to answer the question and file a motion, you're welcome to do that. But I'm going to keep asking these questions. And I don't want you suggesting to her -- now, you can ask her questions when it's your turn. But I don't want you suggesting to her that she's wrong about this.

MR. WILLEY: I haven't suggested anything to her. And I'm not going to.

MR. WHELAN: Great. Anything else?

MR. WILLEY: No. Ready?

(The following resumes videotaped portion of transcript.)

THE VIDEOGRAPHER: On the record at 1:50.

BY MR. WHELAN:

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Q. All right, ma'am. I believe that the question I had just asked you was, the question on page 496 was typical of the type of question that you were talking about earlier from Mr. Daniel, correct?

MR. WILLEY: Object to the form.

A. Yes. Putting words -- putting words in people's mouths, I guess.

Q. Okay. Now, I'd like you to turn for me, if you would, to page -- actually, let me ask you this, ma'am: So I'll represent to you that the question that was asked of you on page 496 was actually not asked by Mr. Daniel. It was asked by Mr. Smith.

A. Really?

Q. Yes. Do you recall who asked you that question?

A. No. No. I don't recall.

Q. Do you still feel that that is a tricky, unfair question?

A. Um -- uh, I would think that, um, I didn't -- I wasn't prepared for him to ask that question, so I just agreed with what was said.

Q. Well, you took the --

A. But -- and that's, you know, an honest

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opinion. But this is similar to the questions that Mr. Daniels asked.

Q. Um, now, when you were sitting on the stand, you were telling the truth to the jury, correct?

A. Yes.

Q. Okay. And you don't want to take back that answer you gave, do you?

A. No.

Q. Okay.

A. I wouldn't disagree. The only part that I was disagreeing with was that, talked to "a lot of people this week."

Q. Okay.

A. Not about -- anything about the lights or anything else.

Q. All right. Now, if you would, turn to page 511 for me.

A. Okay.

Q. Actually, let's go a little bit farther to page 514.

A. Okay.

Q. And here, if you look at line 11, you were asked the question, "What you told me under oath is everybody else got it wrong, I had my

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headlights on, I am the one that got it right; that is what you said?" That question was asked of you, correct?

A. It's on paper. I guess.

Q. Do you remember that?

A. No.

Q. Okay. And you said, well, "...that is what I thought," right?

A. Yes.

Q. And then the question was, "That is what you thought but, you know, that is what you testified to and now maybe you are not so (sic) sure about, right?" Was that question asked to you?

A. Isn't that a leading question?

Q. Yes. That question was asked of you, right?

A. I can't contest that.

Q. Okay.

A. I see it.

Q. And you said that you were sure -- that you were sure you thought you had your headlights on, right?

A. Yes.

Q. And then the question is, "But now you

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think you may have been mistaken?" And your answer was what?

A. "Yes."

Q. Okay. And do you remember -- sitting here, do you remember telling the jury that you think you might have been mistaken about whether your lights were on or off?

MR. WILLEY: Object to the form.

A. No.

Q. Okay. But looking at this testimony, do you dispute --

A. Yes.

Q. -- that you told the jury that you thought you may have been mistaken?

MR. WILLEY: Object to the form.

A. Apparently I said that.

Q. Were you telling the truth when you said that?

MR. WILLEY: Object to the form.

A. I believe so, because I don't -- I don't lie. Um --

Q. And sitting here --

A. I think -- my thinking was that it was presented on so many occasions and brought up in the trial for everybody to ask the same question

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about the lights being on and off that, at some point, I just thought it would be better to question myself, to have the jury think, Well, at least she's thinking she didn't have them on, because everybody else says she didn't have them on. Do you follow that train of thought?

Q. Well, if I do, and I'm not sure I did, but let me just see if it's right. Are you saying that this wasn't the truth, that you really didn't think you were mistaken, but you thought that it would help you strategically if you said you were?

MR. WILLEY: Object to the form.

A. No. I didn't think that. I -- I was thinking -- I gave them this answer because so many people had said I didn't have them on. And I had no proof at that point that they were on. It was just what I believed.

Q. What about Mr. Poplin?

MR. WILLEY: Object to the form.

A. He wasn't there.

Q. Why not?

MR. WILLEY: Object to the form.

A. I don't know.

Q. Okay. What about the other experts?

A. Um, I don't know who actually was --

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everybody that was at trial. But -- this question had to be from Mr. Daniels. Um, I always tried to second-guess what he was going to ask me, and I knew it would be something that I couldn't factually make it -- you know, say yes or no to. Because it was alluded to that fact. He already basically said, I am the one that got it right, and that's what I said. That's true, I said that. And the reason I said, "That is what I "thought but, you know, that is what you test-" -- oh, he said that, "That is what you thought but, you know, that is...testified (sic) -- "what you testified to and now maybe you are not sure about it, right?" And I don't know why I said, "No, I'm sure." Because I -- the following sentence says, "I am sure that I" -- oh, "that I thought." I used that word, "thought."

Q. Right. So was what you told the jury the truth?

MR. WILLEY: Object to the form.

A. I should have phrased it differently. I should have not used "thought." Because I knew that my headlights were on.

Q. So when you said, "I am sure I thought that I had my headlights on," what you meant to

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say was, I know that I had my headlights on, right?

A. Yes.

Q. And so when it said below, "...now you think you may have been mistaken?," and you said, "Yes," that was not the truth?

MR. WILLEY: I'm going to tell her to quiet down. Can we go off the record?

MR. WHELAN: Sure.

THE VIDEOGRAPHER: Off the --

MR. WILLEY: Will you all quiet down, please? We can hear everything you're saying. Thanks.

THE WITNESS: Really? I couldn't hear a thing.

MR. WILLEY: We can stay on. It's fine. I just didn't want it to get in the way of the tape.

A. God, why did I do this? Here is that question again. "You swore under oath in your deposition that it was" -- "you had the headlights on." And I did say that in the deposition, so I responded to that question.

I'd like to know where he got the information to ask me "what you told me under

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oath" because everybody else got it wrong. Because that doesn't even sound like something I would say. I could have been, you know, very nervous, but that doesn't even sound like anything I would say. Yeah, that's something -- I wouldn't say everybody else is wrong. Because it's always half and half, right?

Q. What do you mean by that?

A. Everything is either one way or the other. 50 percent will think it's one way, 50 percent will think it's the other. That's what I mean by half and half. So I would never -- I don't recall saying this, and I don't believe I would have said that everybody else got it wrong. Because why would I believe that if Mr. Poplin said that my lights were on?

Q. But, ma'am, what I --

A. I know you have to go by what's down here on paper.

Q. And what I was asking you about is when you told the jury, um, and when you agreed that you may have been mistaken --

A. Mistaken.

MR. WILLEY: Object to the form.

MR. WHELAN: What is that objection?

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MR. WILLEY: Is it a question?

MR. WHELAN: Yes.

MR. WILLEY: Okay. Well, I don't think the foundation has been laid. It's assuming facts not in evidence; there's no evidence anywhere that this is the transcript of the actual trial or who did it or anything else.

MR. WHELAN: Okay. All right.

BY MR. WHELAN:

Q. So, ma'am, when you told the jury that you think that you may have been mistaken, was that true?

MR. WILLEY: Object to the form.

A. Um, I'm trying to put myself in that frame of thought. I thought that "everybody else got it wrong." I still don't see how I would have said that. But I would have been replying to the fact that everyone thought I got -- "everybody else got it wrong," I know I didn't say that. But I know it's typed there, so I had to have said it, but there's something missing in that sentence. And so the rest is true. Basically, that is what I thought.

Q. So --

A. So if he -- so the next question is,

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"That is what you thought but, you know, that is what you testified to and now maybe you are not sure about it, right?" This is what I'm talking about, his questions. You know, what do you say to that? I mean, if that's what I thought, left it there. But then he adds on that, um -- that I testified it to (sic) "and now maybe you are not sure about it, right?" He didn't refer to "it" being this testimony or the deposition, which is probably where it occurred. So I'm answering his question with, I guess, another -- not another question, but -- I'm confused.

Q. Okay.

A. So I will go with what is written here and, um --

Q. Well, it's --

A. -- and attest to the fact that, um, I may not have asked for a clarification about the question, because there is more than one question in that question, and, um, I should have asked for a clarification, what he was trying to say, but, you know --

Q. So --

A. -- I have to go with this.

Q. All right. So let me ask you this: So

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sitting here today, is it your testimony that at trial you knew that you weren't mistaken and you knew that your headlights were on?

MR. WILLEY: Object to the form.

A. I knew my lights were on.

Q. Okay. And so if you told the jury that --

A. I questioned whether they were on or not? I did question myself.

Q. Well, let me ask you -- let me ask the question, okay, before you answer. So if you told the jury at trial that you think you may have been mistaken when you said your lights were on, that was not accurate, right?

A. It was accurate.

Q. Was it? Okay.

A. Because, um, I -- you know, the one thing I knew was that any of these places, you have to have facts. And I didn't have any facts to support it otherwise.

Q. Uh-huh. And that's why you told the jury you may have been mistaken?

A. Yes.

Q. And so at that point, had you already decided -- when you gave this testimony, did you

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think your attorneys were going to bring Mr. Poplin to testify or not?

A. I had no idea.

Q. So for all you know --

A. I didn't know. For all I know, nobody was coming.

Q. But in the same sense, for all you know, he was going to come, right?

A. Well, no. Because, number one, I didn't know who he was, and I had not been told anything.

Q. Um, and then if you'd look at page 511 for me, and look at the bottom, the very last question, starting at line 22 -- actually, let's start at line 18. Mr. Daniel says -- this is when Mr. Daniel is first asking you questions. Okay? And he says, "...if I heard you correctly...you say, If other people say that I did not have headlights on, I am not going to dispute that." Do you see that he asked you that question?

A. Yeah.

MR. WILLEY: Object to the form.

A. But then --

Q. Excuse me.

A. But he prefaces that by saying, "I'm asking you your testimony. What do" -- "What

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do" -- blah-blah-blah -- "if they say that you didn't have your headlights on..."

Q. I'm going to underline for you what I'm talking about because I think it's -- right there.

A. Oh.

Q. He says "...what you say, If other people say that I did not have headlights on, I am not going to dispute that." Do you see that?

A. Yeah.

Q. And your answer was "I understand"?

MR. WILLEY: I object to the form.

Q. Is that what you said?

A. Yes, that's what I said.

Q. And you acknowledge that you told the jury you weren't going to dispute that you didn't have your headlights on, based on what the other witnesses had said, right?

MR. WILLEY: I object to the form.

A. I guess you could say that.

Q. Was that the truth?

MR. WILLEY: I object to the form.

A. My thinking at that time is as is written on paper. Um, I was very emotional at my trial. I knew that I would be questioned by Mr. Daniels, and I know how he questions. And I was

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tense and I -- if I agreed with him, then there wouldn't be any arguments. And -- because then he would just continue and continue to badger me, so it was easier to just agree with him.

But my heart, um, thought is that I had my lights on. And that -- but I didn't have any proof of that. So I started questioning myself. Because I didn't have any solid proof that I had, and I already told you all the mental anguish I had about questioning myself.

So when he asked that question, um, when I was talking to the jury, it was -- I had to take account into what he was gonna -- I don't know if I should say how he was going to ask me next, uh, what it was. And I just didn't want -- I was going to say, I didn't want to argue with him, you know. Basically, that's it. I'm not going to say that I lied. I'm going to say that I agreed on his -- actually, I don't know if I have to say I agreed with his things -- yes, I agreed with his questions because I didn't want to deal with the, um -- the arguments. I was protecting myself from being argued anymore.

And the possibility always exists, and I think in somebody's life that things -- you know,

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you remember some things one way at one point in your life, and then you have time to think about it and other situations happen and then you remember it a different way. Does that answer your question? No?

Q. So are you saying that what you told the jury may not have been the truth because you just didn't want to deal with Mr. Daniel, basically?

MR. WILLEY: Object to the form.

A. I told them the truth. But I agreed with Mr. Daniels because I was avoiding confrontation.

Q. Okay. And when you were -- when Mr. Smith asked you whether you were going to dispute with these people who said your lights were off --

A. Uh-huh.

Q. -- and you said you weren't, was that because you were avoiding confrontation too?

MR. WILLEY: Object to the form.

A. No. That's because I didn't have any proof of anything else. You know, I just had people's word to go on. And that's all that I think people were using, um, to define my case. To be honest with you, this whole section is interesting. At best I can say, I must have been

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very confused.

Q. And Mr. -- Mr. Smith was at that trial, right?

A. Yes, he was.

Q. And Mr. --

A. And I -- you know, I think I -- I'm pretty sure I knew he was going to ask that question, but he did tell me about the focus groups and that he had met with them. So I assumed that he had seen -- talked to a lot of people about my lights being on and off. And that's why I said, okay.

Q. Okay. You would -- you wouldn't maintain that they were on a hundred percent?

MR. WILLEY: Object to the form.

A. Let me see.

Q. When you say --

A. Wait a minute. Where are we?

Q. I'm asking you this, ma'am, not on the transcript, but when you said that based off what the focus groups had said --

A. When Mr. --

Q. Mr. Smith --

A. -- asked me --

Q. You said, Okay?

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A. Yes.
Q. Okay, what? What are you referring to?
A. I'll have to go back and look.
Q. I don't think Mr. Smith asked you about the focus groups in your trial.
A. No.
Q. It had to be --
A. He just said people.
Q. It had to be before the testimony started.
A. Um, no. He told me, um, that there were some, and that he talked to a lot of people.
Q. Who?
A. And I -- you know, why would I not believe him, that he talked to a lot of people?
Q. Who said what?
A. That I had my lights off.
Q. So the testimony you gave was based off what Mr. Smith had told you?
MR. WILLEY: Object to the form.
A. Well, no. I had formed my own opinions, but -- my thoughts about what he said. But, um, he explained everything thoroughly to me. Um, he's very good at that. And so I understood, you know, what, um, the questions were going to be

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like, based on other questions he had asked me in the past.

Q. Okay. So before you got up there on the stand?

A. Yes. But we -- well, we really didn't talk during -- we weren't allowed to talk during the trial.

MR. WHELAN: Okay, ma'am. I'm sure Mr. Willey is going to have some questions for you, but I want to thank you again for your time and your patience during this process.

THE WITNESS: Oh, thank you.

MR. WHELAN: Absolutely.

MR. WILLEY: Would you like to take a break?

THE WITNESS: No.

MR. WILLEY: Okay.

THE VIDEOGRAPHER: Don't forget your microphone.

Off the record at 2:14.

(The deposition went off the record.)

THE VIDEOGRAPHER: On the record at 2:15.

EXAMINATION

BY MR. WILLEY:

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Q. All right, Terry. This trial transcript, Exhibit 8, alleged -- have you ever seen it before?

A. No.

Q. Do you know where it came from?

A. No.

Q. Have you read it at any period of time before it was just shown to you?

A. No.

Q. Did anybody ever ask you to make edits or corrections or if everything you said was taken down correctly in this document?

A. No.

Q. Okay. Look at page 511 for me.

A. Okay.

Q. And I'm going to represent to you accurately that this is Mr. Daniel in this section asking you these questions. Okay?

A. Okay.

MR. WHELAN: Object to the form.

Q. Line 18 it says, "If I heard you earlier, if I heard it correctly, you are now, what you say, If other people say that I did not have headlights on, I am not going to dispute that." That's actually what that section says,

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correct?

A. That's three questions.

Q. Well, hold on. Is that what that section says?

A. Yes.

Q. Okay. Is there a question mark there at the end of that section?

A. No.

Q. Okay. Is he asking you anything specific, based on how that is taken down on this document?

A. No. He's assuming I'm going to answer --

Q. Okay, yes or no. Line 21 says what; how did you respond?

A. "I understand."

Q. Okay. Did you understand what he was saying there? Did you state, allegedly --

A. "I understand."

Q. -- that you understood? Okay. So let's go to the next page, 512.

A. Okay.

Q. Line 4 and 5 is an actual question, correct? There's a question mark; do you see that?

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A. Yes.

Q. Okay. What -- what -- did he ask you -- is this correct, "Right. Are you disputing that you did not have your headlights on?" Did I state that question correctly?

A. Yes.

Q. Okay. And what was your response, according to this document?

A. Okay. Well, on line 3, it says, "Running lights on."

Q. Hold on. Go to line 6. I'm asking you about line 6.

A. Oh, 6. Okay.

Q. What -- what --

A. That's --

Q. Read it.

A. "I drive with my lights on automatic all of the time. I don't recall touching them."

Q. Okay. Has that been your consistent position throughout the entire underlying case?

A. Yes, it has.

Q. Okay. Is that what you told Mr. Whelan today before he handed you this document?

A. Yes.

Q. Okay. And is that what you said in,

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allegedly, the trial transcript of this document if we had just kept reading?

A. Yes.

Q. In response to Mr. Daniel's question?

A. Yes.

Q. Okay. Now, when you were talking earlier, he gave you this, do you recall from September of 2017 exactly what was asked to you during the trial of that case question for question?

A. No.

Q. Do you remember specific details about that day as far as exactly who you talked to necessarily and what they said?

A. No.

Q. Okay. Would your memory of those events have been closer in accuracy closer in time to that trial or now? In other words, would your memory have been closer -- better closer to the trial, or would your memory about the events that occurred at trial be better now?

A. Well, considering I was under a lot of stress at trial, I would have to say now.

Q. Okay. Look at Exhibit 6 for me, if you will. I think it's right under that one.

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A. She lined them back up for me.
Q. Okay. Good. I'll try to help you.
Maybe -- did he take that one back?
MR. WHELAN: Maybe I did. What is it?
MR. WILLEY: Exhibit 6. It's the Interrogatories. Oh, no. Here it is. Sorry. Okay.
I wrote down the wrong one. Disregard that one. I'm not even going to ask you about that.
BY MR. WILLEY:
Q. Okay. I'm not going to ask you about the document, so you can set it aside.
A. Okay.
Q. Prior to your deposition in your case against Antoine Johnson, had you ever met Attorney Chris Nickels?
A. No.
Q. Had you ever spoken to attorney Chris Nickels --
A. No.
Q. -- prior to that? Had Attorney Chris Nickels, prior to your deposition in your case against Antoine Johnson, ever asked you what you thought occurred in the underlying wreck?

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A. No.

Q. Okay. There was conversation about what occurred at that deposition with Mr. Nickels and Mr. Daniels (sic) being there; is that correct?

A. Yes.

Q. And I think there's some confusion; I'm going to try to iron out. At that deposition, Mr. Daniels asked you questions, correct?

A. Yes.

Q. Okay. At that deposition, you were being represented by Mr. Smith?

A. Yes.

Q. And Mr. Smith is the attorney that brought the lawsuit on your behalf against Antoine Johnson, correct?

A. Yes.

Q. Okay. And USAA, who is your insurance company, right --

A. Uh-huh.

Q. Is that correct?

A. Yes, that's correct.

Q. -- you understand that they hired Mr. Daniel, correct?

A. That's what he said.

Q. And did you understand at that time that

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Mr. Daniel was hired in that case to be the defense lawyer on your claims against Mr. Johnson for USAA?

MR. WHELAN: Object to the form.

A. Did I -- had --

Q. Let me rephrase. I think it's a bad question.

A. I did not know Mr. Daniels --

Q. Let me rephrase it. Let me rephrase it. You never met one-on-one with Mr. Daniel prior to that, correct?

A. No.

Q. Okay. You never had a one-on-one conversation with Mr. Daniel prior to that, correct?

A. No.

Q. Okay. You understood that, although Mr. Daniel was working for USAA, he was not your personal lawyer, correct?

MR. WHELAN: Object to the form.

A. No.

Q. Okay.

A. I understood that he was.

Q. You understood that he was? Okay. Did you understand at that particular point in time

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that Mr. Nickels had been hired to be your personal lawyer?

A. That, he told me.

Q. That, he told you. And during the course of that introduction, Mr. Nickels introduced Mr. Daniel as your lawyer for USAA?

A. Yes.

Q. Okay. If -- scratch all that. You understand that you're a USAA customer, correct?

A. Yes.

Q. Does the fact that Mr. Daniel worked for USAA make you believe that he was supposed to be looking out for your interests?

A. Yes.

Q. Okay. And is that where your confusion about him representing you or not comes from?

A. Yes.

MR. WHELAN: Object to the form.

Q. So as I understand it, you understood that Mr. Daniel was hired by USAA to investigate the case?

MR. WHELAN: Object to the form.

A. Yes. He was supposed to do the personal injury; that's how it was explained to me, that I recall. And that Mr. Nickels did the property

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damage.

Q. Okay. During -- the Kucks, during the courses of these cases, also said that your car turned over, correct?

A. I'm -- I don't recall.

Q. Okay. You don't recall. Did you --

A. I don't recall who said it. Somebody said it.

Q. Okay. Did the fact that the jury found you 49 percent at fault in the underlying case bother you? How did that make you feel?

MR. WHELAN: Object to the form.

A. That bothered me.

Q. How did it make you feel?

A. Oh, that they saw that I was either negligent or at fault for the accident for that percentage of awardance (sic), I guess.

Q. Do you recall at the trial of the case there being anything else brought up that would show you were at fault in any way other than the headlights by Mr. Daniel?

A. Um, no.

Q. Do you -- does -- your husband's name is David?

A. Right.

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Q. And does David or you generally handle the purchasing of the actual insurance and the renewals --

A. Yes.

Q. -- and things like that? Who does that?

A. Um, I have been doing it.

Q. Okay.

A. But we put it -- I think we put it in his name -- well, it's in both our names. Because both of us have checking and savings --

Q. Right.

A. -- and insurance.

Q. Right. And so you're the one for the family that handles that portion of the finances in terms of --

A. The majority of the time, yes.

Q. Okay. And in deciding to go with USAA in the beginning, did you rely on their advertisements and what they -- how they said they treated people?

A. Yes.

MR. WHELAN: Object to the form.

Q. Okay. And as part of that -- the statement, that when you join USAA, you become part of a family who stands by you during every

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stage of your life --

A. Yes.

Q. -- was that your general understanding?

A. Yes.

MR. WHELAN: Object to the form.

Q. And do you feel like in the underlying case that they did that for you?

A. No.

MR. WHELAN: Object to the form.

Q. There was a mention about after the trial a juror coming up and making -- making some remarks. Um, do you recall after the trial being outside of the courthouse in the courtyard?

A. Yes.

Q. Okay. Do you remember there being a lot of people around?

A. Yes.

Q. Okay. Do you remember the --

A. The boisterous one?

Q. The boist- -- the attendees and some of the jurors and others that came out during that period of time?

A. Yes.

Q. Okay. And do you recall, you know, that some of the jurors were -- were hanging around and

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talking to everyone?

A. Yes.

Q. Okay. Do you recall, um, you know, the jurors talking to you and David, you know, a couple of them and other people in the party?

A. Yes.

Q. Okay. But you don't specifically, as you sit here today, recall what was said, right?

A. No.

Q. Okay. But you do remember the general environment of everybody kind of --

A. It was in front of the -- I think we took the picture in front of the courthouse.

Q. Right. And some of the jurors wanted to be in the picture, right?

A. Right.

Q. And, um, your memory about what was said out in the courtyard and everything would have been better closer in time to those events than they are today, correct?

A. Yes.

Q. Okay. You were asked about damages. Isn't part of the reason for your bringing this case is you don't want this to happen to anyone else?

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MR. WHELAN: Object to the form.

A. Yes. Oh, I did say that, yes.

Q. And I don't expect you to know all the legal terms, but part of the damages that we're asking for in this case -- that we've asked for is punitive damages, which are damages that are, I'll represent to you, generally meant to deter USAA from doing this again. Aren't you seeking those damages in this case?

MR. WHELAN: Object to the form.

A. Yes.

Q. There was a lot of talk about USAA's relations with you and they lied to you and all like that. After you retained counsel, Mr. Smith, aside from the one e-mail that you sent, isn't it true that all of your contact with USAA was through counsel?

A. Yes.

Q. Okay. And so Mr. Smith obviously made available to you letters and things and pleadings that Mr. Daniel filed?

A. Yes.

MR. WHELAN: Object to the form.

Q. Okay. And so you had the opportunity to see what USAA was saying through those documents,

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correct?

A. Right.

Q. But it's equally accurate to say that, you know, USAA with the little red hat, never stood up itself and specifically lied to you, correct?

A. Correct.

Q. Okay. And so what you were saying is that in those documents and through the course of the case, you were lied to; is that accurate?

A. Yes.

Q. Okay.

THE WITNESS: (Inaudible.)

MR. WHELAN: What did you say?

THE WITNESS: You're at ease.

Q. One of those --

THE COURT REPORTER: What did you say? I'm sorry.

MR. WILLEY: You're at ease.

BY MR. WILLEY:

Q. One of those documents that you saw or had communicated to you was Mr. Poplin's -- the expert's report, correct?

A. Yes.

Q. Okay. And was it your understanding

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that in that report Mr. Poplin said it was conclusive that your high beams were on at the time of the wreck?

MR. WHELAN: Object to the form.

A. Yes.

Q. Okay. And did that report indicate to you at that point USAA should have known conclusively that your lights were on?

A. Correct.

MR. WHELAN: Object to the form.

Q. There was a lot of questions about what court reporters took down or didn't take down at depositions or trial. Do you know, as you sit here today, everything that was or was not taken down by a court reporter in the underlying case and proceedings?

MR. WHELAN: Object to the form.

A. No. I don't know what was videotaped and wasn't.

Q. Okay. Do you recall if there was a court reporter at the mediation in the underlying case?

A. At the mediation? The first mediation?

Q. Right.

A. No.

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Q. You don't know one way or the other --
A. No.
Q. -- if they had one?
A. No. There was no court reporter.
Q. There was no court reporter. Okay. Do you know during the course of depositions that were taken when exactly the court reporters started taking down everything that was being said and when they stopped taking down everything that was being said?
MR. WHELAN: Object to the form.
A. No.
Q. Okay. So you don't know one way or another whether or not those transcripts reflect everything that Mr. Daniel would have said to you or whether they don't, do you?
MR. WHELAN: Object to the form.
A. No.
Q. You were asked about focus groups, and you've said that you had no idea, you know, how many, correct?
A. No. I don't.
Q. You don't know where they occurred, correct?
A. No.

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Q. You don't know what they were asked to evaluate, do you?

A. No.

Q. Do you know if they were asked to evaluate case value, verdict amount or settlement value, one way or the other?

A. No.

MR. WHELAN: Are you saying they weren't, and that's why you said no in the Interrogatory?

BY MR. WILLEY:

Q. Do you believe that the way that USAA treated you in this case is how they should treat their insureds?

A. I would hope not, no.

Q. Is it how you would ever treat a member of your family?

A. No.

Q. Do you believe that the pain, I guess, anguish, I think you called it, that they have put you through has been extreme?

A. Yes.

MR. WHELAN: Object to the form.

Q. Do you think that the actions they took in taking disparate positions exceeds the bounds

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of decency?

MR. WHELAN: Object to the form.

A. Yes.

Q. Do you agree that an insurance company can't just go around in court and take positions that it knows to be false to protect its money?

MR. WHELAN: Object to the form.

A. Yes.

Q. Ms. Hood, you were asked a lot about specific dates today. Okay? Are you good with specific dates?

A. Well, not really. I don't, you know, recall specific dates, recall specific incidences.

Q. Okay. If today, during the course of this deposition, you got dates wrong or details wrong, were you intentionally lying to Mr. Whelan and the jury in this case?

A. No.

Q. It's been your intention to tell the truth to the best of your ability?

A. Yes.

Q. Okay. And when you've answered his questions, have you erred on the side of trying to answer truthfully rather than saying "I don't recall" if you didn't exactly remember every

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detail?

A. Yes.

THE WITNESS: I tried to remember.

BY MR. WILLEY:

Q. There was a question about USAA forcing you to file a lawsuit.

A. Okay.

Q. If USAA had paid you the full policy limits prior to you filing the underlying lawsuit, would you have ever served a lawsuit on USAA?

A. No.

Q. Okay. You don't find the process of a lawsuit to be enjoyable, do you?

A. This is my first one. And I would say definitely not.

Q. Okay. And is it true that the only reason you did that is because you wanted what was owed to you?

A. Yes.

Q. Have you ever done anything to try to get more than was owed to you?

A. No.

Q. Okay. And isn't that what this lawsuit is about, to get what USAA owes to you and to stop them from doing this to anyone else?

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MR. WHELAN: Object to the form.

A. It was to stop from doing it to anybody else, but to be an insurance company of their word is more important.

MR. WILLEY: Thank you. That's all I have.

RE-EXAMINATION

BY MR. WHELAN:

Q. Ms. Hood, I am going to have some follow-up questions. Are you good to keep going, or do you --

A. Yes.

Q. -- want to take a little break?

A. Okay.

Q. Are you good?

A. Uh-huh.

Q. Okay. Um, now, Mr. Willey -- I'm confused. You told Mr. Willey in response to one of his questions that you were lied to. Who lied to you?

MR. WILLEY: I object to the form.

THE WITNESS: What was your question that I said that to?

BY MR. WILLEY:

Q. It was one of his long questions that

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you said yes to. And the question was, you were lied to?

MR. WILLEY: Object to the form.

A. Um --

Q. Can you tell me any lie that was told to you, ma'am?

MR. WILLEY: Object to the form.

A. I would say -- well, for one, um, the fact that Mr. Daniels wasn't my attorney. That was never -- that was -- you know, the implication that he was the attorney to do personal injury and Mr. Nickels was the attorney to do the property damage, so I was lied to then.

Q. Okay. Can you think of anything else?

A. Um, other than the things I mentioned earlier, no.

Q. I'm talking about lies.

A. Oh, lies --

Q. Yeah.

A. -- that people said? Um --

Q. And I thought earlier you had told me that there weren't lies. But then you told Mr. Willey there were lies. But that's why I'm asking you.

MR. WILLEY: Object to the form.

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A. Yeah. I think that was based on the wording of the question, maybe.

Q. Sure. And if there weren't any lies, fine. If there were lies, fine. I just want to know about it.

MR. WILLEY: Object to the form.

A. That was just about Mr. Daniels and...

Q. Okay. Um, let's see. Did you -- when you answered these Interrogatories and the one that asked about a third party evaluating damages, did you check with Mr. Smith to see whether those focus groups did evaluate damages?

A. No.

Q. Okay. So for all you -- so they may have talked about damages, they may not have, but you don't know?

A. I don't know.

Q. Okay. At the mediation -- and Mr. Willey made a good point; there would not be a court reporter at the mediation. What -- what do you remember, if anything, being said at the mediation?

A. Well, the mediator, um, we would come up with a proposal for USAA and then, of course, he went to talk to USAA; and they would come back

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with something else. And then he'd tell us, Well, this is ridiculous. And then he went back, and they did this back and forth a few times. And then, finally, the mediator said, They're not gonna go any further. You might as well just drop this.

Um, so I think that's what you're asking, right?

Q. Yes, ma'am. What you remember from the mediation.

A. Yeah. And then the amount. And I thought that was...

Q. Now --

A. Even the mediator thought that was...

Q. Now, at the mediation, you would have given your attorneys some authority to settle the case; in other words, We can accept this amount to make the case go away --

A. Right.

Q. -- right? Do you remember what that number was?

A. No. I don't think he ever said.

Q. Okay. Did you ever tell Mr. Smith or Mr. Willey that you would settle this case for less than a million dollars?

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MR. WILLEY: Object to the form.

A. I didn't say that to anybody.

Q. Okay.

A. I didn't even think anything like that.

Q. So as far as you were concerned, a million was the minimum amount that you would take to settle the case; is that right?

A. I would -- I wasn't confronted with that fact about another offer. So I would have to say, yes, I would expect the million. But I had any other figure --

Q. Now, my understanding -- and I wasn't there -- was that you had asked for $650,000 to settle the case in mediation or your attorneys had.

A. My attorney.

Q. Okay. Did you have anything to do with that?

MR. WILLEY: Object to the form.

A. No.

Q. Did -- would you have settled the case for $650,000?

A. I don't know.

Q. Would you have settled the case for less than $650,000?

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A. I don't -- I can't answer that. It would be based on how I felt at the time, I guess.

Q. Now, if USAA had paid you the $650,000, the case would have ended at that point, correct?

A. I think that's how it goes.

Q. And you would have had to pay Mr. Smith 40 percent of the --

MR. WILLEY: Object to the form.

Q. -- of the $650,000; is that right?

MR. WILLEY: Object to the form.

A. (Inaudible.)

THE COURT REPORTER: I'm sorry. What was the answer to that?

THE WITNESS: Yes.

MR. WHELAN: I think she said "that's correct."

Q. Didn't you?

A. That's correct.

Q. And I guess it turned out to be a good thing for you financially that USAA didn't settle it for $650,000, right?

MR. WILLEY: Object to the form.

A. I could agree to that.

Q. I mean, that's true, isn't it?

A. Yes, that's true.

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Q. I mean, if they had settled -- if they had accepted the $650,000, you and your attorneys would have had 350,000 less dollars, right?

MR. WILLEY: Object to the form.

A. Well, actually, that's not true.

Q. Okay.

A. Because when I went to trial, I had no idea how the jury was gonna vote. Either they voted me at fault and I wouldn't get any money -- so I think the offer from USAA was to prevent the case from going to trial, perhaps thinking that I would win and, therefore, if they offered the, um, amount before the trial, then since I didn't have to go to trial, they wouldn't have to pay the full amount. But it was a risk all along for me, because I had no idea what the outcome was going to be.

Q. Right. Nobody did?

A. Yes, nobody did.

Q. Did anybody involved in this case have a crystal ball that said what the jury would do?

A. No.

Q. Roy is raising his hand.

A. It was a risk.

Q. So there was risk for you, right?

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A. Yes.
Q. And there was risk for USAA, right?
A. Yeah.
Q. And it turned out that the cards were in your favor, right? The risk --
A. Yes.
Q. -- worked out in your direction, didn't it?
A. Yes.
Q. And you actually got -- because you took that risk, all right, and because USAA took that risk, you actually ended up with more money, correct?
MR. WILLEY: Object to the form.
A. I ended up with more money, yes.
Q. Now, the picture in front of the courthouse, tell me about that.
A. Well, I was still in a daze. I had gotten up with my friends. They weren't in the picture. We just used some of the -- we all walked out as a group. There were several other attorneys that Mr. Smith had hired to help and plus his paralegal. They were in the picture and then several of the witnesses. But it was like a friendly, just discussion, you know, about -- not

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necessarily about the trial, but some of -- some of the questions, you know, that had been answered, I guess. But mostly it was just about getting to know the person. And because Kevin and Roy and all of the staff were such a family-oriented kind of situation, that we took the family picture, and it was like a camaraderie kind of thing.

Q. Sure. So this was a celebratory photograph, right?

MR. WILLEY: Object to the form.

A. Um, I guess you could say that or just team work.

Q. Sure. You won?

A. Yeah.

Q. I mean, you were taking the picture because you were successful, right?

A. Yeah, that's true.

Q. And were there -- so -- and -- so there were some pictures with the witnesses, some without the witnesses, some staff?

A. I don't remember that. I don't know how many pictures were taken, if more than one. I think maybe a jury person might have taken a picture, but I don't recall.

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Q. And how many of the pictures do you have?

A. None.

Q. Who has them?

A. I don't know. Whoever took the pictures.

Q. Okay. Um, and have you seen -- have you seen the pictures since they were taken?

A. No, sir.

Q. Okay. And did you do any celebrating after you left the courthouse?

A. No, sir.

MR. WHELAN: I'm not asking you.

MR. WILLEY: You've never been to Ridgeville (sic) apparently or wherever -- Ridgeland.

THE WITNESS: Ridgeville (sic).

MR. WHELAN: Um, okay.

MR. WILLEY: There's a fricking Sonic.

BY MR. WHELAN:

Q. So let's see here.

THE WITNESS: Yeah, that's true. Everybody went to eat at the same place, this little diner, southern diner. Yeah, that was interesting --

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Q. Now --

THE WITNESS: No. McDonald's. That's serious.

Q. Okay. Well, you take what you can get.

A. Yeah.

Q. The -- you said that, um -- you mentioned some advertisements before you got USAA, I think. There may have been some confusion.

A. Well, it was some -- when -- when you're in the service, they have advertisements about banks, like the Pentagon Federal Credit Union, USAA for insurance; they have information that they give you that, you know -- I wouldn't say it was propaganda. I would say it's in- -- just information that -- of what is available to you, like different banking ideas or whatever. And I picked one of the USAA advertisers. I had no knowledge about USAA at that point; nobody in my family had ever had USAA.

Q. This would have been --

A. Well, nobody qualified for USAA.

Q. True. So this would have been, if I'm understanding, in either the '70s or the '80s?

A. Let me see. I didn't start driving -- the late '70s.

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Q. And I assume that -- let me ask you this: Once you got USAA in the late '70s, other than the incident that we're here for today, has it been -- I mean, has it lived up to what it said it was? Has it been a great company?

A. Yes, yes.

Q. And I think you told me at the beginning, you said, We profess that USAA is the best insurance company?

MR. WILLEY: Object to the form.

A. Yeah. USAA says that.

Q. But you told me we --

A. Yeah. I would say --

Q. You and your husband?

MR. WILLEY: Object to the form.

A. Well, I meant we, as in the people, like the people you see on TV is the group of people. And you, on your commercials, say that people should buy USAA because you can be members for life, and you have all these things that you offer, like the accident protection and, um -- I don't remember. Some other ones, the medical, the 401(k) that some people have used. And that's where I got some of the information.

And recently -- well, after the car

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accident, we had to change our insurance carrier because we live in a flood area. And we had Liberty Mutual, and they don't insure flood area things. But USAA, we did a contract with them, they came to investigate, you know, the property and its lines, and then we got that for house insurance.

MR. WHELAN: Okay. We're going to go off the record real quick.

THE VIDEOGRAPHER: This is the end of media No. 4 in the deposition of Therese Hood. We're off the record at 2:52.

(The deposition went off the record.)

THE VIDEOGRAPHER: On the record at 2:53.

BY MR. WHELAN:

Q. Okay, ma'am. So as far as the -- I'm going to go back and look at the transcript, and I could be completely wrong, but my impression of what you were telling me at the beginning of the deposition was that you and your husband like USAA a lot and tell people that USAA is a good insurance company?

MR. WILLEY: Object to the form.

A. Yes, we tell everybody.

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Q. Yeah. Okay. Um, and so -- you know, that's what I thought. I just wanted to make sure that I heard that right.

A. Yeah, that's correct. You -- in my view, your reputation went way down. Um, but that's my view, and I didn't share it with people. I didn't discourage anybody from getting insurance through USAA. As a matter of fact, I encouraged them. And I think this accident was a very unfortunate experience for me, and I don't want to have anybody to have to go through this. I mean, that was so unprofessional and -- just a lack of words for what happened to me. That should never happen to anybody.

Q. And you mentioned -- you mentioned some advertisements. I assume you've never seen any advertisement that talks about underinsured motorist coverage?

MR. WILLEY: Object to the form.

A. No, I have not.

Q. Okay.

A. Do you advertise that?

Q. I do not know. And when you -- when you signed on in the '70s, that was based on some paperwork you got in the military; is that right?

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A. Yes -- well, yes, fliers, like Army Emergency Relief and all of those.

Q. Yeah.

A. And we had GEICO or -- to pick from and -- who else? But I -- it just stuck out --

Q. Okay.

A. -- your paperwork.

Q. And am I correct that since the -- starting in the '70s, you became insured with USAA?

A. Uh-huh.

Q. And up until this accident, you had an excellent experience with them; is that right?

A. Yes.

Q. Okay. And you continue to be insured with them not because of any advertisements you saw --

A. No, no. Just --

Q. -- but because of your experience?

A. -- because I believed -- well, not because of my experience. But I believed that -- you know, the good faith that is there. And that's what hurt me so much, was it wasn't there. But overall, I believe that it's an excellent insurance company. And now I would have to

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contest that it serves its people well, but I think that the -- you know, all my family members, my daughter -- younger daughter has USAA.

I met Kevin through her because we hired him for an accident she was in. But we had -- we had USAA, another thing that went on. She was found innocent. But anyhow, so all the family members have USAA.

MR. WHELAN: Okay. Thank you very much, ma'am. I don't know if -- Roy, do you have anything else?

MR. WILLEY: Um, just --

RE-EXAMINATION

BY MR. WILLEY:

Q. Just the lie thing; let me just ask you about that briefly. You know that -- you know that USAA took two different positions in two different cases, right?

A. Yes.

Q. Okay. It's your understanding that both times that was to protect their money, right?

MR. WHELAN: Object to the form.

A. Yes.

Q. So when we talked earlier about a lie, we weren't talking about, again, the guy with the

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USAA hat who came down and told you that the sky was yellow, right?

A. Uh-huh.

Q. We were talking generally about them taking multiple positions in the underlying cases, correct?

A. Yes.

MR. WILLEY: Okay. That's all.

THE VIDEOGRAPHER: This concludes the deposition of Therese Hood. We're off the record at 2:58, media No. 5.

(The deposition concluded at 2:58 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 12th day of February, 2019, in the City of Charleston, County of Charleston, State of South Carolina.

Eve Wilbanks

Eve Wilbanks,
Registered Professional Reporter
and Notary Public

My commission expires:
November 18, 2024

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ERRATA SHEET

I have read the transcript of my deposition and find that no changes are necessary.

_____
THERESE HOOD

Having read the transcript of my deposition, I wish to make the following corrections (Please state reason):

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THERESE HOOD

Sworn to and subscribed before me this day of , 2019, County, S.C.

_____
Notary Public
My commission expires

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A

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STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-CP-10-0666
	)	
	)	
	)	
THERESE HOOD	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
UNITED SERVICES AUTOMOBILE ASSOCIATION GIC, et al	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 20, 2018
Charleston, South Carolina

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE

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

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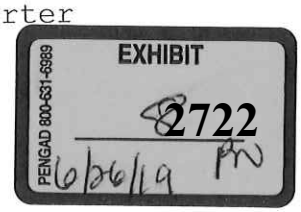
Circuit Court Reporter



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PROCEEDINGS

THE COURT: The next matter is Therese Hood versus United Services Automobile Association, GIC. Good afternoon. Are all the parties present wishing to be heard today in this matter?

MR. WHELAN: They are, Your Honor.

THE COURT: All right. It looks like we have three motions; a motion to compel, a motion for summary judgment, I have a plaintiff's motion; it's hard to tell or decipher from here.

MR. WILLEY: It's just two motions, Your Honor.

THE COURT: Just those two?

MR. WILLEY: The two you stated.

MR. WHELAN: There are I think two motions to compel. The first one was a motion to compel a third party compliance with a subpoena.

THE COURT: Okay.

MR. WHELAN: I think that one has been resolved.

THE COURT: Okay.

MR. WHELAN: And so the next one is the defendant's motion for summary judgment and then the plaintiff's have a motion to compel.

THE COURT: Okay. I'm happy to hear those in any order. I've got various documents that have been filed in association with these motions.

MR. WHELAN: The motion for summary judgment was filed first and it probably makes sense to hear that ---

THE COURT: --- I think so, yes ---

MR. WHELAN: --- first if that's okay.

THE COURT: Okay.

MR. WHELAN: Your Honor, Robbie Whelan for USAA. There is I think one thing that Mr. Willey and I will agree on today and that is this is an unusual case with an unusual legal theory.

THE COURT: Okay.

MR. WHELAN: And I'd like to talk about the theory and the facts. I drew up -- may I hand something up, Your Honor?

THE COURT: Of course.

MR. WHELAN: Okay. I drew up a chart.

[Whereupon, Mr. Whelan provides documents to the court]

THE COURT: Thank you.

MR. WHELAN: And what this shows Judge is ---

THE COURT: --- do you want me to mark this as a court's exhibit or?

MR. WHELAN: That would be great.

THE COURT: I'll do that momentarily. Give me one moment. It will be court's 1 -- actually plaintiff's 1 -- no defendant's 1.

[Whereupon, defendant's exhibit number 1 is marked by the court reporter]

THE COURT: All right, defendant's 1.

[Whereupon, defendant's exhibit number 1 is entered into evidence by the court]

MR. WHELAN: Thank you, Judge. So this is a bad faith suit and this is an underlying suit that is at the bottom of this triangle. That is a suit by Ms. Hood against Mr. Johnson and then a counterclaim from Mr. Johnson back against Ms. Hood. And then there is a separate suit by the Cooks against both the Hoods and the Johnsons, okay.

THE COURT: All right.

MR. WHELAN: And I'll get into the facts and I think this will make more sense. This case involves positions taken by defense counsel. And I just wanted to illustrate that Ms. Hood was defended by Chris Nickels. Ms. Hood is a USAA insured. And so USAA hired Mr. Nichels from Clawson and Staubes to defend Ms. Hood from the Cooks suit and also from Mr. Johnson's counterclaim.

And then in the case of Hood v Johnson I think Geico was Johnson's liability insurer and they hired Toland Sams to represent Mr. Johnson. Ultimately Geico tendered their limits and so Jack Daniel stepped in for the UIM carrier, who is USAA. So let me back up to the facts of

the case. So the plaintiff in our bad faith suit is Therese Hood. Therese Hood was driving down 278 at dusk and her lights were either on or they were off and that's at the center of this dispute. As she is driving down the road Mr. Johnson pulls out of a driveway and hits her. So that's the first collision. She crosses the street and then hits the Cooks and that's the second collision.

So there are two sets of suits. The Cooks sue Hood and Johnson saying that one or both of them are at fault. There is a suit by Mr. Cook and there is a suit by Mrs. Cook and those cases are pending right now in Jasper County and subject to trial any day. As I already mentioned Ms. Hood has liability insurance with USAA and they represented Chris Nickels to defend Ms. Hood.

In that suit there is a question of were her lights on or off. A bunch of eyewitnesses say they were off. Mr. Nichels hires an expert witness who opines that they were on. And that expert witness position is essential to the plaintiff's bad faith suit.

Now in the other suit Ms. Hood sues Mr. Johnson and Johnson counterclaims back against Ms. Hood. Then again the central issue is were her lights on or were they off. Mr. Johnson says your lights were off. That's the position taken by Toland Sams for Geico. During the Hood

v Johnson trial -- or not the trial but during the case Geico tenders its limits, gets a covenant not to execute and so at that point USAA's counsel steps into the shoes of Mr. Johnson and defends the case; and that's Jack Daniel.

Now when that happened after Mr. Daniel took over the defense for Mr. Johnson Hoods lawyers, the plaintiff's lawyers, sent a request to admit to Mr. Daniel and it said admit that her lights were on. And in that request to admit and the expert witness opinion procured by Chris Nickels are the two exhibits to this bad faith case. It's what this bad faith case is based on.

And it's the plaintiff's position that Jack Daniel because he was hired by USAA had to admit that the lights on despite the fact that all these eyewitnesses said they were off. And they claim that Mr. Daniel had to admit that they were on simply because USAA was paying Mr. Daniel and because USAA was also paying Chris Nickels to defend Ms. Hood.

So that is the legal theory. There are several different causes of action that are asserted in the complaint. But this much is based, Your Honor, on a matter of law. There is no cause of action that would require or could be based on Mr. Daniel defending the UIM

carrier to the best of his ability. This is controlled by statute. South Carolina Code 38-77-160 controls underinsured motorist coverage. And it says the insurer has the right, the right, to appear and defend in the name of the underinsured motorist. And obviously there is going to be a conflict between the plaintiff and the underinsured motorist carrier. The legislature recognized that and it said, this is in the statute, it says the underinsured motorist insurer may assume control of the defense of action for its own benefit.

So USAA and Jack Daniel when they step into the shoes of Mr. Johnson are defending USAA. They are not defending Ms. Hood. And the plaintiff's position that they have to look out for Ms. Hood's interest or they have to adjust their evidence depending on what Ms. Hood claims is just inconsistent with the statute.

I won't go through them but we cited a few briefs -- excuse me, a few cases in the brief we submitted on Friday, Brew v Watts [phonetic] and there are few others. But they talk about the fact that the statute gives the insurer the right to defend itself. It steps into the shoes of the tortfeasor.

The plaintiff's position is it steps into the shoes of the plaintiff. And I just can't see how Jack Daniel or me or any defense lawyer could step into the shoes of

the tortfeasor and simultaneously look out for the interest of the plaintiff, which is what they are claiming. The complaint as I mentioned has six causes of action. The first is bad faith. Again, we think none of them can survive because of 38-77-160. But beyond that bad faith cannot lie if an insurer has a reasonable basis for the action it undertakes. Here there was a reasonable basis provided by 38-77-160.

I should mention that that Hood v Johnson case went to trial in Jasper County. In the trial there was substantial evidence that Ms. Hood's lights were off. The plaintiff, Mrs. Hood, elected not to call an expert to say that her lights were on and the jury attributed 49 percent of fault to Ms. Hood. There was a 2.5 million dollar verdict reduced by 49 percent. USAA's UIM limits were a million dollars and they tendered this plus interest to the plaintiff.

With respect to breach of contract Lawson v Porter talks about the fact that an insurer has a right to defend a case under 38-77-160. In fact Lawson v Porter says the right to recover UIM benefits does not even arise until a judgment against the underlying tortfeasor. They had sued for barratry and barratry could not apply under these facts that its barratry to defendant a UIM suit and it would render the statute meaningless.

Additionally barratry applies to someone who interferes in a suit between two unrelated parties. That is not the case here. Ms. Hood cannot claim you made me sue you and that is barratry.

The fifth cause of action is outrage. And outrage requires -- I could quote you the language; you know the language. But it requires absolutely abhorrent behavior that is atrocious to a civilized society or something like that. And this is just run of the mill insurance defense. So there is no facts that would support a cause of action for outrage.

And then their last cause of action is negligence per se. This is a little bit of a different cause of action. They claim that USAA's insurance adjusters weren't licensed. They did not have evidence to support that. They filed an opposition to a motion for summary judgment and said well two of the adjusters we talked to may not have been licensed with the South Carolina Department of Insurance.

So I submitted an affidavit in response to that on Friday that said yes, they were licensed. In any event the statute they cite does not give rise to a private cause of action. Thank you, Your Honor.

THE COURT: All right. Thank you so much. Mr. Willey, if you don't mind stating your name for the

record and the party you represent.

MR. WILLEY: Your Honor, Roy Willey, and I represent Therese Hood. And I disagree with just about everything Mr. Whelan said. But I'm going to start with the motion itself because the motion was filed on the basis of USAA not having a duty to the plaintiff. And under the Nichols case and all the progeny UIM carrier like any other insurance carrier has a duty to act in good faith and fair dealing toward its insured. Our allegations in this case are that USAA did not do that for multiple reasons.

Taking disparate positions as to headlights and different cases to protect their own bottom line at the expense and humiliation of Ms. Hood is one of those ways, but it is not the only way. Dragging out a claim is another way that that can give rise. And Mr. Whelan said something interesting which is there has to be a reasonable basis. Well, reasonable basis is a question of fact for a jury to determine whether or not the insurer in this instance acted as a reasonable insurer would.

And in this situation we would obviously argue that they did not. But that's the basis of the motion. Anything else raised today I don't have fair notice of and so it can't come before the court other than the duty

argument and he claims that there are no damages. But as Your Honor knows and we cited it in our memorandum in the Nichols case the plaintiff is entitled to recover consequential damages in a bad faith action against an insurer. Ms. Hood in this case has alleged that she suffered damages including humiliation, going through the litigation process; expenses that she should not have had to endure and those would be recoverable in the case if the jury found that USAA did not act as a reasonable insurer should.

But in this case I'm not even sure we get there because as Your Honor noted I have filed a motion to compel. And let me give you a little procedural history on this case before even Mr. Whelan became involved. And that is that I was associated late in the underlying matter to try the underlying case in Jasper County which we did and got a verdict of two and half million dollars reduced by 49 percent.

And at that time an appeal was filed by USAA and post trial motions and all the rest all of which was taken away. I'm sure if the appeal actually got filed and I'd have to check that. But in any event we filed a bad faith action after that point. And Mr. Whelan became involved and we had a conversation about the case. He said I think your case is crap. I said I think my case

is good. And he said well, let me talk to USAA and see if we can agree on mediation before we go through the full litigation of the bad faith claim, and I said that would be fine. We were able to get a mediation set and we agreed and had a gentleman's agreement not to conduct depositions and further discovery during that period of time despite the fact that I had served discovery in August of 2017. We did not file the motion to compel.

One day I'm sitting in my office with mediation on the horizon and I get a motion for summary judgment in March of this year just before we were to have the mediation that we had agreed upon in this case. I called Robbie and I believe Robbie said you know my client asked me to file it and I had to get the motion filed. And I said I understand but you know we have this outstanding discovery and we haven't done any discovery in the case pursuant to our agreement. And as a result I don't think the motion is proper.

So my motion to compel August 2017 we served discovery September. They filed a motion to stay pending transfer of the underlying cases. An order to transfer venue to Charleston from Jasper was signed in September, but the case was not actually transferred until February the 9th. Before that, even before the case was transferred we had had an agreement to go into an early

mediation without discovery. Despite that March the 12th about a month after the case was transferred the motion for summary judgment was filed and then immediately thereafter I filed this motion to compel discovery responses. The case law is quite clear and we cited it in our ---

THE COURT: --- I don't want to stop you but it's a little bit confusing because you're referring to the case and I think you're referring to two separate cases. So just so I'm clear when you say we were on the horizon for mediation was it for the underlying case ---

MR. WILLEY: --- this case ---

THE COURT: --- or this bad faith case ---

MR. WILLEY: --- this case.

THE COURT: Okay.

MR. WILLEY: So the verdict in the underlying case was rendered prior to this bad faith case law suit being filed.

THE COURT: Okay. Thank you.

MR. WILLEY: We filed this just before the verdict.

THE COURT: Okay.

MR. WILLEY: But we're talking about this case.

THE COURT: Okay.

MR. WILLEY: So this timeline in August we served discovery in this case which we have filed in Jasper

County which is where we allege the bad faith took place since that's where the trial was pending. Judge Mullen in September -- well, a motion was filed to transfer the venue in September. She signed it September 19th saying no, you need to go to Charleston which we had kind of agreed on. It's kind of complicated how we got there but anyway. But it was not transferred, this case, until February of 2018.

THE COURT: Okay.

MR. WILLEY: I still had no discovery responses obviously while we were pending transfer. We had mediation on the horizon, which I can't remember exactly ---

THE COURT: --- has it been mediated?

MR. WILLEY: --- it has been mediated.

THE COURT: Okay.

MR. WILLEY: The early mediation we did with Marvin Infinger. We were not able to reach an agreement mainly because this motion was pending, which is kind of ironic. But in any event March the 12th they filed this motion and immediately thereafter I filed my motion to compel and said basically hey, we had an agreement and we're supposed to not do anything until we mediate. But if this is the route you want to go and litigate I've got to get the discovery responses. Obviously, I need to know

everything USAA knew and when because that all goes into reasonable basis for the positions that they took in the case. So it boils down to this. Does an underinsured motorist carrier have a duty to its insured? Yes, of course it does; the law is clear. Is it possible based on the pleadings in this case that USAA breached that duty to Ms. Hood by dragging on litigation that did not need to drag on by taking disparate positions in different courts to protect their pocketbook.

And the thing that wasn't mentioned in this particular argument is that the checks were actually written by USAA so this is not a litigant situation, it is an insurer situation; they hired the expert, the expert that rendered the opinion. But none of that matters none of that matters because we don't have discovery so it's moot.

But even if we did the basis of the motion on duty is clear. They have a duty; we've alleged they breached it. There are some facts just in the argument that Mr. Whelan made to support that but further discovery is required in order to give us a full and fair opportunity to respond and to complete discovery. And the Beira [phonetic] case is right on point, the Cunningham case. There is a whole litany of cases as Your Honor knows. And so that's our basis. We have fully briefed it in

terms of each of the causes of action. The fact is that Your Honor doesn't need to read, and I hope you didn't spend time reading the full trial transcript because that is not really relevant to what we are arguing today because the bad faith goes deeper than that and it's beyond that and we need the discovery in order to be able to litigate this case properly. I think it's pretty clear but I would be happy to answer any questions the court has.

THE COURT: Okay. What do you say about, address briefly if you don't mind his argument as to the statute 38, the underinsured motorists statute 38-77-160, and the underinsured duty with respect to the -- under -- insurer's duty with respect to the insured.

MR. WILLEY: He is -- his statement, and in fact we cited that statute in our memo. The insurer does have a right to defend the case but they do not have a right to defend the case in bad faith or in an otherwise negligent manner. The Nichols case, Nichols v State Farm 279 S.C. 336 speaks directly to that.

And it says if an insured can demonstrate bad faith or unreasonable action by an insurer in processing a claim under their mutually binding insurance contract she can recover damages in a court action. That's exactly what we allege here; that they were unreasonable and

committed bad faith in processing and litigating the claim for a variety of reasons. As a result Ms. Hood was damaged. So while they have a right to defend they do not have carte blanche to take disparate positions to commit fraud on the court, to take you know inconsistent positions to protect their money at the expense of their insured. They have a duty to act in good faith and in fair dealing as to their dealings with their insured even when they are defending an action from that insured.

And we've cited the UIM cases that clearly provide the law in terms of allowing an action against an underinsured carrier or a first party -- it's called a first party bad faith action. There is a whole section on it in the insurance book. It wouldn't exist if it didn't, if it wasn't possible.

And we've brought these cases many times. I've never -- I don't recall ever having defended the argument that a UIM carrier has no duty and they can do what they want pursuant to the statute. It's just not consistent with the case law.

THE COURT: All right.

MR. WHELAN: Thank you, Your Honor. Just to clarify we're not taking the position that an insurer does not have a duty. That is not what we say. Our motion says that the duty sought to be imposed by the

plaintiff is not recognized under South Carolina contract, negligence or bad faith law. The plaintiff has an obligation is response to our motion to not rest on the pleadings but to provide facts that support for their theory. They have filed a 12 or 14 page memorandum in opposition. I think there is about 300 pages of exhibits that are attached to that.

And the only thing they allege is that or the only facts they have is what Mr. Willey just called inconsistent positions, disparate positions and fraud on the court he said. And that goes to this request to admit and Mr. Daniel maintaining that Ms. Hood's lights were off.

Both parties, Your Honor, have attached the trial transcript as exhibits to the motion. I have pulled out just a very few pages of excerpts. May I approach and hand up these excerpts?

THE COURT: Yes.

[Whereupon, Mr. Whelan provides documents to the court]

THE COURT: Do you want these marked?

MR. WHELAN: It's not necessary; they're in the record.

THE COURT: Okay.

MR. WHELAN: Thank you. So Your Honor, these are

witnesses in this trial. The plaintiff called I'm not sure how many witnesses and the defense called one. And I pulled these pages because they concern whether her lights were off or on. And again the plaintiff claims that the fraud on the court was claiming that the lights were off.

The very first page is an excerpt for the plaintiff's witness Mr. Lee. He says that the headlights were not on. The second page is an excerpt of Officer Welch [phonetic] called by the plaintiff. And there are two pages here 246 and 247. Officer Welch [phonetic] said the headlights were not on. And that's when she arrived. She didn't see the wreck but when she arrived afterwards her dashboard camera showed the lights were off.

The next page 285 the plaintiff's witness Mr. Cook: Question: Now Mr. Cook in this case your testimony is no headlights, right? Answer: Yes, sir. The next page is Mr. Johnson at page 304: I didn't see no headlights. The next is Ms. Hood herself at page 496.

And here plaintiff's counsel says: Now Ms. Hood we've heard from a lot of people this week, people saying no headlights but running lights, Ms. Hood that is the testimony and we have heard that over and over again are you going to disagree with that. And her answer was:

No, I'm not. Then the next page is page 556. This was the defense's single witness. This is Carey Tanraft [phonetic]. And Carey Tanraft [phonetic] said that he did not see headlights and he told the officers that because it was important and it was dark outside.

And then I saved the best for last, Your Honor, and that's page 553. This is plaintiff counsel Kevin Smith who tried the case with Mr. Willey. I quote from Mr. Smith, quote: If this witness is going to testify that Ms. Hood did not have her headlights on we'd stipulate to that; period end quote. So they're claiming it was bad faith for USAA to say Ms. Hood's headlights were off. We went into trial and when I read the transcript I was shocked to see they stipulated her headlights were off.

With respect to the discovery the discovery was served in August of 2017. At that time both of the lawsuits on my diagram were pending. The Cook case had not gone to trial yet. So we filed a motion to stay discovery pending the resolution of the Hood lawsuit and both Cook lawsuits. I'm not sure why that motion was not scheduled today but it is pending.

And the point here is that if the plaintiffs are allowed to proceed under this theory, if they are filing a suit concerning actions taken in two underlying suits then we need to wait until those suits conclude to

conduct discovery. I don't see how you can do discovery on these suits while they are pending. The Hood suit has concluded. The Cook suit has not although I understand it should be set for trial soon. And then the other point on discovery is and I'm going to quote from the plaintiff's brief at page 5 where they are citing the Ginneken [phonetic] case but there are many cases that say the same thing.

A party that claims summary judgment is premature because she has not been provided a full and fair opportunity of discovery must advance a good reason why time was insufficient under the facts of this of this case -- that doesn't apply -- but they must advance why further discovery would uncover additional relevant evidence and create a genuine issue of fact, of material fact.

And in this case the plaintiffs have not said I need to learn this or I need to learn that. They have -- the only thing they have said in response to our motion is a disparate position. Mr. Willey made reference to USAA dragging out a claim. There has been no evidence of that provided to Your Honor. In fact the case was just litigated and there is no evidence that it was dragged out, and therefore summary judgment is appropriate on each of the plaintiff's causes of action.

MR. WILLEY: Your Honor, if I may briefly?

THE COURT: Sure.

MR. WILLEY: The elements for a bad faith negligent insurance action is what we should call it or the existence of a contract of insurance between the parties, which we have, refusal by the insurer to pay benefits due under the contract, which we have, resulting from the insurer's bad faith or unreasonable action, which is a jury question, causing damage to the insured, which we have.

This transcript doesn't mean anything because the facts that we need to uncover in discovery are what USAA knew, when they knew it, what their claims file showed, what they decisions in not paying the case or paying the claim were based upon, why they chose to drag out the litigation. And I can go through each of these and tell you why they aren't relevant. I mean Mr. Lee for example admits he didn't see her car at the time of the wreck. This is talking about minutes before the wreck for example ---

THE COURT: --- I realize these are out of context ---

MR. WILLEY: --- but the ---

THE COURT: --- let me ask you something real quick and I don't mean to interrupt tell me is this under a

scheduling order right now at all this current case?

MR. WILLEY: No. The current case ---

THE COURT: --- there is no pending scheduling order ---

MR. WILLEY: --- I don't think it is and part of the reason on the unreasonable time ---

THE COURT: --- it's not that old ---

MR. WILLEY: --- I had forgotten he's correct that they did file a motion to stay discovery, which I had forgotten about that which initially got our conversation going. But there is the unreasonable time. I mean there is a motion to stay discovery pending and I was thinking a motion to compel discovery is pending and so we've had zero opportunity to do anything.

And the question in the case what did USAA know about the claim, when did they know it, what did their agents do in response to it. I need all of that information. I need the claims file. I now have the file from one of the lawyers. I need the full and complete file from the lawyers.

I need to take depositions of the adjusters and what they knew because frankly what came out at trial doesn't mean a hill of beans if they didn't have that in their file as knowledge before. And I can tell you that what's in their file is they paid an expert to go out and do a

landfill of an analysis test who said her lights were off. So whether or not they had anything to contradict that prior we need to know. That's what ---

THE COURT: --- I'm not going to grant them a motion for summary judgment today. I think it is premature given what has not happened in the case. I know it's really not that old of a case necessarily relatively. You're not under a current scheduling order.

I'm going to dismiss it without prejudice. In other words you can bring it back at a later time after some more discovery has been conducted, okay. And I don't know -- do y'all need -- I don't think a formal order really is going to be required. Do the parties consent to a form order just simply stating that the motion is denied without prejudice to...

MR. WHELAN: That's fine, Your Honor ---

THE COURT: --- or with leave I could say without prejudice and leave to renew at a later time during ---

MR. WILLEY: --- that's fine. And the other motion before Your Honor is my motion to compel ---

THE COURT: --- right. And I mean giving my reasoning for the denial of summary judgment is that nothing is there -- we can go forward with it if you want to.

MR. WILLEY: I just need an order compelling them

to respond. I don't have any responses.

THE COURT: Well, apparently there is a pending motion to stay discovery. So I don't know; it's not showing up on this roster ---

MR. WILLEY: --- and I believe ---

THE COURT: --- was it filed in Jasper ---

MR. WILLEY: --- it was filed in Jasper ---

THE COURT: --- and not transferred is probably what happened.

MR. WHELAN: Your Honor, I think that is going to take care of itself when this Cook case resolves. And I don't know but you may know better than I but I think it's going to be relatively soon.

MR. WILLEY: I don't need anything right now for the Cook case. I need the claims file in this case so that I can start identifying an expert as I work through the claims file in this case.

I'm fine if he wants to put on a privilege log everything about the Cooks case and say it will be provided once that case wraps up I'm fine with that. But as to this case which is resolved they've already written a check and all that. We need this claims file and the files related to this case.

THE COURT: Well, I'll just state that it's -- defendant will have 30 days to respond as he would. Now

you're on notice that we're moving forward. So now you have 30 days to respond to the plaintiff's discovery requests.

MR. WHELAN: Okay. And Your Honor, there are 90 some discovery requests including subparts. Obviously I'm going to have objections to some of those. You're not ruling on ---

THE COURT: --- I'm not ruling on individual pieces at this point in time. I mean I understand you have sufficient reasoning for not responding to date. I don't think opposing counsel, I mean you understand ---

MR. WILLEY: --- oh, of course I want sanctions.

THE COURT: I'm not going to do that today. So anyway I'll state that the motion to compel is granted and I'm not issuing any fees or costs or anything like that against you; just 30 days to respond as you would during the course of normal discovery proceedings.

MR. WHELAN: Okay. Thank you, Your Honor.

THE COURT: And of course I encourage y'all to keep up the communication. Any extensions you grant between yourselves are fine.

MR. WHELAN: We will. Thank you, Judge.

THE COURT: Thank you.

********END OF TRANSCRIPT OF RECORD********

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina on the 20th day of June, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 9, 2018

Joyce C. Rueger, CVR-M
Court Reporter

In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119\

Therese Hood,

Plaintiff,

vs. **Transcript of Record**

Antoine Johnson,

Defendant.

VOLUME 1

September 5, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

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AND

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REPRESENTING DEFENDANT:

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PROCEEDINGS

THE COURT: Good morning. Okay. Well, there's a number of pre-trial motions in this case. I say we start. The jury is coming in at 11:00. Obviously, we need to take up as many motions as we possibly can. I can tell you I've read everything.

Some of them I may need some type of proffer before I'm able to make a decision, or get a little more argument. Just a couple of them I wasn't quite clear about what had been done.

But I know that we need to start with Mr. Lee, who is sitting out in the back. He wants to get back to work.

So I understand, Mr. Lee, that you were the one that made the 911 call following the accident. My understanding is the Plaintiff is going to call you as a witness in the trial of this case, correct?

MR. SMITH: Yes, ma'am.

THE COURT: All right. So let me tell you what my thoughts are as far as timing is concerned and how this is going to unfold. Because he would be, I guess, a fact witness.

2750

To begin with, pull the jury at 11, it will take us till 12. I probably anticipate that I would send them to lunch at that point. I know it'll be a little bit. But instead of just doing opening statements and then sending them, I think we'll probably just pull the jury, send them to lunch, bring them back. I guess my hope then, if we can get a jury roughly by 12:30-ish, 1:00, 1:30-ish.

Mr. Lee, I'm thinking we have you back here at 1:30. Is that okay with you, sir?

MR. LEE: I have a 608 Merits hearing in Allendale County at 2 o'clock. Then I have at 9 o'clock in the morning a 608 Merits hearing at 9:00 a.m. in the morning. They kind of call them like general sessions cases. You get there, and you don't know when the Judge is going to call them. So that's what I'm -- I'm trying to express that to both sides.

THE COURT: What Judge is that?

MR. LEE: I believe in Allendale, it's Judge Jenkinson today. And then --

THE COURT: Is that a magistrate Judge?

MR. LEE: No, it's a family court Judge. It's a 608 family court merits hearing for

abuse and neglect case. I'm a 608 contract attorney for five counties. And I think that's got --

THE COURT: Okay. Do they start -- do they have many cases on a roster, or what do they have?

MR. LEE: I don't know how many they have now. To tell you the truth, this is my first appointment in two years there. So as far as today, I'm not sure. It starts at 2:00. It's a solid hour drive. I just don't know -- it's our initial merits hearing. Basically, the case just got filed last week. I got appointed on Wednesday morning.

THE COURT: Were you subpoenaed to be here today?

MR. LEE: Excuse me?

THE COURT: Were you subpoenaed to be here today?

MR. LEE: I was subpoenaed by both sides to be here today, just throughout the entire week. So I've got --

THE COURT: Well, obviously, I'm going to release you from the entire week. But I want your testimony, I need to get it up today.

So yes, sir.

MR. WILLEY: We could -- if you wanted to come back after that hearing, we could call him late this afternoon. That would work.

MR. LEE: I could do that.

MR. WILLEY: We could commit to that.

THE COURT: Is that easiest for you?

MR. LEE: That would be the easiest. I just don't know exactly when I'll get out of there because if we start exactly 2:00 and it goes half an hour, hop in my car, I still might not be back here until 4:00.

THE COURT: And that's fine. I think that's fine. And I plan to go today until at least 5:00. So that works separately.

MR. LEE: I just can't promise when I'll be out of there because that --

THE COURT: That's okay, because I can call Judge Jenkinson and have him send you. So just make sure you leave from Allendale and come straight back here.

MR. LEE: I will.

THE COURT: Okay? And we'll go from there.

And quickly, I would like to get you up

and done today so we don't have to worry about you the rest of the week. Okay? Then you can go on about your schedule. Okay?

MR. LEE: All right.

THE COURT: Mr. Lee, does someone here have good cell phone numbers for you?

MR. LEE: I believe both sides have my cell phone number. I just changed providers so I could hopefully get service out in Allendale over the weekend. So --

THE COURT: Okay. So we should be fine.

All right. As long as we have a number for you. Obviously, we'll give you a call, Mr. Lee. Go on your way right now, we'll see you back later this afternoon. And we'll get you up today. Okay?

MR. LEE: All right. Thank you very much.

THE COURT: Thank you, sir.

MR. SMITH: Thank you, Your Honor.

THE COURT: You're welcome.

All right. Well, that takes care of that issue.

Oh, Mr. Lee, one other thing before you come today. Just so you understand, when you're in court this afternoon you're going to

be addressed as Mr. Lee, not as Judge Lee. And when asked what your job is, you are a lawyer. You don't say anything about being a judge or a magistrate judge in any way. It's not lying to the jury because you are, in fact, a lawyer, and you're a practicing lawyer. So we're just going to be relaxed saying anything about you being a judge. Okay?

MR. LEE: The only reason I asked that, I was directly asked in the deposition. So --

THE COURT: And that's fine. The lawyers in this case aren't going to raise that in any way, shape, or form. It wouldn't be appropriate. I know it does bring into influence, you know, on your testimony if you are called a judge and Your Honor. So we're just going to refer to you as Mr. Lee. That's it. And we'll go from there. Okay?

MR. LEE: Thank you.

THE COURT: Thank you.

MR. LEE: I'll see you back this afternoon. Thanks.

THE COURT: Okay. Let's start going through the motions.

MR. SMITH: Yes, ma'am.

THE COURT: I think maybe the best place to start might be the Motion to Bifurcate. I understand that there is a motion to go ahead and try to split this case.

My understanding, just from what I've read and everything I've heard, I'm quite familiar with this intersection. It's about two miles from my house. And I hate to say it, we are frequent flyers of Dunkin' Donuts and Yummy House, which is right there, and also The Batter's Box there, which is batting cages. And I'll go ahead and say it, we have a monthly contract with them because I have a little girl who plays softball, and plays softball there. So I'm familiar with where it is, and what's going on.

I understand, and I'm kind of seeing as far as this case is concerned, you know, I have just -- could Plaintiff's tell me in a nutshell what their idea of liability is, if you would. And I want to hear from Defense counsel of what your contentions are. Like, for instance, I know that one of your things that you've said is that allegedly she didn't have her headlights on, so driving without a light.

I just kind of want to hear from your point of view what you would put up and from your point of view what you offer for that. Not really going to need anything, but whether or not certain things are admitted. I just wanted to know. Okay?

So let's go ahead and start with you.

MR. WILLEY: Your Honor, Roy Willey representing the Plaintiff.

Liability in this case is actually pretty clear despite all of the pretrial filings. What happened is, Ms. Hood was traveling down 278, going east, and Mr. Johnson was at the stop sign, exiting Dunkin' Donuts.

And when Ms. Hood was in the lane closest to the median, so the farthest lane from him, he proceeded through the stop sign and T-boned her vehicle. And there's actually photographs. Obviously, this is his vehicle with the front-end damage, and here's a photograph of her car, where he impacted her.

THE COURT: Okay.

MR. WILLEY: And what happened after that is Ms. Hood was diverted into the oncoming lane of traffic, across that small grass median

there.

THE COURT: So she went up through that whole grass median.

MR. WILLEY: Correct.

THE COURT: Okay.

MR. WILLEY: And they head-on -- had a head-on collision with somebody coming --

THE COURT: With the Kucks -- tell me --

MR. WILLEY: Yes, the Kucks, yes. The Kucks, coming in the opposite direction, hit her head on. So liability in this case you know, as far as that goes is fairly clear.

Now, there is an assertion by the Defendants that Ms. Hood did not have her headlights on, and, therefore, she would have been hard to see. But it's undisputed in this case that she did, in fact, have her running lights on. And, in fact, as the expert testimony will show that at the point of --

THE COURT: So you have this expert testimony? Who's your expert witness?

MR. WILLEY: We have a combination of experts. We have Woody Poplin, Ken Richardson, and Stephanie Borzendowski. And the combination of those experts testify as to --

when obviously there's a statute that deals specifically with headlights, and when it's required, 30 minutes before sunrise and up to 30 minutes after sunset. And in this case, we actually have the data about sunset from that exact intersection.

And what the, you know, evidence will show is at this time she wasn't required to have her headlights on. She says that she does have her headlights on anyway. And so that -- that's their issue for comparative negligence.

The only problem with that is that the impact in the case happened to the side of her vehicle. And, obviously, immediately before impact he would have had to see her because she was directly in front of him. Either that or he didn't have his headlights on or he wasn't able, you know, to see what was going on. So that's basically liability in a nutshell in this case --

THE COURT: Are they alleging speed is an issue at all?

MR. WILLEY: Speed is not a proximate cause or a potential proximate cause.

THE COURT: I mean, are they alleging it?

Is the Defense alleging it?

MR. WILLEY: They have raised that, and it's sort of derisive so, you know, scenario that --

THE COURT: So the speed limit there is 45 miles per hour?

MR. WILLEY: Right.

THE COURT: What are they putting your lady at allegedly?

In my experience, there was -- there was some type of black box that was out of someone's car, in this case. Was it the Plaintiff's, Defendant's, or anyone's?

MR. WILLEY: Plaintiff's.

THE COURT: It was the Plaintiff's car. Okay. Was that something you got in your discovery that you pulled it out of your --

MR. WILLEY: It's sort of interesting because initially Mr. Poplin was hired by USAA to defend Ms. Hood in another case resulting from this wreck. So he was actually USAA's expert.

THE COURT: So did the Kucks sue her?

MR. SMITH: Yes.

THE COURT: Is that what happened?

MR. WILLEY: Yes.

THE COURT: Excellent.

MR. SMITH: And Mr. Johnson.

MR. WILLEY: And Mr. Johnson.

So whose expert is who is sort of for anyone to guess.

THE COURT: Okay. So in that case, Mr. Poplin got her -- correct me if I'm wrong -- Ms. Hood's box out of her car; is that correct?

MR. WILLEY: Yes, ma'am.

THE COURT: Okay. Okay. Interesting. I was wondering why. It's somehow a little odd how it came about in this case.

Okay. And what does that black box have her going at? Or do we have -- I guess there's two points of impact, and I'm not sure how the black box does that. It's the first impact with the Defendant in this case, and then also the impact with the Kucks.

MR. WILLEY: And that's what makes that unreliable in this case. The actual black box reading puts her about 60 miles an hour. But the black box they go -- you know, it's completely unreliable because of the nature of

the wreck. And this particular case, even if it's not unreliable, it's still not a proximate cause of the wreck because she was T-boned. This is not a situation where she ran into him.

So just the fact that her speed, whether it was 35 miles an hour or 75 miles per hour, put her in that position at that specific time is in no way a proximate cause. We deal with that in one of our pretrial motions that Your Honor has read.

THE COURT: Okay. All right. Happy to hear again.

Yes.

MS SUTTIE: Yes, Your Honor. I'm Madison Suttie for the Defendant. I'm just going to go and address our arguments in order.

As to the lack of headlights, I think it's more than just an assertion by the Defense. We're going to present eyewitness testimony from four witnesses who put Mrs. Hood as driving on 278 without her lights operating.

We also have the investigating officer who checked her in-car video and saw that she didn't have her headlights operating at the time.

THE COURT: How does your in-car video say that you don't have headlights on?

MS SUTTIE: She -- the officer's in-car video shows that the running lights were on, which means that the parking lights were off. I have to look at the exact --

THE COURT: So it's just in --

MR. DANIEL: It's not here.

THE COURT: Is this on every time the investigating officer --

MS SUTTIE: No, in the investigating officer's Officer Welch.

MR. DANIEL: It's destroyed though. She's -- you're not actually going to see it. You're going to --

MR. WILLEY: And it was after the wreck.

THE COURT: Okay.

MS SUTTIE: She went back and she put it in her report that as -- so the headlights are probably a primary issue, but also the speeding as not being proximate cause. There will be testimony from Plaintiff's own experts and also from the officer that, you know, the speed did have an impact on the Plaintiff's ability to react, to avoid the incident, to, you know --

she closed the distance in a shorter amount of time, but --

THE COURT: Did she say she ever saw the Defendant's car?

MS SUTTIE: No.

MR. SMITH: No.

THE COURT: So she didn't see his car and he didn't see her car. Is that correct? Is that the testimony in all this?

MR. DANIEL: Yes.

MS SUTTIE: Yes, ma'am.

THE COURT: And this happened at 5:59 at night in November -- okay.

MR. WILLEY: And one piece on that, Your Honor. Mr. Lee, who was actually traveling behind Ms. Hood will testify that he was able to see her car in front of him, and also the Defendant's car, which he estimates was several hundred feet away from him when the wreck occurred. So he could clearly see everything that was going on.

MS SUTTIE: Well, I mean, Mr. Lee had his headlights on.

But after the expert reliability of the black box data, it records by events. So the

first -- when if something triggers a -- you know, an event, like unusual braking or something, it records in .5 second intervals before. So Plaintiff's expert took both of them and testified that as to the speeds, up to event one, and even speeds leading to event two, they have no reason to dispute the accuracy, and they place her at up to 63 miles per hour right up until the point of collision with Mr. Johnson's vehicle. And not only that, but the data shows that she didn't hit her brakes at all prior to Event One.

THE COURT: Which would make sense if she never saw him.

MR. SMITH: Yes, ma'am.

THE COURT: Okay. All right. And do we have any kind of black box out of your client's car? Mr. Lee's car?

MS SUTTIE: Oh, our client is Mr. Johnson, but, no, Your Honor --

THE COURT: Mr. Johnson. I apologize.

MS SUTTIE: You're fine.

THE COURT: Okay. Well, at least, now, I know what some of the issues are, which I had no idea from pretrial briefs.

THE WITNESS: Well, let's go ahead and start with -- you know what, let's not. Let's wait for bifurcation issue until we get a little further down, I hear a little more facts in the case.

But let's go ahead and start -- I can tell you that you both have given me some proposed -- well, let's go ahead and talk about the motion for Plaintiff to do -- or participate in voir dire. I don't think I need to hear anything on that motion, I just don't allow anyone to do it. I just think the arguments, obviously, about this case do it. I'll even go ahead and go so far as to tell you that I have at one point allowed in a railroad case the attorneys, not necessarily to ask the questions, but to do some follow-up. And my experience has been in that case, is that the lawyers will either try to, if they want the witness rehabilitated, to bring them back to their side or try to push them so far out that they have to be struck for cause.

So I've learned that lesson, I've learned it well. I don't let lawyers do voir dire.

I can tell you, I've gone through both the

Plaintiff's voir dire and the Defendant's. I scratched out a lot. I'll get into obviously my standard that asks a lot of normal questions that you'd want to know. So I'm comfortable that we don't need to discuss that anymore. It's pretty excessive.

MR. SMITH: Can I make one request, Your Honor?

THE COURT: Sure.

MR. SMITH: If a witness does present an answer or an issue that you deem this -- there may be an issue with, could we just ask that the witness not be rehabilitated by any sort of a leading question? For instance, "Well, you can be fair and impartial, can't you?" "Well, you can apply to the law, can't you?" Just, we would just ask that that not be done on leading questions.

THE COURT: Okay. Well, I will ask that. One of my tailored questions is, is the issue is not yes or no, but it's whether or not you can be fair and impartial in the trial of this case. And not being one way or the other.

So while I don't necessarily think it's as leading, I think it does ask the question of

whether or not they can be fair and impartial.

MR. SMITH: Sure.

THE COURT: So to the extent I hope it's not leading, but I'm the one asking it, and so I can ask it any way I want.

MR. SMITH: All right. Sure.

THE COURT: Okay. All right. So that takes us past voir dire.

I'm next looking at Plaintiff's Motion in Support -- or to preclude certain evidence and arguments.

First off, we talked about the Plaintiff's speed, braking time, and other similar or black box data.

Let me just ask you this: So my understanding is from the Plaintiffs, you are going to have Woody Poplin testify. You are going to have Kim Richardson testify, both as engineers. And then you're going to have the human factor, or attempt to have the human factor witness testify.

MR. SMITH: Yes, ma'am.

THE COURT: Well, tell me, I understand what Woody Poplin and Kim Richardson will testify to. I've seen them testify a number of

times. What is it -- what is the human factors expert going to testify to?

MR. SMITH: Your Honor, there's a side issue involved here, and it's distraction -- distracted driving due to some cell phone use. We have a time line in this case that puts the wreck at 5:57 p.m. We have an incoming text to the Defendant at 5:57 p.m.

Ms. Borzendowski is going to talk about distracted driving, what's been referred to as "inattentional blindness," and how that works. So --

THE COURT: Do we have anyone who can say, a witness, that they saw him either holding a phone or looking down at a phone?

MR. SMITH: No, ma'am. There's no read receipts. I mean, we have the record of the incoming call. And what we will show, we have the rest of his text messages as well.

THE COURT: Yeah. Is it a call or a text message?

MR. SMITH: It's a text message.

THE COURT: So it's a text message. And I'm assuming you have that text message printed out? Downloaded? Yes?

MR. SMITH: We do. We do.

THE COURT: Okay. Okay.

MR. SMITH: And, Your Honor, we have -- we have a day of -- what, a hundred and -- how many is it?

MS SUTTIE: 170-some.

MR. SMITH: A hundred and seventy. So we've got a phone activity during a workday of about 170-plus activities throughout the day. So, you know, at the end of the day the jury is going to see the time line between the 911 caller and all the things that happened before she got on the phone. We know the exact time the 911 call, the first one, came in.

And we're going to contend that puts it at 5:57. The jury's going to see an incoming text at 5:57, and they're going to be asked -- one of the things they're going to be asked to determine is, do you think he was looking at it? Is that the reason he didn't see Ms. Hood coming down the road with her -- with at least her running lights on? And so --

THE COURT: How many of these text messages did you try to get in? Like I could go ahead and just tell you right now, I was

worried that anything that occurred right before and during the accident I think would be relevant.

In other words, when I say "right before," I mean, like within a minute before. Because I could see someone could be checking their phone at a stop light. He could have been checking his phone when he was at Dunkin' Donuts. And I'm not going to have her testify that something might have happened at -- if he's got 170 text messages, he's looking at them all day long.

MR. SMITH: Oh, she's --

THE COURT: And she can't say he looked at them back to back. I was worried that I think it's fair game for her to testify that 30 seconds before this, if there was any text messages, if what you say is 5:57 there is a message that came in, you're saying the point of impact is 5:57 for, I'm guessing, the black box, is how you do that time -- or is it by 911?

MR. SMITH: It's the 911 call.

THE COURT: It's by 911. I think that is relevant. And I do think, obviously, there's a

question about violation of the statute at that point.

But other than that, what else -- yes.

MR. WILLEY: Just to clear up one thing. The actual substance of the text messages, we're not intending to admit. We're only intending to admit the actual time line and use of the cell phone. And part of the reason in this case as well, is that we need more of that whole history as when it starts. So he starts his phone activity --

MR. SMITH: 4:44 a.m.

MR. WILLEY: 4:44 a.m. in the morning, goes and works a landscaping job. Obviously this record occurs some 14 hours later. And so that sort of plays into the theory as well with the human factors expert, how that period of time, you know, would factor into a person's attentiveness and alert -- alert --

THE COURT: I don't see how that's just not pure speculation on her behalf. I just don't see how she could testify to any type of scientific, security, knowledge, in any way, shape, or form.

Like I said, I could see it being relevant

at the time of the accident, directly before the accident, but not what his pattern is, you know, up until that -- you would ask him whether or not he wore his seatbelt all day long beforehand, or Ms. Hood was wearing her seatbelt all day long, as to habit or whether or not she was wearing it when this occurred. I think that's pure speculation.

We can address that if we need to when she testifies. Again, I understand you said you don't have any interest in the context, but I can tell you this: If you want the context of it, if they're going to get into it, I'm going to let you put the context in.

In other words, if the text message is something specific. I don't know if it's anything either one of you want to get into.

MR. SMITH: No one has it. We don't know what it is.

MR. DANIEL: Your Honor, and I was just checking. I don't think we actually have the substantive text messages.

THE COURT: Okay.

MR. SMITH: We don't.

MR. DANIEL: And it just shows that, you

know, there's an incoming text that -- you know.

THE COURT: At 5:57 p.m. that night.

MR. DANIEL: Right. And I don't even think it really even verifies whether the text has been read. It's just -- it could be like an email in your inbox.

THE COURT: Well, there's no way to tell if a text message is read or not. You can't go back. So -- unless he replied to it and then I think that would be even worse for you.

So, anyway -- all right. Well, to that extent then, I will tell you just in looking at everything, I'm assuming you have an expert that is going to make speed relevant, correct?

MR. SMITH: No.

MR. DANIEL: Your Honor, we can actually draw that out through the officer who's a certified accident reconstruction -- yeah, she's certified in it, which it's a special education --

THE COURT: She didn't see the accident, correct? She came onto it afterward.

MR. DANIEL: She did not. But we have the speed that's verified by the crash data that

their experts pulled, and have testified to in their depositions.

THE COURT: And I'm going to assume that Woody Poplin and Kim Richardson are testifying that speed had absolutely no proximate -- he can't talk about proximate cause because he didn't -- that wasn't a factor contributing to this accident. Am I correct on that? Is my hypothesis correct?

MR. SMITH: Well, if we even take it down to a further baseline level, no accident reconstruction has ever been done in this case. The officer didn't do it. Kim didn't do it. Woody didn't do it. Borzendowski didn't do it.

I know they'd been talking to an expert, but presumably he didn't do it either. It has not been done, so essentially what they're asking the jury to do is do their own accident reconstruction here live in court.

You know, to make speed a proximate cause you've got to talk about braking time, and the human reaction time, and do all that. So the starting point would at least be someone who has done an accident reconstruction. No one from either side has done one, Your Honor.

THE COURT: The only problem I have is that if you think speed is relevant most of the time. And I have a hard time believing I'm going to tie their hands and not allow them to talk about speed.

I'm going to assume his speed potentially is an issue as well. I know he's pulling out allegedly -- is there a question of whether or not he stopped at the stop sign or if he just went through the stop sign pulling out? Do we know?

MR. DANIEL: We don't know either way.

THE COURT: Do your people say anything?

MR. DANIEL: We don't know either way.

THE COURT: Okay.

MR. SMITH: And, Your Honor, I know you've read the briefs. And, you know, the only thing that we can -- well, the cases that talk about this and the cases that talk about it's reversible error to admit something like this, they talk about the requirement fraction of reconstruction. You've got to bring something to proximate cause.

You know, the fact that speed -- all speed did is -- that we know about, is bring these

two people together. If she's going 80 miles an hour, accident doesn't happen. If she's going 14 miles an hour, accident doesn't happen. If she hits snooze on her alarm clock this morning, accident doesn't happen.

But the case law talks about the need to bring science in to draw this proximate cause. Because, Your Honor, this is the exact reason the 403, I think, is in place. Speed could be such a toxic issue for the jury that they're going to see just a bad driver, an out of control driver, and they're going to assume for themselves that it had something to do with it.

Trying to draw these legal arguments about cause and effect to a jury that it wouldn't have happened if she was going slower or it wouldn't have happened if she was going faster, neither one of them saw each other, so it didn't affect any sort of reaction time.

Asking the jury to make these legal arguments, Judge, I'm worried about it. Because, you know, this is a legal issue and these go to not only, you know, our claim, but it goes to comparative negligence.

So both sides had an opportunity to do

accident reconstruction. Both sides had an opportunity to call a doctor and say, hey, if she was going slower, would the injuries have been this severe?

No one did that either. I mean, it's not -- you know, clearly, under the case law it wouldn't be admissible under proximate cause for liability. But as far as damages, too, are they going to ask the jury now to infer from a legal -- from a medical standpoint, do you think her ankle would have been shattered so severely if she was going slower?

I mean, this is -- this is expert testimony that's required, Judge, and I -- asking the jury to do this, I -- we all know what they're likely to do with speed without expert testimony. They're going to interpret it as a bad driver and -- who knows what they're going to do.

THE COURT: All right. Well, I'm assuming you're going to ask their experts whether or not speed played a factor into this, if you don't have your own saying there's any issue.

MR. DANIEL: Your Honor, we will, and we can ask the -- just the officer, generally, can

speed be a factor? And I think we can elicit enough testimony.

The case law though does -- I mean, we can provide opinions, some South Carolina decisions.

There's really -- there's no requirement that you need an accident reconstruction expert to talk about speed. I mean, speed and persons -- a person has a general duty to drive at the appropriate speed to keep their car under control. It's a general jury instruction.

I think there will be testimony, even from fact witnesses, that she was speeding. Mr. Lee is -- that was just excused by the Court -- was driving, and she was tailgating him. He pulled to the side. His normal standard, and what he testified and will testify to, he testified to in his deposition, is he goes about five over, she passed him, and then the accident happened.

And then you have this crash data, where their experts verify in their testimony, deposition testimony that's usually accurate within about a mile or an hour or two. There might be a little variance, but they have no

reason to dispute it. And there was speed just before the first event, which is the right side impact --

THE COURT: Well, I don't know how just before, because what I understood in that motion in reference to Mr. Lee, it's something about she was tailgating him and passing him. It's kind of the same thing as the cell phone, and whether or not a text was coming.

I don't care if she was tailgating him five miles behind. I don't care if she was tailgating him up to the light before then. That doesn't matter. What matters is what happened at this wreck.

And that, to me, is testified to. So I don't think we can conclude that she had a bad motive to her in some way.

So you need to be careful of what Mr. Lee's testimony is going to be. I'm not exactly sure. He can say that at the time of this accident, she passed me. But one of the things you just said is he normally goes five miles over the speed limit. Again, I don't care what he normally does, I want to know what he was doing on this occasion.

I want to know what speed he says he was going, and what he knows and what he can testify to, and what he can swear to under oath. So, again --

MR. DANIEL: Well, he does -- well, he -- I think he will give competent testimony that she was going in excess of the speed limit when she passed him, and the accident happens moments later. She doesn't have her headlights on, he observes that as she passes him, which would be certainly directly relevant to whether her headlights were on and corroborates Mr. Johnson's testimony position like, "I never saw anything, I never saw headlights."

And then what another witness says they saw as she actually hits this third vehicle, which is the -- really the severe impact.

And that's really -- to put it all in context, Your Honor, what you haven't really heard so far is that there's this sort of sideswiping, scraping, impact. It's not a very severe impact, a minor impact, their experts concede that, between Mr. Johnson's vehicle and the Plaintiff's vehicle.

And then she goes over a hundred feet

across a lane or two of travel and a median, and hits another vehicle head on. And that damage is the significant damage in the case. That is what caused injury here. And so her speed is directly relevant to damages, it's directly relevant to her ability to control her vehicle, make an appropriate, evasive maneuver, swerve, keep her vehicle under control to avoid hitting that second SUV, the third car involved in this accident.

THE COURT: So was that case settled? What happened with that case?

MR. DANIEL: That case is still pending, Your Honor. And I do take -- just to be clear, Mr. Poplin was hired on behalf of Mrs. Hood, the Plaintiff, in this case. And he went and inspected her vehicle and pulled this crash data. Mr. Richardson has reviewed the crash data. They both testified under oath in depositions about how it reads, what it reads, and what that means about her vehicle speed. So we should be allowed to have ask some questions about that.

MR. WILLEY: Just to be clear, Your Honor, so you don't think I misrepresented something

important. This is a UIM case with USAA defending. So when I said USAA hired Mr. Poplin, that was accurate, on behalf of Ms. Hood when they were defending her in that case.

THE COURT: I understand.

MR. SMITH: Mr. Johnson originally had a counterclaim. And that's why Chris was here.

THE COURT: Okay. I certainly understand that. Okay. That is --

MR. SMITH: Your Honor, if I could maybe just direct your attention to the -- I think the most instructive case out of everything that we filed is probably the Odum case. And in that case, Your Honor, Defendant was stopped at a stop sign, just like Mr. Johnson, testified he did not see Plaintiff's vehicle approaching from the left, just like Mr. Johnson, when he attempted to pull out through the intersection to make a left turn, exactly like Mr. Johnson.

He testified even that he was approximately two car lengths away when this happened. So he's even giving further information, it's not even so sudden and direct. And then the Defendant's vehicle

struck the front left fender, just like Mr. Johnson.

The Court knows, the Supreme Court held that excessive speed was not a proximate cause because he pulled directly into traffic. They also looked at who's got the right of way in these situations. And in that case, that's the one where the Supreme Court held that directed verdict on liability was reversible error, not to have granted that speed was not a proximate cause.

And, Your Honor, that's our argument. It's not a proximate cause, and if it's not, it's irrelevant. And any probative value is -- is grossly outweighed by the prejudicial effect.

THE COURT: All right. Well, I'm just going to have to hear testimony obviously from the witnesses to see. I can tell you that I understand your argument that -- you know, obviously it doesn't matter. The only testimony is that speed did not matter. That would be one thing. But I would be arguing that speed was at issue. Someone is going to link speed to the issue.

Regardless, I also think it's probative. It's prejudicial, but I agree that someone's got to give me some type of idea what the speed did or did not do. And I've heard you argue that, you know, even though you can't see the impact, that speed had to have been a reason why he didn't see her car. And I haven't heard the issues, and I don't have any answers to that yet.

MR. DANIEL: And it sounds like you've already kind of decided which way you'll go with it. I just want to add one more thing about speed, that it has to be sort of taken in context. Like the fact that there were two impacts, and that this impact with this third vehicle a good ways down the road.

There's also the speed coupled with the lighting issue. And what you'll hear, and I think what a jury can draw, based on their common sense, the conclusion they can draw is if this lady, the Plaintiff, is going 62 miles an hour, and Mr. Johnson's at an intersection where he's at the T, if she's going that fast, 62 versus 45, she's going to be a lot farther back down the road at that intersection, as

it's getting dusk, as it's dark. And the farther back she is, we all know the farther something is away, the harder it is to see. And when you compound that issue with darkness, I mean, it's directly relevant to his defense for liability and it's also -- I mean, the comparative fault and comparative negligence of the Plaintiff. So the speed and the lighting, you almost can't talk about one without the other, is our position.

THE COURT: I certainly understand your position. I am a bit concerned about what you're going to have this officer testify to. She didn't do an accident reconstruction. She can testify to information she gathered, but I think that you're going to have to be very careful with her reaching her conclusions about what occurred when she wasn't there.

So we're just going to have to cross that road when we come to it, but I am concerned. You know, she may have been -- she may be qualified as an accident reconstructionist. She may tell me that she's done 500 accident reconstructions, but she didn't do a reconstruction in this case is what I'm

hearing. She may have gotten her facts, but we'll just kind of go from there and see where she is and how she'll testify.

Who is the officer in this case?

MR. SMITH: Officer Laurel.

MR. DANIEL: Now, Laurel Welch.

THE COURT: Welch. Okay.

MR. SMITH: Your Honor, since we're going to approach this issue when we get into it and we have the appropriate testimony, I assume that this is not something that should come out in opening statements because --

THE COURT: Exactly.

MR. SMITH: Okay.

THE COURT: We're not going to -- I will say this though. I'm assuming we're getting to the speed at some point, and I think I will let him -- I'm going to let him testify to speed in this case.

MR. SMITH: We'll see how it proceeds, sure, but --

THE COURT: Speed and lighting. But I think you need to be careful as far as what your experts are going to testify to based on that limitation. Okay?

MR. SMITH: Thank you, Your Honor.

THE COURT: I think that somewhat talks about --

MR. SMITH: That would cover basically our motion for speed and probably his directed verdict or motion for partial summary judgment. I would imagine that would settle both of your rulings.

THE COURT: I'm good, yeah. I'm not going to grant summary judgment to anything at this point. We're going to let the jury hear it. So -- okay.

MR. SMITH: Our next issue, Your Honor, is certain limitations, which you've already touched upon with Dustin Lee. And, basically, you know, there's just a lot of information there.

I mean, he was trying to be helpful, and God bless him for that, but, you know, there's a difference between making a very helpful 911 call and offering opinion testimony.

THE COURT: I'm not going to let this guy get away -- I'm not going to let him give opinions. I'm quite confident he is not an accident reconstructionist unless there's more

that I don't know.

But then again, all's I can tell you, even though I know him as a lawyer, I didn't know he was a magistrate lawyer. So -- I think I swore him in, but I don't know that.

So, anyway, we ought to be careful with that. I completely agree with you. He can't give his testimony --

MR. SMITH: I'm not going to elicit those responses, and I imagine Jack won't as well.

MR. DANIEL: Your Honor, just to be clear on that, so that, you know, we don't run afoul of any rulings. There is in the 911 call, he makes the statement and he's talking -- he's just seen this event, and his testimony is that he pulls over. As soon as he's clear off the roadway, he dials 911. And whatever length of time, it may have been a minute, however long it takes to connect, he's then talking about what he just saw and describing the details of it.

And he gives good -- he actually gets the type of license plate that the Plaintiff has. He gets that right. There's a lot of information in there, I do agree with Kevin

about that.

He doesn't -- and I'm not going to ask him questions like, Do you think that the Plaintiff was negligent? Do you think that she caused the accident? I'm staying away from that. But there's a -- what our position is, there's a clear, present sense impression this 911 call was made right after the accident. So it -- you know, the case law on that and the reason why that is admissible is because it tends to be factually accurate and not just an honest --

THE COURT: I have heard the 911 tape.

MR. DANIEL: We can play it, we --

THE COURT: He can testify as to facts. He can testify as to facts, but I'm not going to allow him to testify as to conclusions.

MR. DANIEL: Well, what -- one thing -- one thing he says in the 911 call, and I just wanted to draw Your Honor's attention to it, because he actually says -- he describes the SUV that passes him, which turns out to be the Plaintiff's vehicle. And he talks about the car that's crossing 278, which we know is Mr. Johnson's vehicle. And he says, "I don't think the car -- or "the car probably couldn't

have seen that vehicle coming."

THE COURT: Well, that portion isn't coming in, because that's pure speculation. Unless we all agree that he says he didn't see it. But I -- it's his opinion, and I think that's their own defense.

So, yeah, I don't know how you're going to redact the 911 tape. If you plan on using it, you're going to have to deal with that when you get to it. But him speculating -- he can't speculate. He just can't. He can't say what he saw. I assume he's going to testify he never saw her, which is what you all are telling me, and that she never saw him. So I don't think that's fair game. I think he can state actually what he saw.

MR. DANIEL: If we redact that from the 911 call, Your Honor, do you have any opposition to us bringing that call and introducing it into evidence?

THE COURT: I haven't heard it in its totality. You could just play it for me, you could tell me what portions that you object to.

MR. SMITH: There is a lot to redact.

THE COURT: I think it's relevant. I

think it can be. I mean, I think typically it would come in. A 911 call, contemporaneously saying what had just occurred. However, if there's anything that he's talking about that runs to a fact -- I'm sorry, an opinion in some way, some type of speculation, I'm not letting that part come in. So you're going to have to cut it or do something. Okay?

MR. DANIEL: Yes, Your Honor. And we can play it for you before he testifies.

THE COURT: And that's fine. We'll just do that when we get to it. Okay?

All right. What else do we have?

MR. SMITH: The letter to the Kucks. This is --

THE COURT: Okay. Tell me about that.

MR. SMITH: This is a little strange. Okay?

THE COURT: Tell me how that is relevant in any way.

MR. SMITH: So initially what happens is, you know, the Kucks are the vehicle that were hit head on. Right? That they were coming in the opposite way of traffic.

The Kucks initially give a recorded

statement where the driver says to the insurance company, "Ma'am, all I seen was headlights coming right at me." He says it three different times. Right?

THE COURT: Okay.

MR. SMITH: This image is just burned into his brain. Therese Hood is barreling down on him and all he's seeing is headlights coming right at him. Right?

THE COURT: Okay.

MR. SMITH: Well, subsequent to that, the Kucks hire a lawyer. We're in contact with them to try and get an affidavit saying the same thing, right? So at this time, we don't have a statement yet. We're just trying to get a statement from him that the lights were on, right, because we understand that's what they're going to say.

Well, they get a lawyer, statement comes out, and also then the Kucks learn Therese carries $500,000 per person, so a million for the Kucks. Ms. Johnson carries 25. The Kucks story has now changed.

THE COURT: Okay.

MR. SMITH: Okay. No more headlights.

Right?

They are -- so Therese writes them a letter, explaining again the insurance. Now, she -- she gets it backwards. Okay? She gets it backwards. She says how much insurance she's got with USAA, she says how much insurance he's got with GEICO. But she says, "If you say the same thing, if you say my lights were on, like you said before, you'll get more money." Which it would actually work in the opposite, and she was just very confused.

But that's what that letter was. It's explaining the insurance money, it's saying, "Please tell the truth." They're waffling at this point, and they're changing their testimony -- well, not testimony at this point, but they're changing their story after the event about insurance.

THE COURT: Who wants to enter this letter?

MR. SMITH: He does.

MR. DANIEL: Your Honor, we -- I mean --

MR. SMITH: Well, if he didn't want to, it's not an issue.

MR. DANIEL: I don't think that we will go there or need to go there other than if they start talking about I don't think that the issue with Mr. Kuck and the fact that there's insurance there, when she actually misrepresented how it would work and told them there would be more money if they sided with her and said Antoine Johnson was at fault.

MR. SMITH: But it's all on her.

MR. DANIEL: That's what she says in the letter, but I really -- I didn't -- I don't plan on going there. I also don't think --

THE COURT: I don't think --

MR. DANIEL: I also don't think --

THE COURT: That letter is relevant in any way unless you tell me it's for some -- I don't even know what purpose it could be.

So as of right now, we're not talking about the letter, it's not coming in. If someone wants to try to put it in, you need to address it with me first during the proffer.

MR. DANIEL: Yes, ma'am.

THE COURT: You need to take a break, I need to look at this because I'm going to try to use this. I don't remember what for --

impeachment purposes? I don't know. But, again, right there on --

MR. SMITH: All right. Roy has our last issue, so I'm going to sit down.

MR. WILLEY: The last issue, Your Honor, comes from Page 4 of the Defendant's pretrial brief. There's a sentence in there that says, "Mr. Lee will further testify that it was dark enough outside to require the use of headlights."

THE COURT: And, of course, that's a legal conclusion, which he will not be able to testify to. So he'll be able to say it's dark outside, but he can't make the jump to go that it requires. Because, again, there's a statute that says 30 minutes -- it's 30 minutes before and 30 minutes after?

MR. WILLEY: Thirty minutes after sunset, 30 minutes before sunrise.

MR. DANIEL: But, Your Honor, I mean, it would be, just to be clear about our position, we're not going to ask him questions in the legal context of, you know, were you legally required --

THE COURT: You can ask him --

MR. DANIEL: I think we can ask him was it dark? And, two -- was it dark, and was it hard to see? And did you need your headlights to see? I think those are the --

THE COURT: He can testify to that. Those are factual issues, he just can't give you ultimate conclusion of, "I think it's required by law to have the headlights on."

MR. DANIEL: We'll fashion the questions properly.

MR. WILLEY: And the key piece that I just want to hit on there, it's the Key v. Charleston, a railroad case, 144 SC164, is making sure that not only can he not make the jump, but that he cannot say it was dark enough where he felt like he should have his headlights on.

So darkness is not an issue. The issue with respect to headlights as to the statute is timing. Whether or not it was 30 minutes after sunset or whether it wasn't. There's no -- there's no other option for that except with respect, for example, it talks about environmental factors. So if you have an eclipse, obviously if you have an eclipse, you

might need to have your headlights on. It deals with that.

But with respect to the normal course of day and night, the statute specifically lays out when you are required to have headlights on. And I don't think that he can testify in contrary to the law on that point. The Court will give them the law. He can -- of course, he can say he can have his headlights on. That's fine.

THE COURT: And I can guess he had his headlights on at the time, correct? And he's going to testify to that.

MR. WILLEY: Correct.

MR. DANIEL: Yes, Your Honor. But I mean, I think it is 701 type lay witness testimony where, you know, you were out there, was it dark? It was -- it was dark. Did you think you needed your headlights on? Yeah, I needed my headlights on to see.

I mean, that's not a -- that's a conclusion that a driver, a licensed driver in the state of South Carolina, or really anywhere, can attest to.

THE COURT: He can say I had my headlights

on. I even think he can say, I needed my headlights at that exact time to be able to appropriately see.

I just -- I'm worried about him extrapolating and going from whatever his experience is to the next one.

MR. DANIEL: We're not going to ask --

THE COURT: So he needs to be really careful.

MR. DANIEL: We're not going to ask him to make legal conclusions or phrase it of, you know, in the way of, you know, statutorily were you required. It's just a general perception thing, and as a driver what his common knowledge is.

THE COURT: Just be careful. If not, you need to object when it occurs or if it goes too far, and I'll make a ruling on it.

MR. WILLEY: Can we -- can we at least remove that from opening until we see what he's going to testify to, as to specifically the headlights? And, again, I'm relying on this case. This is actually a railroad case which --

THE COURT: I don't think anyone in their

opening statement better put any words into Mr. Lee's mouth, because I don't know. But I'm getting the feeling in this that he's a little all over the board.

MR. WILLEY: Correct.

THE COURT: And I might be wrong on that, but that's what I'm gathering.

MR. SMITH: We do all agree that one thing he says, and this is his observation, and we don't have any objection to this, but he observed Therese in his rearview mirror, and as she's passing him, he says that she had her running lights on and no headlights.

MR. WILLEY: As she was passing him.

MR. SMITH: There's no getting around that. He saw it, Your Honor, and -- you know. There's nothing --

MR. WILLEY: That's fine.

MR. SMITH: And he had his headlights on at the time. So I know those two facts, those are his observations, we can't argue with that. But all this other stuff is obviously --

THE COURT: That's all I'm going to say is in the opening statement, you can say what, you know, you believe the evidence is going to

prove. But I would be careful on putting words in anyone's mouth. But, of course, that's to your own peril. Because if you promise something that doesn't get delivered by a witness, then you are the one that looks bad. So --

MR. SMITH: Yes, ma'am.

THE COURT: Again, I think everyone needs to be so careful. But, like I said, apparently that's an issue in this case potentially. So to the extent you need to use it, again, I just wouldn't be putting words in people's mouths.

MR. WILLEY: So for purposes of that motion granted as to opening and held dependent on what the testimony shows?

THE COURT: What I just granted is the opening to specifics. I think they can say what's going to be argued. Again, I don't think he can say this is specific to Mr. Lee. But I think he can say the evidence is going to show.

MR. WILLEY: So it's denied?

THE COURT: I think it's denied.

MR. WILLEY: Okay. And for purposes of our pretrial motions, do you have printed

copies for the record, or would you like us to provide them?

THE COURT: You need to go ahead and provide.

MR. WILLEY: Okay. And we will do that at a break.

THE COURT: All right. What else do you have?

MR. SMITH: I could probably -- these are it for our motions, Your Honor. I could probably tell you which of his that we don't have objection to, which may shorten his presentation.

THE COURT: Perfect.

MR. SMITH: Your Honor, this would be in the master Motion in Limine filed by Mr. Daniel.

THE COURT: Yes. Go ahead.

MR. SMITH: And it will be Issue No. 2, testimony of Dr. Hanlon regarding the exacerbation of Plaintiff's bipolar disorder and mental health issues.

Also, I imagine it will be Parkinson's in there as well, because that was really the subject of her testimony.

Your Honor, we agree that the Plaintiff's mental condition, bipolar disease, depression, and Parkinson's Disease is irrelevant. We're not going to bring it into trial.

THE COURT: Are you not claiming that it was exacerbated by this accident?

MR. SMITH: No, ma'am.

THE COURT: Okay.

I guess I'll just hear from you.

MS SUTTIE: Yes, Your Honor. It is relevant though to the issue of the extent of her damages. I mean, this depends on a ruling on the Motion to Bifurcate, but the Parkinson's may come in.

THE COURT: Well, they say they're not putting it in. So I think to the extent though that -- I mean, we have to take her as she comes. I mean, with whatever she's got. I mean, I think that's going to be certainly a jury charge in this case.

I don't think anyone should touch on the issue, I don't think we need to go there.

MR. SMITH: Yes, ma'am.

THE COURT: If you open the door on bipolar and depression, that's a whole 'nother

issue. I think the Parkinson's a little different. I think it's fair game.

If you have a medical doctor testify, if must be something. But you don't want to open the door on bipolar or any depression or anything along these lines. If you open that door up, they'll come all day long and go through it.

MR. SMITH: Yes, ma'am.

MS SUTTIE: Yes, Your Honor. Just the Parkinson's, I think, for maybe liability purposes will get brought up, and that's the only other inference I could potentially see.

MR. SMITH: You don't want us to bring it up for damages, but you want to bring it up -- if it's irrelevant, it's irrelevant.

MS SUTTIE: Well, it could come up for damages, too, but Dr. Hanlon can't talk about that.

THE COURT: I don't think potentially Parkinson's could be. I don't know what the doctors say. But, I mean, my understanding is, she had a very badly shattered ankle and as well as she some fractures of her cervical and her lower back, correct?

MR. SMITH: Yes, ma'am.

THE COURT: Okay. Well, obviously the relevant doctors will testify as to what they can in those cases they saw and what they did or what their treatment is.

And if one of them can't opine the Parkinson's had something to do or made things more difficult, I think that's fair game for you to testify to.

And are you telling me that Kim Richardson or Woody Poplin's going to talk about her Parkinson's, the effect? I mean, she does have a valid driver's license, correct?

MR. SMITH: Yes, ma'am.

THE COURT: I mean, she can drive a car. So, again, I don't know where anyone's going through the door on that one, so --

MR. SMITH: We won't. So we agree that those issues are irrelevant. You won't hear those words out of our mouth, and we would also ask that that --

THE COURT: I will say this. It's probably fair game to bring it up. Because I will say this, and I don't mean any disrespect. I can see you shaking a little bit, and I think

people would wonder maybe, just a little bit, what that is.

So, again, it's very subtle. But, again, I don't think it's completely out of bounds here. I think it can be mentioned, but unless you got someone saying that somehow that affects her -- and I don't see that because I don't hear you brought an expert witness. And any way that's there, we're not going through that door. Okay?

MR. SMITH: Your Honor, on Issue No. 4, on Defendant's master Motion in Limine, Charmane Bonham (phonetic), we've never been able to find Ms. Bonham, so we're not going to offer her hearsay testimony.

THE COURT: Okay. That shouldn't be a problem.

MR. SMITH: Yes, ma'am.

THE COURT: Okay. What else?

MR. SMITH: And Issues No. 5 and 6 are kind of intertwined. And they have to do with the Defendant's criminal record and driving record.

Your Honor, we'll agree initially that those would certainly be irrelevant. However,

if the Defendant testifies that he's always a safe driver and always has been a safe driver, or he testifies that he has always told the truth, there's a crime of dishonesty in his criminal record. So if he stays away from that --

THE COURT: You can't ask him that question either. You can't ask that question.

MR. SMITH: I'm not. I'm not going to set him up. I'm not going to set him up.

THE COURT: Okay. All right. Just don't open the door on it. Okay?

MR. SMITH: Right. Failed attempts at settlement.

THE COURT: Obviously it's irrelevant.

MR. SMITH: We're not bringing any numbers into this.

THE COURT: Okay.

MR. SMITH: And --

THE COURT: The reptile theory?

MR. SMITH: Yeah. I don't know, you may have seen this before, Judge. It's a Golden Rule argument. Roy and I, this ain't our first day in court. If we approach the Golden Rule, let us know. We're very aware of the rule.

But -- and that's a little similar to Jack's argument about we can't refer to the vehicle being totaled. You know, you've seen the -- I mean, they were crunched up.

THE COURT: Right. It certainly wasn't totaled in this part of the wreck.

MR. SMITH: Right. So, anyway, so, those are what we agreed on so far, and I'll give Jack the floor to go over the remainders.

THE COURT: All right. Are you ready?

MS SUTTIE: Yes, Your Honor. We have another one. The first one, and now a master motion, is to exclude the video testimony of Dr. David Jaskwhich regarding Plaintiff's other medical conditions.

In his video deposition, Mr. Smith asked him general questions, such as, "Were Plaintiff's injuries related to the subject accident and --"

THE COURT: Correct me if I'm wrong, Dr. Jaskwhich is an orthopedic surgeon?

MS SUTTIE: Orthopedic surgeon. He just treated her ankle.

THE COURT: He had nothing to do with her back?

MS SUTTIE: Nothing to do with the back, spine, ribs, anything else.

THE COURT: He treated her for her spine, her fractures and that?

MR. SMITH: Hilton Head Hospital.

THE COURT: Hilton Head Hospital, just directly after the accident? Did she have any follow-up?

MR. SMITH: She did have some follow-up. She saw a neurologist. These were -- these were fractures in her cervical and lumbar spine. You know, you either get a kyphoplasty or you deal with the pain.

THE COURT: Exactly.

MR. SMITH: So she had some follow-ups. But these are --

THE COURT: Epidurals? Or what did she have done?

MR. SMITH: She did -- these are emergency room diagnoses that happened. They were a little bit more concerned, she had a dissection of the vertebral artery near the level of the cervical fracture. They were a little bit more concerned with that.

But there were follow-ups. So

Dr. Jaskwhich is reading the records about what Dr. Tobin did, where he popped the ankle, then he did the surgery, and all the other diagnoses that come along with it.

THE COURT: Okay. So you don't want Jaskwhich to be able to testify to anything other than the ankle?

MS SUTTIE: No, ma'am.

THE COURT: And do you agree with that? I mean, I don't think her looking at other things -- or him looking at other things, I think he can bring up. He treated her for the ankle.

Now, how do you intend on getting in injuries? Who's going to get in for you the injuries for cervical and her lower back?

MR. SMITH: Well, Dr. Jaskwhich is her treating doctor. He reviewed the records from Hilton Head, he relied on those records in formulating his treatment plan. He discussed the injuries in his treatment notes, not only the ankle injury, but all the other injuries with Ms. Hood.

THE COURT: I mean, I'm just reading what they gave me as far as the testimony.

MR. SMITH: Right. We're not -- we're not going with him any further than that. He's not talking about any future treatment, epidurals, facets for the neck, for the low back. He's not doing any of that kind of stuff.

But he is competent to testify as a treating medical doctor that he relied upon those records, and based upon what he knows and his medical training and his examination of her, that those appear to be related to the wreck.

I mean, the wreck happens and she gets diagnosed with all these things. We've got her records before, she didn't have cervical fractures, rib fractures, lumbar fractures, a concussion, which is really it, in addition to ...

THE COURT: Well, let me ask you, when he does a physical of her, and he didn't treat her at Hilton Head Hospital, correct? He treated her in Charleston?

MR. SMITH: That's right. She lives in Goose Creek.

THE COURT: So he didn't treat her at Hilton Head Hospital, but when she saw him as

an orthopedic surgeon, I don't know what he specializes in, whether it's ankles, arms, backs, whatever. But does he actually do a physical exam of her cervical or lower back?

MR. SMITH: He does a physical examination, head to toe, yes, ma'am.

THE COURT: I mean, does he in his notes, write obviously, that she had a fracture to her cervical whatever number and whatever level?

MR. SMITH: Yes, ma'am.

THE COURT: Same thing with the --

MR. SMITH: Yes.

THE COURT: So who -- are you having an ER doctor testify?

MR. SMITH: No, ma'am.

THE COURT: And are you having Dr. Tobin testify?

MR. SMITH: No, ma'am.

THE COURT: Okay. Okay. I think to some extent he can say that he is her treating doctor, and they did discuss her cervical, her lower back. And I don't know what the written medical records show. It just depends on how in-depth. I think if he does testify -- I think he can testify to some extent that

something caused it, he's relying on the record. I just don't know that the situation was with her back, either cervical or her low back, prior to this accident.

MR. SMITH: He doesn't go any further than that, Your Honor.

THE COURT: Who's treating her -- who treats her for her Parkinson's?

MR. SMITH: Ma'am?

THE COURT: Who treats her for her Parkinson's?

MR. SMITH: Her family doctor at the VA.

MS SUTTIE: That's actually a misrepresentation. She's primarily treated for her Parkinson's by a neurologist at the VA who -- not Dr. Hanlon, who's her primary care physician.

And to clarify some points that were raised, Dr. Jaskwhich didn't have the entire Hilton Head records. He had Dr. Tobin's records from the ankle surgery. And so Mr. Smith asked him on the record, "Were these injuries caused by this accident?"

He didn't clarify, you know, the first impact with Mr. Johnson, the second impact with

the Kucks. Objected to the questions and offered him an opportunity to correct the former question, maybe get back verification.

But I think if Dr. Jaskwhich's testimony about her other injuries are allowed to come in, it could -- it's unfairly prejudicial and outside the scope of his expert testimony.

THE COURT: I think it comes, as far as Dr. Jaskwhich feels comfortable, he can testify. So most of the time a doctor will say, well, you know, I can say as a medical doctor that this accident caused her problems that -- you know, whatever and whatever. Then they can say, I treated her back, I didn't take care of that. You're telling me --

MR. SMITH: He says all that.

THE COURT: -- he won't testify to any futures, anything along those lines?

MR. SMITH: That's right.

THE COURT: As long as he qualifies it, I think he can. He's a medical doctor. And I think it goes to the weight, not admissibility. So I think he can testify to that.

MR. SMITH: Yes, ma'am. And all those questions that you just brought up, those were

all asked during cross. So that is all highlighted that he's not treating that and -- you know.

THE COURT: Okay. I mean, do you have anything as far as pre-existing, that she had other previous back injuries?

MS SUTTIE: Yes, Your Honor. She had a prior cervical injury, she had -- just significant fall risk. We know there's a lot of --

THE COURT: Is that as a result of the Parkinson's or is that from the back?

MS SUTTIE: The -- I mean, close in time to the Parkinson's, but I don't think the back injury is a result of Parkinson's. But perhaps prior right ankle foot injury as well. I mean, there's extensive pre-existing issues.

THE COURT: Okay.

MS SUTTIE: The next one that we have was during Dr. Jaskwhich's video deposition for trial. Mr. Smith introduced the actual hardware that was placed in Mrs. Hood's ankle, and then subsequently removed by Dr. Jaskwhich, in addition to an x-ray that clearly shows, you know, the hardware in there.

Dr. Jaskwhich had already testified as to what was placed in the ankle, what was removed from the ankle.

THE COURT: Do you plan on trying to get the hardware in?

MR. SMITH: Yes, ma'am.

THE COURT: I don't know what it looks like, so show me.

MR. SMITH: Sure.

THE COURT: So how long was this in?

MR. SMITH: Actually it was November of 2014, it was removed about three months ago.

THE COURT: Okay. Your premise is that it's prejudicial?

MS SUTTIE: And it's duplicative, and they have x-rays showing exactly that in the x-ray. And then Dr. Jaskwhich has already testified, showing on the x-ray what each piece of hardware is. And I think it's just -- the only purpose of that needs to come in is to, you know, invite sympathy and prejudice the jury. I just don't see the purpose of it.

THE COURT: I think it can come in. It shows what was in her ankle.

Okay. What else?

MS SUTTIE: The next one may be --

MR. DANIEL: One of them, Your Honor, is the -- we got -- we filed a Motion in Limine as to the video, presenting the video testimony of William and Mary Kuck, the drivers from --

MS SUTTIE: No objection.

MR. SMITH: They are coming live. I mean, there may be cross examination of theirs, but we don't -- we're not just going to throw it -- they don't qualify under the statute. Unless they don't show up, because they've been subpoenaed.

THE COURT: Then we'll cross that when we get it to.

Okay. What else?

MR. DANIEL: Then there's the motion to exclude the mention of insurance in the case, which, I mean, this is a --

THE COURT: We always agree, right.

MR. DANIEL: I'm sorry?

THE COURT: We always agree.

MR. SMITH: Unless, of course, he says he has to pay a verdict, and then it's relevant. Because he doesn't.

MR. DANIEL: Right. But there's also,

there's a specific issue as to Mr. Kuck and --

THE COURT: We're not going to talk about the other lawsuit. We're not going to talk about any of that. We're not going into that.

MR. DANIEL: Okay. I just -- the Plaintiff's counsel, in Mr. Kuck's deposition asked -- I mean, probably a couple hours worth of questions about this prior statement that Mr. Kuck gave.

THE COURT: We're not talking about that. We're not going into it. And whoever let Mr. Kuck know, I want to make sure that you tell him ahead of time, everybody tells the witnesses ahead of time, no mention of insurance. If they think for some reason their question has to be responsive to it, they need to say, stop, and look at me, and say we need to take break. Okay?

MR. DANIEL: Yes, Your Honor.

You've ruled on the Motion for Partial Summary Judgment. And we did file a Motion to Exclude Mrs. Borzendowski just because of the timing of it, Your Honor. She was named about --

THE COURT: I saw July 17th, is what I

saw.

MR. DANIEL: Yes, Your Honor. And the --

THE COURT: Did you have a chance to depose her -- did you have a chance to depose her?

MR. DANIEL: We deposed her just five days ago.

THE COURT: Okay. But you deposed her. Okay.

I'm not even sure if she is -- I don't know what her testimony is. Actually, that's one that I might want to between now and when you put her up, I don't whether you intend on putting her up, but let me take a look at her deposition.

MR. SMITH: It will be sometime tomorrow, Your Honor.

THE COURT: Okay. Well, then you can give me a copy of her deposition, let me take a look at it.

MR. WILLEY: I'll email it first --

THE COURT: But you have deposed her, right?

MR. DANIEL: We have, Your Honor. It's just from the Defense position, we did --

THE COURT: Did you have a scheduling order?

MR. DANIEL: We did, and we had this date certain trial that was set --

THE COURT: And did your scheduling order cut off discovery at some point?

MR. DANIEL: It did. I'd have to go look at it. Well, it didn't cut off discovery, I think there were deadlines to name experts at one point.

MS SUTTIE: We just had a date certain trial, a mediation trial deadline.

THE COURT: Okay. Then you got to live with what you have. And if you guys didn't put it in there, then, like I said, the discovery goes to the date of trial.

And as long as -- I would be more concerned if you hadn't deposed her. But it sounds like you deposed her, so -- and there was no cut-offs for naming of experts and there was no cut-offs for doing discovery, so --

MR. DANIEL: There's also a Motion to Compel that we filed. Mrs. Borzendowski, when we deposed her five days ago, said that she had been provided a summary of Ken Richardson's

deposition testimony. We asked for a copy of that because I think we're entitled --

THE COURT: I think you're entitled to have whatever she was given.

MR. SMITH: It was a mistake, Your Honor. My office did a summary, and they included the abstract of my work product instead.

THE COURT: It was provided and looked at it and they're entitled to it.

MR. SMITH: All right. I'll give it to them.

THE COURT: So you need to get that to them, and you need to get it to them today.

MR. SMITH: Yes, ma'am.

MS SUTTIE: And I think our last one before the Motion to Bifurcate is the exclusion of punity, which is on the grounds that Plaintiff hasn't produced evidence of -- clear and convincing evidence that Mr. Johnson was driving --

THE COURT: Okay. I'm not going to make a decision on human damages until I actually hear and we have a decision on just liability first. So that's the first thing we're going to do.

I'm trying to think about how and

potentially where to bifurcate this case. I want to make sure that if we were to do that, it would make the case go more quickly.

Again, it's usually based for me on whether or not there's a real issue as to liability.

Just so I understand, I want to make sure that there is no duplicative witnesses. We're going to bifurcate liability and damages, I want to make sure that there will be no witnesses that have to testify twice. Is that correct?

MS SUTTIE: That's my understanding. But we don't have an objection to the Plaintiff, just so she only has to testify once, if she would like to testify about her injuries.

THE COURT: Well, of course, if that's what's going to happen.

MS SUTTIE: I mean, that's the only witness I would think who could testify to both issues unless --

MR. WILLEY: Your Honor, that's actually not accurate. There would be multiple crossover.

THE COURT: Who? Who?

MR. WILLEY: So, as an initial matter, the cop would be a crossover, property damages as an element of damage, and she testifies about the damage that she saw when she --

THE COURT: We're going to have property damage in this case?

MR. WILLEY: Yes. We're talking about all the damages that are recoverable, yes, ma'am.

THE COURT: Okay. That does not matter. I'm more worried, obviously Ms. Hood will have to testify again. Who else besides that? Who else besides the police officer?

MR. WILLEY: The cop would have to testify again. Potentially the Defendant, when we're talking about mechanism of injury and where exactly the impact occurred.

THE COURT: Yeah. He would not testify twice.

He doesn't need to. Okay. Who else?

MR. WILLEY: And then, again, obviously the doctors that are going to be coming in for that just specifically.

But we have limited -- their concern with the bifurcation was our amount of treating physicians, and we have really narrowed that

back. I mean, I don't think -- with the door openings, the door closings, I actually think we have time.

THE COURT: I'll tell you what I'm concerned is, I see treating physicians, but I also see some type of RN, which I'm going to assume is a life care planner. Am I correct on that? I saw Tricia Yount on there, who -- I mean, it doesn't matter, she used to be my accountant. Probably worked forever, from years and years ago. But -- so Tricia Yount obviously.

Who else as far as the damages expert?

MR. WILLEY: We are actually -- we're going to go ahead and take out -- okay.

Judge, we'll actually remove the life care plan, which will also obviate the need for Ms. Yount, which takes the damages witnesses just down to -- if we don't bifurcate, just takes the damages witnesses down to the doctors, who are about an hour. They're on -- that's on video obviously.

THE COURT: When you say "doctors," who are we talking about?

MR. WILLEY: Dr. Jaskwhich.

THE COURT: And what about Dr. Hanlon? Are you bringing her?

MR. WILLEY: She's short.

THE COURT: But she's coming.

MR. SMITH: We -- yeah. Well, there's some limits on what she can testify to, Your Honor. We're going to consider. But if she comes, she's coming live. There's no video, but we're going to have to think about --

THE COURT: So if you took out the life care planner, if you took out Tricia Yount, I just need to know who is -- I mean, who's going to testify as medical experts?

In other words, it would be David Jaskwhich, Dr. Ann Hanlon. Anyone else?

MR. WILLEY: No. And, I mean, talking about less than two hours. If we limit it down to that, which we're willing to do if we don't bifurcate.

MS SUTTIE: Your Honor, I wanted to clarify one point.

THE COURT: Sure.

MS SUTTIE: If the Plaintiffs are willing to strike the safety and the life care planner, from what I'm hearing, Dr. Hanlon said maybe --

if they're going to strike their claim for future damages.

MR. WILLEY: Well, you don't strike them.

THE COURT: Based on this, she's got permanent injuries as a result.

MR. SMITH: Yes, ma'am. That's all over Dr. Jaskwhich's --

MS SUTTIE: As to her ankle.

MR. WILLEY: Which gets us to the future damages, which is all we can get to. Because we don't have to prove them to a mathematical certainty, which, of course, is the purpose of a life care planner.

THE COURT: But someone's got to be able to testify that she is going to need -- if it's just permanency for pain, or is it permanency for other treatment?

MR. SMITH: Well, what his testimony is, is that she's going to require more treatment for her ankle. And he's going to talk about that.

THE COURT: What type of treatment? I mean, is she going to have to have more hardware put --

MR. SMITH: Well, what she's got is, she's

got severe post traumatic arthritis, she's got scar tissue, and she's got a broken, you know, healed ankle.

THE COURT: And the future medical treatment, I want to know if this doctor has --

MR. SMITH: Injections, physical therapy, ankle braces, and poasibly 20 percent chance of an ankle fusion.

THE COURT: And does he put a dollar amount on this?

MR. SMITH: No, ma'am.

THE COURT: Well, then how do get the dollar amount, because she can't speculate?

MR. WILLEY: We're not required to have a -- all we're required to do to submit future damages to the Court.

THE COURT: You got to have some kind of way to make a claim to say she's going to have to have an injection. Someone has to be able to testify the injection costs roughly X amount of dollars. If your life care planner was the one that did that, then I think you have to have your life care planner.

But a doctor, absolutely can testify as to an injection that roughly costs $400, whatever

it is.

MR. SMITH: Yeah. Your Honor, it's really not the focus of, I guess, that. You know, our future damages that we're focused on is this woman's retirement, right?

THE COURT: Okay.

MR. SMITH: So going back and forth to the doctor to go get injections. Limited mobility --

THE COURT: For pain suffering and her time. Obviously she can testify as to value of her time.

MR. SMITH: Yes, ma'am. Yes, ma'am.

MR. WILLEY: We're not interested in a dollar amount on specific features in terms of cost amount.

MR. SMITH: No ma'am. I mean, they're going to hear she's a veteran.

THE COURT: I mean, I have a problem, just so we're all clear -- I have a problem. If you're going to stand up and say this woman needs future X, Y, and Z, I can't have the jury speculating on what the cost of that medical procedures will be.

I would agree that goes to additional pain

and suffering for her. Going back and forth to the doctor, having to live through the injections. I agree that's all for them and there's no number that you can attach to that. But I -- you just need to be careful because I'm not going to let you sit and say, you know, we're asking for whatever medical damages are.

As long as you limit it to the pain and suffering part, I just can't let the jury just grasp in the air of what an injection costs.

MR. SMITH: Yes, ma'am. And we're on the same page.

MR. WILLEY: We're on the same page.

MR. SMITH: And if we want to bring in the costs, we'll bring in the nurse at the life care plan. Otherwise --

THE COURT: Well, that's the difference though. I need to know that now. It's like I said, if you're going to have Patricia -- or Tricia Yount in, a life care planner, I am going to bifurcate it. If you're not, I'm inclined to just put it all over. If there really is just the two doctors, then I would agree it's probably more efficient --

MR. SMITH: We're going to scratch it.

MR. WILLEY: We'll withdraw those in exchange for not bifurcating.

THE COURT: Okay. All right. So that's what we'll do then. Okay. So we're not going to bifurcate the case but we're not --

MR. SMITH: Sorry about that.

THE COURT: That's okay.

MS SUTTIE: I do have one final issue, your Honor, and it's not in our motions. But I've noticed some type of full courtroom back here. I would like to point out that Plaintiff's counsel brought a number of people from their firm with them and have had them sit on the outside of the courtroom. And for the purposes of jury selection and trial, I want to ask that they sit on their side.

THE COURT: That's okay with me, because I don't know how much room we're going to have.

I will say this. Where's Margaret? Margaret's not here. Y'all are going to have to like go for a corner. I don't know how many people she's got coming, but I have to let them in for right now.

MR. SMITH: And, Judge, you do have some 403s. Those are the --

THE COURT: Okay. And that's perfect. I just need everybody -- I don't need you while we're addressing the jury. So what I'm going to ask is those of you that are here, I'm just going to stick you all -- you want to come over here?

It's strange, too -- I will admit I don't want to do this. I'm going to put you all in the far corner. Is that okay for right now? Once I get rid of all my jurors, of course you're welcome to sit wherever you want.

Margaret, would you want them sitting in the gallery here that are not jurors? I'm just going to ask them all to go to the far corners. I don't know how many people you've got coming in. But I just need to know, if we're going to start on this side, we'll line people up left and get them as close as we can over here to this side. Okay?

MR. DANIEL: One last issue. Mr. Hood is here as well, and he's not a party. You know, I'd just ask that Your Honor sequester witnesses. I think he may be testifying.

MR. SMITH: He's not testifying about anything to do with --

THE COURT: Was he in the accident?

MR. SMITH: No.

MR. DANIEL: No, ma'am.

THE COURT: Well, then, I mean --

MR. SMITH: He's here for moral support.

THE COURT: Is he testifying at all?

MR. DANIEL: Your Honor, he's on our witness list. If we need him, we're going to call him. If we don't, we won't. It's not generally something that I do, as far as damages go.

THE COURT: You don't need to. If he was in a wreck, that might be one thing, his liability is an issue. But all he's going to testify to is that, you know, the difficult time she's had afterwards. So -- okay?

All right. Thank you all for doing that.

I'm going to step down, Margaret is going to go ahead and do roll call with them. I'm going to come out and qualify.

Margaret, my intent, it's going to be all week.

THE CLERK: I'll try to get three.

THE COURT: Okay. If we can, we'll go for three; if not, we'll go for two. And if not,

we'll just go with one. Okay? So that's what we're going to try to do.

MR. WILLEY: And, Your Honor, I am done, but these are our pretrial motions. I'll just mark this binder as a Court's exhibit with the --

THE COURT: Okay. I'm going to step down.

Before I go off, I want to see if any of these people we can cross off this witness list. It's a combined witness list, I want to know if there's any people we can cross off, then the less people I'm calling out the better.

MR. SMITH: Well, yes, ma'am. And I will say that if you noticed in my pretrial brief, I listed specifically every witness the Defendant has listed since the beginning of this case. Most of them are --

THE COURT: I saw that. That's why I'm asking the two of you to look at this and cross off anyone that you're the one that named that's not coming. Just so I get a short list, right? Okay?

(Recess.)

THE COURT: Good morning, ladies and

gentlemen. It's a pleasure to see you. My name is Carmen Mullen. I am the resident circuit court Judge here in the Fourteenth Judicial Circuit, which includes not only Jasper County, but also Beaufort, Hampton, Allendale, and Colleton Counties.

Ladies and gentlemen, it's my pleasure this week to be trying or holding a term of civil court here, and as I'm sure you've seen in front of you we do have the first case on our roster ready to begin.

Ladies and gentlemen, what this means for you is that if you are chosen as a juror in the trial of this first case, you can expect to be with me for the week, ladies and gentlemen. And when I say, "for the week," I mean through Friday. And I will also tell you that we typically have court from roughly 9:30 or 10:00 in the morning until 5:00, 5:30 in the afternoon. That's just to let you know what to expect while you are here performing jury duty.

Ladies and gentlemen, I also want you to know that if you had a dispute or a matter, you would hope that the good people of Jasper County would be here to help you decide these

issues. What I always tell jurors is you will know and readily understand 12 heads are always better than one.

And that's why we want and need citizens of Jasper County to decide these matters. All right?

So with that said, ladies and gentlemen, I need to go through and ask you a number of questions in regards to your jury service.

Have you sworn them in yet?

THE CLERK: No.

THE COURT: So we're going to ask you all to stand and we're going to swear you in as a jury pool in this case. The result of that, ladies and gentlemen, is that you're required to answer questions that pertain to you.

So let's go ahead and get you sworn in and then I'll start asking you questions.

(The jury panel is sworn by the Clerk of Court.)

THE COURT: Thank you.

Now, ladies and gentlemen, I have certain questions that I am required by law to ask you in regards to your jury service. If you need to respond to one of these questions, I ask

that you stand. We'll bring a microphone to you, because sometimes it's a little difficult to hear in this courtroom, and if you need to respond to the question.

Also, ladies and gentlemen, I want you to know that some of the questions I'm required to ask can be a bit personal. If you don't feel comfortable standing up and announcing whatever you have to tell me in front of all your jurors, or all your fellow jurors, what you can simply do is stand, give me your name and juror number, and then ask to approach.

You and I will have a conversation over here next to the court reporter, and I can tell you it's in relative private. Because, number one, she has to put it on the record, and the attorneys trying this case are also entitled to hear what you have to say. All right?

So ladies and gentlemen, I just remind you that this is a civil term of court, we're not hearing any criminal matters this week. And the first case before us that we are expected to try this week is an automobile accident case. All right? Just to give you a bit of an idea about what we're doing.

So, ladies and gentlemen, if you need to respond to my questions, again, simply stand. Give me your name and juror number, and then go ahead and respond to my question.

Is there any member of the jury panel that's not a citizen of the United States? If so, would you please stand?

(No response.)

THE COURT: Is there any member of the jury panel who is not a resident and citizen of Jasper County? If so, please stand.

(No response.)

THE COURT: Is any member of the jury panel unable to read, write, speak, or understand the English language? If so, would you please stand.

(No response.)

THE COURT: If you can't understand the English language, I have no idea how you're supposed to respond to that question, but I'm required to ask it.

Ladies and gentlemen, does any member of the jury panel have less than a sixth grade education or its equivalent?

Now, ladies and gentlemen, if you've

raised a family, held a job, and paid your bills, you have more than a sixth grade education. But I want to make sure you feel comfortable sitting as a juror.

If you have any concerns about this question or any of the other questions, I will at the very end ask a catch-all question that simply says if for any reason whatsoever you need to discuss your jury service with me, now's the time to do it. Because after that, ladies and gentlemen, you will be qualified as a potential juror.

So is there anyone that wants to respond to this question? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is unable because of mental or physical infirmities to render efficient jury service?

Ladies and gentlemen, again, you're going to be sitting as a juror up here in the jury box --

THE CLERK: Someone's standing.

THE COURT: Thank you, Margaret. Up here in the jury box, you're typically going to be

here roughly an hour at a time or so. We will stand up and take stretches. If anyone is diabetic, you can certainly make sure you have juice and candy. But this is for people who just simply cannot sit in a jury box primarily an hour at a time, and you brought a doctor's note with you today.

Go ahead and give her the -- does she want a microphone? Give her the microphone.

Ma'am, would you give me your name and juror number.

JUROR: Oradell Lee, 97.

THE COURT: Yes, ma'am.

JUROR: Yes. I suffer with bipolar disorder and manic depression.

THE COURT: Okay. And you're unable to sit? Did you bring a doctor's note today?

JUROR: No, ma'am.

THE COURT: All right. And you don't think you're able to sit during the trial of this case; is that correct?

JUROR: No, ma'am. That's correct.

THE COURT: All right. Ma'am, I will go ahead and excuse you. Thank you for being here.

JUROR: Thank you.

THE COURT: Anyone else?

(No response.)

THE COURT: Has any member of the jury panel been convicted by guilty plea or trial in a state or federal court of record for a crime punishable by imprisonment for more than one year, and your civil rights have not been restored by pardon or amnesty? If so, please stand.

Sir, your name and juror number.

JUROR: Mike Foley, 56.

THE COURT: Mr. Foley, do you know what you were convicted of or plead guilty to?

JUROR: I don't. This last time I was here in court, the Judge told me I had been, so --

THE COURT: That you had been. Do you know what it was?

JUROR: That I'd been convicted of something that carried a penalty of one year. I didn't do any time.

THE COURT: Okay. How long ago was that?

JUROR: 1987.

THE COURT: You weren't under the age of

18, were you?

JUROR: Ma'am?

THE COURT: Were you under the age of 18 at the time?

JUROR: No, ma'am.

THE COURT: Okay. All right. Sir, well, if you tell me that another judge has excused you, and you don't know exactly what it was, I'll go ahead and excuse you. Thank you for being here, sir.

JUROR: Yes, ma'am.

THE COURT: Anyone else?

(No response.)

THE COURT: Is any member of the jury panel a clerk or deputy clerk of court, constable, sheriff, or other commissioned law enforcement officer, probate judge, county commissioner, magistrate, or other county officer, or employed within the walls of any courthouse? If so, please stand.

Yes, ma'am. Your name and juror number.

JUROR: Susan Waite, 155.

THE COURT: Yes, ma'am.

JUROR: Employed as a county assessor.

THE COURT: A county assessor. Very good.

Are you in the building behind us?

JUROR: Yes.

THE COURT: All right. Ma'am, I'm going to go ahead and excuse you, but I appreciate you being here. Thank you.

Anyone else?

(No response.)

THE COURT: Ladies and gentlemen, is there anyone on jury duty who's previously served up here in circuit court, not magistrate's court, municipal court, or Federal court, during the last calendar year? If so, please stand.

(No response.)

THE COURT: Has anyone served as a member of the Jasper County grand jury during the past several years? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, we now move to jury exemptions. State law provides for several exemptions to jury service.

An exemption does not mean you are not qualified to serve; it means you may choose not to serve. But I, ladies and gentlemen, encourage you if you are at all inclined to stay with us, we'd love to have you.

Do I have anyone who is 65 years of age or older who does not wish to serve with me this week? If so, please stand.

All right. Ma'am, name and juror number.

JUROR: Arlene Smith, 144.

THE COURT: And, Ms. Smith, you don't wish to stay this week?

JUROR: I have two doctors appointments on Thursday. One of them took me two months to get.

THE COURT: Okay. Ma'am, I'll go ahead and excuse you. Thank you for being here.

Yes, ma'am.

JUROR: Virginia Garbade. I'm not sure of my number.

THE CLERK: Sixty-three.

THE COURT: And you don't wish to stay?

JUROR: Not really, if I don't have to.

THE COURT: All right. Ms. Garbade, I'll excuse you. Thank you.

Yes, ma'am.

JUROR: My name is Ethel Walker. I have a sick husband with a feeding tube, and I have the only car that we have.

THE COURT: Okay. Ma'am, I'm going to go

ahead and excuse you as well. Thank you.

THE CLERK: That would be 40 right there.

THE COURT: Forty. Okay.

Another exemption concerns prior jury service. No person is required to serve as a juror more often than once every three calendar years. Therefore, is there anyone who has served up here in the last couple of years who wishes to be excused this week? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, those of you who have served as grand jurors during the last five calendar years may also be exempted. Do I have anyone who served on a grand jury?

(No response.)

THE COURT: The next exemption of law says if you have small children, it has four parts, all of which must apply, ladies and gentlemen, for you to be able to claim this exemption.

You may be exempted from jury service if you have a small child or small children under the age of seven for which you have legal custody of that child or children; and you have the principal care, custody, and control of

that child or children; and lastly, you are unable to make adequate arrangements for the care of your child or children while performing jury duty.

Ladies and gentlemen, if you take your children to school or take them to daycare and go to work, it's presumed you can do the exact same thing while you're here. All right?

So if anyone needs to claim this exemption, if so, please stand.

(No response.)

THE COURT: The next exemption involves those of you who may be attending school at this time or working in some capacity with a school. Now, if this exemption applies to you, what I can do is transfer your jury service to a term of court that doesn't conflict with your school responsibilities.

In other words, the holiday break, spring break, or the summer break.

So is there anyone here who is a full-time student, school teacher, school crossing guard, school bus driver, or who serves in any other school related function and as a result of your school involvement you are unable to sit on

jury duty this week? If so, please stand.

Okay. Yes, ma'am. Your name and juror number.

JUROR: Paige Peoples, I'm Juror 120. I am the head volleyball coach at Legacy Christian Academy, and we have games on Thursday and Friday at 5 o'clock, and I need to be there with the girls at 3:30 to begin warm-up.

THE COURT: Okay. I'm going to ask you to sit tight with me. I may need you. And so I'm a little bit concerned. But sit tight, and I'll let me see what I can do.

Give me her number again, Margaret.

THE CLERK: One-twenty.

THE COURT: Okay. I can tell you right now, if y'all are teachers and they can get assistants and substitute teachers, I'm going to tell them they have to do that.

Now, let's start with you. Your name and juror number.

JUROR: My name is Gloria Williams. I am an assistant teacher at Beaufort Jasper PCO.

THE COURT: Okay. Ma'am, I'm going to tell you that I'm going to have to have you

stay. They're going to have to get somebody to come in and substitute for you. If you get chosen, I just -- I need you all. I've got to tell you right now, I am down to, I believe, it's 39 people. And I need enough people to choose a jury from.

So, sir, your name and juror number.

JUROR: I don't know my juror number. It's Gregg Wright.

THE CLERK: One-seventy-three.

THE COURT: Yes, sir.

JUROR: Ma'am, I'm contracted with four different school districts. I respond to all the crises that happens in school. I'm contracted with them.

THE COURT: What kind of crises?

JUROR: Well, we manage behavioral issues, emotional issues, all these things. And typically, I respond to all the crises. I'm like the clinical back-up. So I have a meeting in the morning that -- in Colleton that's extremely important to helping them with their school system in setting up this programming at school. So I don't know -- and also, I have a relationship with the Solicitor's office, as

well. A program that I provide for them.

THE COURT: And that doesn't matter. This is not criminal court. So that's irrelevant.

Sir, give me your number.

JUROR: One-seventy-three.

THE COURT: All right. Sit tight, sir. Let me see what I can do. If I can transfer you, I will. But if I need enough people, again, I may have to keep you.

Go ahead.

JUROR: Davaron Edwards, Juror No. 51. I'm director of band at the high school.

THE COURT: Director of what?

JUROR: Band. The problem is, on a school day, the problem is after school. We have band practice. There is -- I do have some support staff, but they are at the Hardeeville campus. So they will not get to the Ridgeland campus until about 4:30, if at all. And we have a home football game Friday night, so I really need to have band practice this week, if I can.

THE COURT: Is it your first home game this year?

JUROR: No, it's the second.

THE COURT: It's the second one. Give me

your number.

JUROR: Fifty-one.

THE COURT: All right. Sit tight. I don't know what I can do yet. If I can help you, I will. But I'm losing a lot of people, so I'm concerned.

All right. Yes, sir.

JUROR: William Rutland. I'm supposed to be teaching a short course up in Athens, Georgia next week, I've been doing planning for it this week. So -- and I'm Juror 131. If there's anything you can do, I'd appreciate it.

THE COURT: All right. Sir, I can't transfer you. This is next week. You're going to have to -- it's in between. But I can tell you this. Bring your materials with you, there's going to be some downtime if you get chosen as a juror. Typically, I don't let people bring computers, but if I need to make an exception for you, as long as you promise not to use it in any way, if you do this as a juror, I'll let you bring whatever you need so during your downtime you can prepare. Okay?

I appreciate it, sir, though. Thank you. Sit tight.

Yes, sir.

JUROR: How you doing, Your Honor. My name is Horace Eady, I'm not sure of my jury number.

THE CLERK: Fifty.

JUROR: I work for Thomas Hayes Fence of Hilton Head.

THE COURT: Who do you work for?

JUROR: Thomas Hayes Fence at Hilton Head, 278. And I've just been approved to start training as an auto check. And I start school for training this week, Monday.

THE COURT: Okay. Where is that training at? Is it in Hilton Head or elsewhere?

JUROR: I'm not sure. I'm not sure exactly where it's at right now.

THE COURT: And you say "this Monday," that mean next Monday?

JUROR: This Monday coming up.

THE COURT: You'll be out of here in time, so you're fine. I'm not worried about it. Sit tight. We're going to finish the trial by then, I can assure you of that. All right. So sit tight with me.

Okay. Everyone. Is there anyone here

who's employed with the Department of Corrections at a penitentiary? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, is there any juror who performs services for a business, commercial, or agricultural enterprise that you're so essential to the operation of that business or enterprise that if you are required to perform jury duty, that business or enterprise would have to shut its doors?

Ladies and gentlemen, what in the world does that mean? It means that I understand a lot of you have jobs, and you have a need to be elsewhere. However, ladies and gentlemen, I have to have enough people to pull this jury. So do I have anyone because of work that they are absolutely not able to stay this week? And I got to tell you, if you own your own business, I'm going to tell you, do you have any support staff? If you say you work for someone and you're the only one on this day, tell your boss to go hire more people. Okay?

Ladies and gentlemen, I need jurors, and I'm not kidding when I say that. Okay? But I

certainly understand that sometimes this is the absolute worst week in all 52 that you could have been assigned here.

I also may remind you that this is a short week. You could have been here five days, you're here four days, ladies and gentlemen. And these lawyers know that I told them they need to take this case up now and down in that time period.

I'll tell you, from my experience there are good weeks and bad weeks to serve on jury duty. This is a very good week because of the shortened week. You could be on a case that could last longer than a week, it could go two or three, which happens. So, again, it's a good week to serve if you are able.

However, ladies and gentlemen, again I remind you I understand that this can be an incredibly bad week for you.

Ladies and gentlemen, if anyone wants me to entertain a transfer of your jury service, I can do that. But I got to tell you, the chances are that I'm going to hold it in my back pocket for a bit until I know I've got enough people to go ahead and pull this jury.

But, again, if you have a compelling reason, and ladies and gentlemen, general inconvenience is not enough, I know sometimes it's difficult, but if you have a truly compelling reason to transfer your jury service to another week, I will entertain it. All right?

Do I have anyone that wants me to consider a transfer? If so, please stand.

JUROR: Oh, yes.

THE COURT: Yes, sir.

JUROR: Like I said, I have an extremely important meeting --

THE COURT: Okay. Anything additional to what you've already told me?

JUROR: No. And, well, here's the thing. I -- no one else can go to this meeting. I mean, I don't have a boss, I am the boss. So --

THE COURT: All right. Take a seat, sir.

Yes, ma'am.

JUROR: My brother has a -- I'm sorry.

THE COURT: You're my volleyball coach, right?

JUROR: Yes. But my brother, he has a

court hearing in Beaufort County that I have an affidavit involved in.

THE COURT: I can take care of that. If it's just an affidavit, no one's going to let you testify. They just want the affidavits. I can take care of that. Don't worry about it.

Yes, ma'am.

JUROR: May I talk to you privately?

THE COURT: Of course. Come on with me.

(Juror and Judge speak privately.)

THE COURT: It's okay. I'll transfer you. What number are you?

THE CLERK: Twenty-nine.

THE COURT: All right. I'm going to excuse you.

THE CLERK: We have a juror that just went out the door.

THE COURT: Who just went out the door?

THE CLERK: Mr. Wright.

THE COURT: Tell him to get back in here.

You're fine. You're fine. You're excused.

THE CLERK: Twenty-nine.

THE COURT: Is excused.

Ladies and gentlemen, does anyone else

need to speak with me regarding jury service?

Yes, sir.

JUROR: Can I come up?

THE COURT: Of course you can come up. Anyone else? Come on up.

Yes, sir.

THE CLERK: No. 174.

JUROR: I went to school with the Defendant.

THE COURT: You consider yourself close friends?

JUROR: We grew up together. His family is close with my family.

THE COURT: I'll excuse you from the trial of this case, No. 174. It's for cause.

Come on up. How are you?

JUROR: I'm doing great.

THE CLERK: Number 60.

THE COURT: Number 60, I'm going to go ahead and excuse 60 for cause as well. Okay?

Come on up. Yes, ma'am.

JUROR: I am a relative. Mary Dupont.

THE COURT: How are you related to him?

JUROR: We are like second cousins, his mom and my mom are first cousins.

THE COURT: Okay. What is her number?

THE CLERK: Forty-eight.

THE COURT: All right. Forty-eight is struck for cause as well.

Anyone else?

You can go ahead and leave, sir. I'm going to go ahead and excuse you. It's okay. You can go ahead and go. Okay?

THE CLERK: That's 174, 60, and 48.

THE COURT: Okay. Is there anyone else?

I'm going to go ahead and just ask my questions for voir dire as to this case, and then we'll talk about cross-offs. Okay?

All right. Ladies and gentlemen, I am now going to ask you some questions more particularly directed to the trial in this case, including the parties, potential witnesses, those types of things, ladies and gentlemen. If you need to respond to a question, like you just did before, simply stand, give me your name and juror number, and you can go ahead and respond. All right?

I do find at this point, this panel qualified, Margaret. I apologize, I should have told you that.

Ladies and gentlemen, we are about to call the case entitled Therese Hood versus Antoine Johnson. Ladies and gentlemen, this case allegedly occurred on November 7th of 2014 at the intersection of Highway 278 and Southwood Park Drive on Hilton Head Island.

Southwood Park Drive is right where the Dunkin' Donuts comes out and also there's a restaurant called The Yummy House and the Batters Box are right along there, and a shoe repair shop.

Ladies and gentlemen, I know that this occurred back in 2014, but I need to know if any of you have any personal knowledge about this case whatsoever. In other words, you happened to be there at the time, or you know someone that knows something about this case. If so, please stand.

(No response.)

THE COURT: Additionally, I'm going to ask the Plaintiff's attorneys to introduce their clients as well as themselves and their law firm. Ladies and gentlemen, my question is going to be, are you related by blood, connected by marriage, have a close personal

friend, or social relationship with any of these people, or are you kin to any of these people? And then I'm going to ask Defendant's counsel to do the exact same thing, ladies and gentlemen. Okay?

Additionally, when it comes to the lawyers, I'm also going to ask if you've ever been represented by them, sued by them, employed by them in any way, shape, or form. Okay?

So, gentlemen, I'll go ahead and start with the Plaintiff, if you would.

MR. WILLEY: Good afternoon. Roy Willey, and I am one of the attorneys that has the pleasure of representing Ms. Therese Hood.

MR. SMITH: And I'm Kevin Smith, I represent Ms. Hood as well.

MS. STEARNS: Amanda Stearns, I represent Ms. Hood.

THE COURT: All right. Will someone introduce Ms. Hood for us, please. And she doesn't need to stand up, she's fine.

MR. SMITH: This is Therese, Ms. Therese Hood. She goes by Terry.

THE COURT: Thank you.

All right. Mr. Daniel.

MR. DANIEL: Jack Daniel, appearing on behalf of the Defendant. This is the Defendant, Antoine Johnson, in this case.

MS SUTTIE: And Madison Suttie, also appearing on behalf of Mr. Johnson.

THE COURT: All right. Mr. Johnson, would you stand for the jury, if you would. Sir, thank you.

Thank you, sir. You all may be seated.

Ladies and gentlemen, to begin with, anyone related by blood, connected by marriage, have a close personal relationship, or a special friendship with either the Plaintiff in this case, Ms. Therese Hood, or the Defendant in this case, Antoine Johnson? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, you have been introduced to the attorneys that are trying this case. Again, you have to answer are you related by blood, connected by marriage, have a close personal relationship, or special friendship with any of these attorneys? Or have you ever been represented

by, sued by, or employed by, or anyone in your immediate family been employed by any of these attorneys? If so, please stand.

(No response.)

THE COURT: Bear with me, ladies and gentlemen.

Ladies and gentlemen, the following is a list of potential witnesses in the trial of this case. And if any of these people are here in the courtroom, I'm going to ask that you please stand and face the jury panel, although I don't think anyone is here. Maybe one or two.

Ladies and gentlemen, potential witnesses in this case are, of course: Ms. Hood, the Plaintiff; the Defendant, Mr. Johnson; William Kuck; Mary Elizabeth Kuck; Corporal Jennifer Welch, formerly known as Jennifer Worrell.

Dr. David Jaskwhich; Cary Tanrath; Woody Poplin; Ken Richardson; Cindy Brian; Nilda Fowler; Therese Milligan; Helen Hernandez. Christine Hood Davis; Stanley Davis; Rosa Almeda; David Hood.

Thank you, Mr. Hood. Thank you, sir.

Tami Melnick; Dustin Lee; Stephanie

Whetsel Borzendowski; Tasha Haupt; Alison Morenio; Clint Thomas.

Ladies and gentlemen, the question is, is anyone related by blood, connected by marriage, have a close personal friendship, or special relationship with any of these potential witnesses? If so, please stand.

Yes, ma'am. Your name and juror number.

JUROR: Cara Koerner, 93.

THE COURT: Who do you know?

JUROR: Tasha Haupt.

THE COURT: How do you know her?

JUROR: She worked with my sister-in-law. She was a manager for dispatch at Beaufort County 911. They're best friends, so we've had several encounters with each at family gatherings and just different sort of things like that.

THE COURT: Okay. May I see the attorneys?

Let me ask you, do you know anything about this case? Have you ever had any information in regards to this case?

JUROR: No, ma'am.

THE COURT: Okay. Let me see the

attorneys.

(Off-the-record discussion held.)

THE COURT: Ma'am, I'm going to go ahead and keep you. It's my guess, and I just spoke with the attorneys, that she may have been the person that accepted the phone call at 911, or maybe just a records custodian. So, I'm not going to star her. Her testimony may just simply be what comes in.

So, again, I appreciate you disclosing that and letting us know.

All right. Anyone else?

(No response.)

THE COURT: Ladies and gentlemen, has any member of the jury panel ever been involved in an automobile accident that resulted in either a claim being made or a lawsuit? If so, please stand.

All right. Mr. Wright, I'm going to start with you. Give me your name, sir, and juror number again.

JUROR: Gregg Wright, 173.

THE COURT: Okay. You were in an automobile accident?

JUROR: Yes, ma'am.

THE COURT: Okay. Were you the Plaintiff or the Defendant?

JUROR: Help me out -- plaintiff, plaintiff.

THE COURT: Did you bring the case or did someone bring a case against you?

JUROR: Somebody brought a case against me.

THE COURT: Okay. Were you injured in that accident?

JUROR: No, I wasn't.

THE COURT: Okay. And has that case been resolved?

JUROR: Yes.

THE COURT: Okay. Thank you. You may be seated.

Sir, your name and juror number.

JUROR: Robin Cane, Juror No. is 26. I was sued for a kid on a bicycle when they crossed the road and I hit him. And I was sued.

THE COURT: Has that case been resolved?

JUROR: Yes, ma'am.

THE COURT: Okay. Thank you, sir. You may be seated.

And I keep calling you my volleyball coach. I'm sorry.

JUROR: That's all right.

THE COURT: Yes, ma'am.

JUROR: Paige Peoples, Juror No. 120. I was a Plaintiff in a case, a gentleman ran a stop sign and T-boned my car into a ditch.

THE COURT: How long ago was that?

JUROR: Two years ago.

THE COURT: And did you bring a claim?

JUROR: Yes, ma'am, I did.

THE COURT: And what were your injuries as a result of that?

JUROR: A neck injury.

THE COURT: Are those resolved?

JUROR: They are now, yes, ma'am.

THE COURT: And is the claim resolved?

JUROR: Yes.

THE COURT: Okay. Very good. Thank you. You may be seated.

Yes, ma'am.

JUROR: I'm Erica Horton, 78. And this was a few years ago, someone ran a red light and I T-boned a -- it was a pleasure truck. I had a neck injury and a shoulder injury. All

that's resolved now, and the claim is resolved, too.

THE COURT: And that's resolved as well?

JUROR: Yes.

THE COURT: Yes, ma'am.

JUROR: All right. Ma'am, thank you. You may be seated.

Yes, ma'am.

JUROR: Surenda Burrison, Juror No. 21. I brought a case against someone. They hit me, and I had a neck injury, hip replacement, and a little bit of everything.

THE COURT: How long ago was that?

JUROR: About 2011.

THE COURT: And has that case been resolved?

JUROR: Yes.

THE COURT: Okay. Thank you, ma'am. You may be seated.

Yes, ma'am.

JUROR: Linette Laszlo, Juror No. 96. I was hit in the back about several years ago, sustained back injury and neck. And that case is resolved.

THE COURT: Resolved. Thank you, ma'am.

I appreciate that.

JUROR: You're welcome.

THE COURT: Yes, ma'am.

JUROR: Deborah Harper, No. 69. I was a Plaintiff in 2013, it's been resolved.

THE COURT: Okay. And what were your injuries as a result of that?

JUROR: My cheek, my face was broke, my cheekbone was broke, and I had some back problems.

THE COURT: And some back problems. Okay. Thank you. You may be seated.

Ladies and gentlemen, has any member of the jury panel or any member of your immediate family ever been treated by Dr. Ann Hanlon of the Ralph Johnson V.A. Medical Center in Charleston, South Carolina? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, has any member of the jury panel or any member of your immediate family ever been treated by Dr. David Jaskwhich of LowCountry Orthopedics in North Charleston or Dr. Joseph Tobin of Tobin joint -- excuse me, Bone and Joint Surgery on

Hilton Head Island, South Carolina?

JUROR: My mother was a patient of Dr. Tobin for a long time.

THE COURT: Ma'am, give me your name and juror number again.

JUROR: Cara Koerner, No. 93.

THE COURT: Your mother was a patient there?

JUROR: Yes, ma'am.

THE COURT: Is she still treated by Dr. Tobin?

JUROR: No, ma'am. There was some discrepancies with the doctor that they had, so she withdrew from that practice.

THE COURT: Okay. And can you tell me, did you ever carry your mother to that doctor's office?

JUROR: Yes, ma'am.

THE COURT: Okay. All right. Thank you, ma'am. You may be seated.

Has anyone in the jury panel ever been treated by or any member of your immediate family ever been treated by Dr. Habib Rizk of the Medical University of South Carolina in Charleston? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, is any member of the jury panel, or any member of your immediate family, any member of the Immaculate Conception Ladies Guild? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, I'm going to ask this question a little more broadly. This would be other than someone involved in an automobile accident.

Has any member of the jury panel, or any member of your immediate family, ever been a plaintiff or a defendant in a lawsuit other than an automobile accident?

It could be a breach of contract. It could be just about anything. It could be potentially a workman's compensation issue. Anything along those lines other than an automobile accident.

Sir, your name and jury number.

JUROR: Cody Clevinger, Juror. 30. My mother was a plaintiff in an assault case from her work.

THE COURT: I'm sorry, at her work? Is that what you said?

JUROR: Yes.

THE COURT: Do you know, is that case resolved?

JUROR: Yes.

THE COURT: Thank you, sir. You may be seated.

Yes, ma'am.

JUROR: Tyra Johnson, 85.

THE COURT: Yes, Ms. Johnson. Sure, come on up.

(Juror and Judge confer at the Bench.)

JUROR: My mom had a case, it was involving my sister, step, my sister's father. He molested me and they had that. He just got charged.

THE COURT: It's a criminal case.

JUROR: Yes. I just --

THE COURT: Thank you. I appreciate you disclosing that to me. Thank you. And it's just now starting.

JUROR: No, he just got charged, but, I guess, I went to the courthouse in Hampton, they sent my mom a letter like last year and I guess at the end of the year he got charged. They resolved it. He took a plea deal.

THE COURT: Okay. To resolve it. Okay. Thank you.

Sir?

JUROR: Yes, ma'am. James Lynch, Juror 102. My youngest daughter was a plaintiff in a lawsuit in regards to a physical handicap.

THE COURT: I'm sorry. I missed this. Physical what?

JUROR: Her hand was crushed when a table fell on it.

THE COURT: Okay. And has that case been resolved?

JUROR: Yes, ma'am.

THE COURT: All right. How long ago was that, roughly, sir?

JUROR: 2005 -- excuse me, 2010.

THE COURT: Okay. Thank you, sir. I appreciate it.

Yes, ma'am.

JUROR: My mom has a lot of medical problems, so when it comes to doctors, she was recently in a body mesh lawsuit with a doctor in Savannah that she had going on. That one's still kind of like lingering in the air. She's got a partial settlement from him, but it

hasn't completely been disclosed.

THE COURT: Okay. And give me your name and juror number, ma'am.

JUROR: Cara Koerner, No. 93.

THE COURT: Thank you, ma'am. Okay.

Ladies and gentlemen, has any member of the jury panel ever previously served on a jury? If so, please stand.

All right. Ma'am, I'm going to start with you, you're closest to me. Give me your name and juror number.

JUROR: Yes. Claudia Brown, I'm not sure what my number was.

THE CLERK: Eighteen.

THE COURT: All right. Ms. Brown, where did you previously serve on a jury? Was it here in Jasper County?

JUROR: Here.

THE COURT: And how long ago was that roughly?

JUROR: About 15 years ago.

THE COURT: Fifteen years ago. Okay. It was one of my predecessors then.

Do you remember what the case was about at all? Or do you know if it was civil or

criminal?

JUROR: It was civil. They basically did a lot of reading. The people had already died, and the family members were here, and they kept us in that back room most of the time.

THE COURT: Into the jury room. Okay.

JUROR: Yeah. They sent us to lunch and then we'd come back in and sat back in the jury room, and then they said "go home."

THE COURT: Okay. So it sounds like the case must have resolved. All right.

Is there anything about that experience other than being sent back in the jury room, anything about that experience that would affect your ability to be fair and impartial in the trial of this case?

JUROR: No.

THE COURT: No, for the record. All right. Thank you, ma'am. You may be seated.

I'm going to go ahead and -- do you have a juror number?

JUROR: It's Yvette Smith, and I believe my number was 147.

THE COURT: All right. What kind of case did you sit on?

JUROR: I really do not remember it, it's been that long ago. But it was right here, and I probably sat like over there.

THE COURT: And you don't remember if it was civil or criminal?

JUROR: No.

THE COURT: So if you can't remember the case, I can't imagine there was anything that affected your ability to be fair and impartial in this case.

JUROR: Correct.

THE COURT: That's not unusual at all. I can tell you that. So please be seated.

THE CLERK: 147.

THE COURT: Sir?

JUROR: James Lynch, 102.

THE COURT: Yes, sir.

JUROR: It was a civil case in regards to a lawsuit for property damage.

THE COURT: Okay. How long was ago it?

JUROR: It's been several years.

THE COURT: Anything that would affect your ability to be fair and impartial in the trial of this case?

JUROR: No, ma'am.

THE COURT: Thank you, sir. I appreciate it.

Ms. Turner?

MS SUTTIE: Koerner.

THE COURT: Koerner. Sorry. Okay. When did you serve on jury duty?

JUROR: Two years ago. I believe it was criminal, it was a child abuse case.

THE COURT: Okay. Was I the Judge, by any chance?

JUROR: No.

THE COURT: No. Okay. Well, that's good. Because I should remember you then.

All right. Anything about that experience that would affect your ability to be fair and impartial?

JUROR: No, ma'am.

THE COURT: All right. You may be seated.

Sir in the very back of the room, sure. Yes.

JUROR: Travis Holden, Juror No. 76. I was here last year.

THE COURT: You were here last year?

JUROR: Last year. I think it was like around September or October.

THE COURT: What kind of case?
MS SUTTIE: It didn't last long, like two days. I guess it got resolved and so --
THE COURT: Okay. You don't remember what kind of case it was?
JUROR: No, I'm sorry.
THE COURT: That's all right. So nothing about it would affect your ability to be fair and impartial in the trial of this case, correct?
JUROR: No.
THE COURT: All right. Thank you. You may be seated, Mr. Holden.
All right. Yes, sir, in the very back, in the striped shirt.
JUROR: Edwin Harvey, Juror 112.
THE COURT: Yes, sir.
JUROR: It's been right at six years. It was criminal.
THE COURT: Okay. Do you remember what the person was charged with?
JUROR: It involved -- he was charged with robbing a lady at an ATM in Hardeeville.
THE COURT: Okay. So anything about that process that would affect your ability to be

fair and impartial in this case?
JUROR: No, ma'am.
THE COURT: Thank you, sir. You may be seated.
Yes, ma'am.
JUROR: Deborah Harper, 69. It was a civil case, and it was a long time ago.
THE COURT: A long time ago. Okay. Anything that would affect your ability to be fair and impartial in the trial of this case?
JUROR: No, ma'am.
THE COURT: Thank you. You may be seated.
Yes, ma'am.
JUROR: Brenda Dooley, 43. It was also a car accident case, 15 years ago.
THE COURT: Was it here?
JUROR: Nebraska.
THE COURT: In Nebraska. Okay. Anything about that case that would affect your ability to be fair and impartial in the trial of this one?
JUROR: No.
THE COURT: All right. Thank you.
Ladies and gentlemen, does any person on this jury panel, or any member of their

immediate family, who is a disabled veteran? If so, please stand.
(No response.)
THE COURT: It could you or your spouse or maybe a child. It wouldn't be, I guess a child anymore, but I guess an adult. Anyone?
Sir, your name and juror number.
JUROR: Ryan Barker, No. 5.
*Note to Mona: He's clearly saying Ryan Barker, but the jury list says Ryan Baker.
THE COURT: Yes, sir. Who's this?
JUROR: I'm a disabled vet.
THE COURT: You are, sir?
JUROR: Yes.
THE COURT: Let me ask you, are you getting treatment in Charleston?
JUROR: I got my initial disability statement.
THE COURT: Up in Charleston?
JUROR: Through them, yes.
THE COURT: All right. So that's okay. That's what I need to know. Thank you. You may be seated.
Again, ladies and gentlemen, I know you know very little about this case. It's an

allegation that this accident occurred. Give me one minute. I'm seeing two conflicting dates on this last question.
On November 7th of 2014, ladies and gentlemen, in the evening, it was on Highway 278, which is also known as William Hilton Parkway, it's the one way where you go to Hilton Head. And, I apologize, someone remind me of the crossroad?
MR. DANIEL: Southwood Park Drive.
THE COURT: Southwood Park Drive, ladies and gentlemen.
Again, it happened in 2014. Does anyone have independent knowledge, anyone saw the case, talked to anyone that saw the case, know anything about the case, whatsoever? If so, please stand.
(No response.)
THE COURT: All right. Is there any further questions required of this panel from the Plaintiff?
MR. SMITH: No, Your Honor.
THE COURT: From the Defense?
MR. DANIEL: No, Your Honor.
THE COURT: Thank you.

Ladies and gentlemen, what's going to happen at this time is all your names are being placed into a random computer list. It is going to draw a list for me. What's going to happen is the lawyers are going to be given this list, they're going to have around 15 minutes to look at them in order to choose this jury panel.

Margaret will tell you where you can go, wherever you're able to, while they're look at the list.

So, ladies and gentlemen, what I'm going to do is this: I'm giving you a break till 20 till 1:00.

I also want to tell you, at 1 o'clock, regardless if you get chosen or not, I'm going to send you to lunch. So I'm going to tell you to go grab a bite to eat, so I don't want anyone concerned if their stomach is starting to growl. Okay?

Either way, if you're chosen or not, you're going to be able to be free to go about your business after we pull this jury.

If you are seated on this jury, I'm going to ask you to come back this afternoon. We're

going to go ahead and start the trial of this case. But, again, I don't want you to be concerned. You're free right now to go refresh yourselves.

The only thing I ask, if you have to go outside the courthouse to smoke or something along those lines, please tell one of the bailiffs or deputy so we know. Because we're going to be looking for you. I can't start until you all are back.

So I just ask you, there's a clock at the back of the courtroom, the top of the exit sign, if you're back at 20 minutes till 1:00, we'll go ahead and pull this jury. Okay?

Margaret, can I talk to you a second?

(Discussion off the record.)

THE COURT: Sir, you need to sit tight. Okay? Thank you.

JUROR: Can I see you a minute?

THE COURT: Sir, if it's about you sitting on jury duty, I needed you all to talk to me beforehand.

JUROR: Oh, okay. All right. I'm sorry.

THE COURT: Are you sure?

JUROR: Yes.

THE COURT: Okay. Sit tight.

Sir, give me your name and juror number, just so I know.

JUROR: It's Terry Keith, 87.

THE CLERK: Eighty-seven.

THE COURT: Eighty-seven, okay.

(Pause.)

MR. SMITH: Is it okay for Ms. Hood to leave and go to work?

THE COURT: That's fine. The only thing I need to tell her and Mr. Johnson is they are not to have any conversation with the jury. She's completely welcome to leave, she just can't talk to any jurors. And I mean, she can't even say hello, good-bye, or isn't it gorgeous outside. Okay?

MR. SMITH: Your Honor, 1 o'clock. Is that a good time, is she coming back, or quarter till?

THE COURT: No, we're going to break for lunch. So, it's probably going to be 2 o'clock.

Mr. Hood, the same thing for you. You can't speak to any jurors.

MR. HOOD: Yes, ma'am. I understand.

THE COURT: Okay, sir.

(Pause.)

All right. Ladies and gentlemen, I will tell you that you all have all been reassigned new numbers. So if you think you've heard your number struck, you have not.

Once the lawyers go through and strike the numbers, we will then call off the list as jurors. Bring all your belongings with you if your name is called and you can come on up. And you understand you're going to take a seat in the jury box, you'll know you're a juror then. All right?

So with that said, Margaret.

THE CLERK: Plaintiff strikes first using the new assigned number on the left.

THE COURT: Between one and 20.

MR. WILLEY: Plaintiff strikes Number 18.

MR. DANIEL: Your Honor, we need one moment.

MS SUTTIE: I think I left my sheet outside. I can run. Thank you.

(Pause.)

MR. DANIEL: Your Honor, Defendant strikes 93.

THE COURT: Okay. We're using the numbers to the left. So between one and 20, on the left.

MR. DANIEL: No. 27.

THE COURT: One through 20. Do you have the right list?

MR. DANIEL: We do, Your Honor. Just bear with us.

No. 18, Your Honor.

THE COURT: Okay. They already struck 18, so --

MR. DANIEL: Okay. Your Honor, Defendant strikes No. 8.

MR. WILLEY: Plaintiff strikes No. 2.

MR. DANIEL: Defendant strikes No. 22.

THE COURT: Between one and 20.

MR. DANIEL: Defendant strikes No. 9.

THE COURT: Okay.

MR. WILLEY: Plaintiff strikes No. 1.

MR. DANIEL: Defendant strikes No. 5, Your Honor.

MR. WILLEY: Plaintiff strikes No. 20.

MR. DANIEL: Defendant strikes No. 14.

THE COURT: All right. The first alternate. One strike each side for numbers

21, 22, and 23.

MR. WILLEY: Plaintiff strikes No. 21. And I'm done.

MR. DANIEL: Defendant strikes No. 22.

THE COURT: Next one is between 24, 25, and 26.

MR. WILLEY: Plaintiff strikes No. 25.

THE COURT: Between --

MR. DANIEL: Your Honor, defendant strikes 26, Your Honor.

THE COURT: All right. Then the next one is between 27, 28, and 29.

MR. WILLEY: The Plaintiff will strike No. 28, Your Honor.

MR. DANIEL: The Defendant will strike No. 27.

THE COURT: You don't need to call them. Just call the names.

THE CLERK: As I call your name, please come forward.

Juror No. 163, Brian Williams. Juror No. 151, Lashaun Taylor. Have a seat in the jury box.

Juror No. 85, Tyra Johnson-Swafford. Juror No. 57, Mary Lou Ford. Juror No. 38,

Jeffrey Davis. Juror No. 149, Sylvia Stoney. Juror No. 50, Horace Eady.

Juror No. 121, Alexis Pinkney. Juror No. 147, Yvette Smith. Juror No. 164, Gloria Williams. Juror No. 30, Cody Clevinger. Juror No. 117, Betty Paisley.

Alternate One, Linette Lazslo. Alternate Two, Rosemary Hamilton Aiken. Alternate Three, Erica Horton.

THE COURT: Is there any matters of law that we need to take up about the jury selection process from the Plaintiffs?

MR. SMITH: No, Your Honor.

THE COURT: From the Defense?

MR. DANIEL: No, Your Honor.

THE COURT: Very good.

Ladies and gentlemen, welcome. You're going to be my jury for the trial of this case.

If you will sit tight for just a minute, I'll give you a few instructions and then I'm going to send you to lunch. All right?

Ladies and gentlemen, those of you back in the back -- ladies and gentlemen, in the back, I get to give you the good news that you are excused for the week. Thank you for being

here. We appreciate it. If you need a work excuse, go down to the Clerk of Court's office. All right? Thank you.

(Remaining members of proposed jury panel excused.)

THE COURT: All right. Let's get that door shut. Thank you.

Ladies and gentlemen, again, welcome. I want to thank you for being here. I want to thank you for helping us determine this case.

I will tell you this, ladies and gentlemen, I recognize that it's a short week, and I'm going to get this case finished this week. So we're going to work hard, but, of course, I can only work as hard as the jury is willing to work.

If at any time during this process you need a break, need a Coke, coffee, whatever it takes, you raise your hands and let me know. If you need a restroom break, let me know.

We will take breaks, ladies and gentlemen, but sometimes we'll have someone who needs a little more or something, let other people know or just get my attention, or let the bailiff know or the court reporter, and we are going to

take care of you.

I will tell you this: You have the best Clerk of Court in the state. Every courthouse has a Clerk of Court, but Margaret is phenomenal. She takes care of her jurors, ladies and gentlemen. If you need anything, please ask her or her staff, and we'll take care of you.

I need to give you a couple of ground rules before we break for lunch. And then once we do, I'm going to ask you to return back to the jury room at 2:30, where we're going to begin the trial of this case.

We'll also tell you we'll run until roughly 5:00-ish. But that is dictated by you, ladies and gentlemen. It's depends on how you tell me you're feeling and what's going on. Roughly that's how we're going to run this case is roughly about 9:30 or 10:00, and until about 5:00.

If someone has somewhere they need to be before that, I need you to tell me. All right? And I'll have you tell the bailiff, when we break.

Ladies and gentlemen, just a couple of

things to begin. Number one, if you were able to get in the courthouse with a cell phone, I'm going to ask that you leave it back in your car or hand it to the bailiff when you come in.

And the reason why is you can get so much information off of a cell phone. I don't want you Googling anything or trying to figure out anything in reference to the case. Out of abundance of caution, I tell you to leave it back in the car.

Also, if you need to use a phone while you're here, simply ask the bailiff. She'll take you to a phone.

Also, if you're worried about someone needing to reach emergently while you are here, simply tell them to call the Clerk of Court's office and say your name and that you are a juror, and I promise you someone will sprint up here and talk to me and I will get you. All right?

Also, I want you to know the attorneys, the witnesses in this case, have been instructed not to speak to you in coming and going from the courthouse. And the reason is this: Even an innocent conversation out in the

parking lot -- isn't it beautiful outside, or it just looks like it might rain -- will be reported back. And, again, ladies and gentlemen, you are not to talk to them in any way, shape, or form. So in an abundance of caution I told them not even to speak to you. So if you pass them in the hallway during the lunch hour or in the evening and they don't even say hello, don't be offended. They are not being rude, they are just following my instructions.

Additionally, ladies and gentlemen, you are going to be given everything you need to decide this case right here in this courtroom. Therefore, it'll be highly inappropriate for you to do any of your own research or to talk to anyone about this case.

Over the lunch hour, or tonight when you go home, the only thing you are permitted to say to a loved one, a spouse, a child, family member, is that you've been chosen as a juror in a trial of a civil case. You're not to say the parties involved, what kind of case it is, or the attorneys. And the reason is this: In every case, someone's going to try to tell you

something about something when they know nothing about this case.

And, again, because I wouldn't want you to be influenced in any way, out of an abundance of caution, I tell you not even to discuss it.

And I also tell you that I don't think there's going to be anything in the news, the newspaper, or the radio about this case. But out of an abundance of caution, if you turn on the news tonight or if in reading the newspaper you see anything about this case, you are not to read it or look at it or be told or talk about it. If there is something, I'm going to ask you under oath whether or not you looked at it. All right?

So, ladies and gentlemen, with that said, the only thing I ask is you grab a bite to eat. Come back. Please understand I cannot start until all 15 of you are here. So if anyone runs into car trouble, decides they're having a problem getting back here, know that I am going to send a sheriff's deputy to find you. All right? That is how important this is. I want you to understand that.

You're going to retire back to your jury

room. They're going to tell you that you report back at 2:30, ladies and gentlemen. We are going to get numbers for you, good addresses. I want to know exactly where you're sleeping the next three or four nights. And it's not just prying into your personal business. If we can't find you if there's some problem, we are going to come looking for you.

Also, if for any reason you fall ill during this trial and you call in, call in and tell us and leave us a message. And it better be pretty serious, ladies and gentlemen, you better tell me you're either in the hospital or you are just deathly ill. Because, again, I need you here. I need you to be able to resolve this matter for us. All right?

The last thing I'm going to ask you to do, when you go back to your jury room before you break for lunch, I need you to elect a foreperson. A foreperson doesn't have any more say than anyone else, they're simply the person that's going to communicate with me regarding scheduling.

And they're also the person that when I send the case to you for your deliberations,

they get the ball rolling, and make sure everybody's contributing. All right?

I'm going to ask that foreperson to take this front seat right here every time in the jury room. For the rest of you, as you come and go, you can move around in your seats. It's not a problem if you don't move around too much. The only thing I want to do is tell my alternates I need you to sit where you are among those three seats so I can always find you. Okay?

Ladies and gentlemen, again, thank you. You are excused back to your jury room. You'll get a few more instructions. I look forward to seeing you all back in your jury room at 2:30. If you're running just a couple minutes late, don't worry. It's not a big deal. But after that, like I said, I'm going to be scouring for you. So - and I mean that. And, unfortunately, I got to do that. Actually I've had people that didn't show up, I've had to send them to their work, to their home, whatever. We need you here. Okay, ladies and gentlemen?

Go grab a bite to eat and we'll see you

back at 2:30. Thank you.

JUROR: Ms. Bostick, I need to talk to the Judge.

THE CLERK: If you go in the back, Mr. Eady, she'll bring you back out.

(Whereupon, the jury exits the courtroom.)

THE COURT: She's just going back there.

Apparently one of them was supposed to pick up a wife from work or something right at 2:30. So they're trying to arrange to get someone else to grab her for him. Okay? Sit down.

THE CLERK: Excuse me. He says this is something else.

THE COURT: No, I'm not for three different things. You can find out what it is and bring it to my attention, but other than that --

All right. For the rest of y'all, is there anything we need to take up? I mean, I think we pretty much have done a good bit of the pretrials. I saw that you gave me the human factors expert's deposition back there. At least Crystal gave me a copy. I'm going to look at that over lunch.

Anything else you all want me to look at over lunch? And I guess another question is, are you going to use -- anybody going to use any kind of technology up here in the opening statement that you need to --

MR. SMITH: I am. I went over with Jack, I showed him all the pictures I'm going to use. There's only one that he has an objection to, and I'll show it to Your Honor.

THE COURT: Okay. I'll look at that, and then also you need to talk to Margaret about getting it all turned on before they all come back in.

MR. WILLEY: I just have one other small thing.

THE COURT: Okay. Let me take care of this first, let's just put it on the record and we'll see what it is.

MR. SMITH: So this is the Google of the intersection, to explain to the jury how it happened. Mr. and Mrs. Johnson come out of Southwood Park, and Ms. Hood is on the inside, he hits her there on the passenger side, she hits the Kucks head on. This is just demonstrative to show them.

MR. DANIEL: Yeah. The one is, it's kind of an animation. And there's been no accident reconstruction.

THE COURT: Yeah, I understand that. I don't want you using that in opening statement. And I don't know, I mean, you're going to somehow lay some kind of foundation for that.

You know, I'm fine with just a photograph, but you didn't have anyone create this, so I don't know how you're using it.

I don't know how you do that as to where everybody was.

But, I guess, I'm probably okay with just the first picture, saying this is where it started. But you telling me that that's where point of impact was, it doesn't do anything without an accident reconstructionist.

You can say -- you're just laying a picture, this is where it is, this is what it looks like.

MR. SMITH: Sure. No problem.

MR. WILLEY: My only thing is, Mr. Eady, I don't know what his latest thing is, but he had two things during voir dire, and now another thing. I mean, I would rather just go ahead

and sit an alternate. Because I think he's going to be an ongoing problem.

THE COURT: And I'm going to have Ms. Bostick tell me what his problem is.

THE CLERK: His problem is, he can't miss work. He has a loan, he won't be able to pay his bills. He has to pick up his wife. That was it.

MR. WILLEY: I would prefer just to go ahead and let him go. We've got three alternates, that will leave us with two.

THE COURT: Okay. I will only agree to that if you all will agree to go down as low as ten jurors. I mean, we won't go below that. But if we lose just vast amounts of people, I need you to be able to agree to at least ten. You're fine with that. It's a civil case.

MR. WILLEY: I think that's fine, just to cut him loose. Otherwise, we're going to be having an alternate in the middle -- I mean, something is going to happen. Clearly.

THE COURT: I'm afraid you're right. I'm afraid you're right.

MR. WILLEY: One excuse is one thing, but every three minutes?

THE COURT: Okay. So you can agree. If Plaintiffs don't agree to ten --

MR. WILLEY: Yeah, we can agree to that.

MR. SMITH: Yes, ma'am.

THE COURT: That's losing a lot of people. That's getting everybody in the car together and then getting hit at lunch.

Mr. Daniel, what about you?

MR. DANIEL: Yeah, we'd just rather play it by ear for maybe another day, but --

THE COURT: He's just going to be a problem, so let's just let him go. Let's do that.

Okay, Margaret, just cut him loose.

There's no "S" on it, and I apologize, Mr. Daniel. I will not put an "S" on your name again. You have a sense of humor about it.

MR. DANIEL: I'm the third, so -- yeah. My dad has no sense of humor, but --

(Discussion off the record.)

THE COURT: Anything else y'all need? Thank you. We're good.

MR. SMITH: No. We should just come back a little early, need to make sure the TVs are on and --

THE COURT: Well, we'll talk to Margaret. 2:15 for you all to be back here. Okay? And I will make sure the technology is working, everything's on and no problems. Okay?

And I'm going to tell you guys, too, it's kind of funky with all of this over here. And I'm not saying you particularly, but in every trial we have this problem with all kinds of junk. So I just want to make sure that you all kind of --

MR. SMITH: Oh, you're talking about our corner of junk?

THE COURT: No, I'm not worried about that, it's that screen. I just want to make sure, sometimes it's difficult for the jurors in that far corner to be looking this way. I'm just giving you a heads up just because that screen is strange right there. I'm just saying just be cognizant. If you don't want them looking at --

MR. WILLEY: I think we'll move it around.

MR. SMITH: All right. We'll move it around. Thank you.

THE COURT: Just so you know. It's very awkward at times. So just a heads up. Okay?

All right. We'll see you all at 2:15.

(Lunch recess.)

(Proceedings continued in Volume 2.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 3rd day of January, 2018.

Mona L. Manley /s/
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Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the

State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs.

Antoine Johnson,

Defendant.

Transcript of Record

VOLUME 2

September 5, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

Roy T. Willey, IV, Esquire
Anastopoulo Law Firm LLC
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AND

Kevin B. Smith, Esquire
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Hoffman Law Firm
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REPRESENTING DEFENDANT:

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Madison Suttie, Esquire
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THE COURT: All right. I think we're just a little bit early for the jury. But I just wanted to know if there is anything else we need to take up before we go ahead and start right in? And do you mind, I'm not asking you to turn over everyone, but just tell me the first couple witnesses you have, looking out for if there is a need to get through anyone today?

MR. WILLEY: Well, Sergeant Welch is here. We plan to call her. We plan to do the 911 person, Haupt, or representative, whoever. They got like three people here, so --

THE COURT: Okay. So Sergeant Welch, 911 person, obviously, Dustin Lee.

MR. WILLEY: Melnick, which is a video, and Dustin Lee. And then we can be prepared to go farther than that. We'll have people here, but --

THE COURT: And then -- yes.

MR. DANIEL: Just a couple things. As far as the 911 operators or witnesses, if we were going to introduce some of the recorded calls, and given what Your Honor has said about Dustin Lee's call in particular, and that we might need to redact a portion of that, we may need to recall one or two of

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those witnesses to get that evidence in. We might not be able to agree to excuse those witnesses today. We might have to recall one or two of them.

MR. WILLEY: I mean, if they get them under subpoena, that's fine.

THE COURT: Yeah.

MR. DANIEL: Yeah, I'm just making Your Honor aware of that issue. And then Officer Worrell, I believe, there might be a couple of things that she can testify to that, at this point, would be -- might be hearsay, about what people have said. But depending on how this plays out, we might need to recall her for those limitations, too.

THE COURT: Okay. And you've got her under subpoena.

MR. DANIEL: Yes, Your Honor.

THE COURT: Okay. All right.

Anything else? You've got everything, technology, in working order, and got all this queued up and ready to go?

MR. SMITH: As far as we know. It won't break until two minutes before we start, so --

THE COURT: Okay. I'm just asking. Anyway -- okay. I just want to make sure we're good to go.

Okay. Well, I'm going to step down until all

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the rest of the jurors are here. If there's anything that comes up, I just wanted to make sure we were ready to go at 2:30. And I don't remember ahead of time on opening statements, but I think we are in this case. So we're ready to go.

Oh, I do want to ask you all, tomorrow morning, are we okay to start at 9:30? Everyone?

MR. SMITH: Sure.

THE COURT: If the jury allows me to, I'd like to start by 9:30. And I hate to say it, but I can start as early as 8:30, but it's up to them. I don't want to push anyone too much. So I'll ask them for 9:00, 9:30, maybe even 10:00, but --

No one else has any other problems or commitments in the evenings, do they? Is everyone okay? Y'all are good?

MR. DANIEL: We're good, Your Honor.

THE COURT: I guess I'm just looking at the clients and the attorneys, just to make sure no one's got to coach a team or something. Okay.

MR. WILLEY: We're allowed to have -- trial lawyers are allowed to have extracurriculars?

THE COURT: You are.

(Pause.)

THE COURT: All right. Let's bring the jury in.

Yes. Do you need me?

MR. WILLEY: Yeah. Just one quick matter that I thought of after you left.

When Mr. Lee gets here, I will need a few minutes with him to prep him on Your Honor's rulings on the motions in limine since they go directly to his testimony. Just wanted to make the Court aware of that.

THE COURT: Okay. That's fine. We'll take care of that. Okay?

If you want to be standing there and ask him when he does it, you may also.

MR. DANIEL: Okay.

THE CLERK: And they chose a foreperson. They chose a foreperson, Betty Paisley, Juror No. 117 she was the last juror.

(Jury enters the courtroom.)

THE CLERK: We have to seat Alternate One.

THE COURT: All right. Thank you. I apologize. Who is it, Margaret?

THE CLERK: Alternate One is Linette Lazslo.

THE COURT: Ms. Lazslo, ma'am, I have already removed one person from the jury, so I need to put you actually as part of the 12-person jury. So I'm going to ask you to go ahead and take a seat next to

our foreperson. And I want to thank you for being willing to serve.

Ladies, gentlemen, scoot on up. This is why we have alternates. Okay? So thank you again.

All right. Ladies and gentlemen, just very briefly, I want to tell you what we're going to do.

First off, Ms. Bostick, the Clerk of Court, is going to swear you in as the jury in the trial of this case. After that, I'm going to make just some very brief comments, just about how a trial kind of unfolds. And then the attorneys are going to make their opening statements. All right?

So at this time, if you'd please pay attention to Ms. Bostick, and she's going to administer the juror's oath.

(Jurors sworn.)

THE COURT: Ladies and gentlemen, I want to explain to you the procedure that we're going to use so you can better understand what's happening during the trial of this case.

You've been selected as fair and impartial jurors whose purpose it is to find and determine the facts. You, the jury, are the sole judge of all the facts in this case. If at any time I make any comment regarding the facts of this case, you must

disregard it. And as jurors, you are to determine the facts from the testimony that you're going to hear from the witness stand, as well as any other evidence that's introduced in this case.

You should you be influenced by any opinions or statements you may have heard outside this courtroom. And please understand that it is especially important that you perform your duty in determining the facts diligently and conscientiously because ordinarily there's no way to correct an erroneous determination of the facts by a jury.

On the other hand, the same law that makes you, the jury, the judge of the facts makes me the judge of the law. The law given by the Court is the only law that you may consider.

You must accept the law and apply the law as I give it to you. I cannot tell you what the facts of the case are, and you cannot disagree with me about what the law is or what you think the law ought to be. Your job is to take the law as I give it to you and apply it to the facts as you find them, and from there, render a true and just verdict in the trial.

Now, until I advise you to begin your deliberations, you must not discuss this case with anyone, and that includes your fellow jurors or

anyone at home, ladies and gentlemen. I remind you again, you are going to have everything you need to determine this case right here in this courtroom, and it would be highly inappropriate for you to be influenced by any outside source.

I also remind you, although I don't think there's going to be anything on the television, the news, or the radio, or the papers, again, in an abundance of caution I have to warn you, you are not to read anything, view anything, or listen to anything in regards to this case.

Ladies and gentlemen, please remember that it's important that you keep an open mind and not decide any issue in this case until all the evidence has been produced, you've heard the closing arguments from the lawyers, and I've charged you on the law after this case, which I will do at the very end of the trial.

Now, I want you to know that in just a minute, the attorneys are going to make what are called opening statements. And what I want you to understand is, these opening statements are not evidence in this case. They are simply contention of what they believe, the lawyers believe, issues will be in this case.

Again, I remind you, the evidence comes from the witness stand and the other evidence that's introduced.

I also want you to know that from time to time, you may hear the lawyers say something like, Your Honor, there's a matter of law we need to take up, or I make a motion on the floor. I may have a short sidebar with them.

I want you to understand something. We're not hiding anything from you. Often times when I have to rule as a matter of law whether or not certain testimony is admitted, ladies and gentlemen, I may make a comment on the facts of the case. And because I do not want anything I do to influence you in your determination of the facts, out of an abundance of caution, we just do that outside of your presence.

Now, in determining what the true facts are in this case, you must decide whether or not the testimony of the witnesses is believable. It's my responsibility to rule as a matter of law whether or not certain testimony is admitted. But once it is admitted, whether or not you believe it is for you to determine.

In deciding whether to believe a witness, you have the right to consider if the witness has an

interest in the outcome of the case. You can look at whether the witness is prejudiced towards either the Plaintiff or the Defendant. And you can hear and listen to the opportunity that witness had to have seen and known some things about which they're testifying.

And you can also look at the way the witness acts on the witness stand. You have the right to use anything in the record that will help you judge that witness' testimony. Therefore, I ask that you pay close attention while they testify, ladies and gentlemen, so you can accurately remember the testimony when you go back to your deliberations, or in your jury room to deliberate.

Now, ladies and gentlemen, in order to preserve everyone's rights, I'm going to ask the attorneys if there's anything that they would like me to further instruct you on. If not, we're going to go ahead and begin the trial of this case.

The Plaintiff is allowed to make the opening statement first, and then the Defense attorney is allowed to make the opening statement.

Any additions?

MR. SMITH: No, ma'am.

THE COURT: Anything from Defense?

MR. DANIEL: No, Your Honor.

THE COURT: Ladies and gentlemen, we'll begin the trial. Thank you.

Mr. Smith.

MR. SMITH: Thank you, Your Honor.

OPENING STATEMENT BY PLAINTIFF

MR. SMITH: Every nine minutes a person is injured in South Carolina due to an automobile collision. This is according to the South Carolina Department of Public Safety.

What brings us together in the Jasper County courthouse are the safety rules that protect each and every one of us. They protect us as we are driving or riding alongside or walking any highway, any street, or the interstate, right down the way.

Now, the only way that these safety rules can protect us is if juries choose to enforce them. There are two basic safety rules that apply to this case.

Safety rule number one, all drivers must pay attention to the road to prevent injury or death to other people using the road.

Safety rule number two, all drivers must look before crossing a busy highway to prevent injury or death to other people using the road.

So these are simple rules. Pay attention, look before crossing.

This case is about a driver who crossed Highway 278 without looking to make sure it was safe. And so we can orient you folks on exactly where this happened, this is Highway 278 running along here towards the beach. Right? And this is the Dunkin' Donuts that you've heard the Judge speak about.

Also in there is this -- The Batters' Box, My Yummy House. And what I want to do for you now is I'm going to draw up a little diagram to show you exactly what happened.

Now, I was not an art major, but I'm going to do my best.

Okay. So to get everybody oriented a little bit -- can everybody see this okay? Y'all see it okay on the end?

So Highway 278, right, headed towards the beach. Okay. First car that I would like to point out for you was right here, and we're going to put a "J" for Mr. Johnson.

The second vehicle here -- I'm sorry, I think I told you that way is the beach. This way is the beach. This is Mrs. Hood. I'll put an "H" for Ms. Hood. Okay?

Third vehicle I draw for you is Mr. and Mrs. Kuck. You're going to hear from them later. Okay?

What happens is, Mr. Johnson, it's his intention to cross Highway 278 and make a left. All right. But before he does that, he's going to stop in the median.

What happens is, Ms. Hood is coming along this direction. As she gets to about here, Mr. Johnson pulls out, and he hits her right here on the front passenger side of her vehicle. The force of the impact causes Ms. Hood to head across the median and strike this vehicle head-on.

Important to note, stop sign here. All right? No traffic lights or stop signs anywhere in the area that I've drawn.

Now, the person that he hit, my client -- sorry, Therese Hood. It was a few minutes before 6 o'clock in the afternoon on a Friday. People are getting off work, driving home. Families are heading to the beach for the weekend. It's a busy road filled with locals, tourists, and people just passing through.

Now, we've brought a lawsuit against Antoine Johnson for three reasons. The first reason is because he wasn't paying attention to the road. The

evidence will show that Therese Hood wasn't far from him when he pulled out across the highway, and if he was paying attention, he would have seen her.

The second reason is because he didn't look before crossing a major highway. If you remember one thing, it's that Therese Hood had the right-of-way.

We know Ms. Hood was in the inside lane, and there was another car in the outside lane not far behind her, sort of down here in this direction.

Mr. Johnson testified that he looked left. He didn't see Ms. Hood's car or the other car. Had he truly looked to his left before crossing out the busy highway, we will ask you to decide if he should have seen both Ms. Hood and the other vehicle not far behind her.

Now, the third reason is because Mr. Johnson refuses to accept responsibility, so we are forced to bring him to trial.

Now, before we decided to come to trial, certain things had to be determined. We had to determine what the defense would say, and we also wanted to know what questions you folks would have. So the first thing we needed to know was who hit who.

We spoke to Mr. Johnson, himself, and he testified under oath that he, in fact, hit Therese

Hood's vehicle. Ms. Hood told us the same thing. And to take it even further, here's a picture of Mr. Johnson's car, the front damage to his car that shows a front impact. And this is a picture of the side of Ms. Hood's car. It shows a side impact, and that's how we determined who hit who.

Next, we needed to determine if there was anything blocking Mr. Johnson's vision. The people involved have told us the weather was clear, dry, the road was straight, and nothing was blocking his vision. This is the Dunkin' Donuts where he is coming out of that lands him on 278.

And at the stop bar, where Mr. Johnson is, this is his view looking left. And as he's pulling out across one lane, this is his view looking left.

Once we determined that nothing was blocking his vision, the next thing we wanted to know, what's the visibility at almost 6 o'clock in the afternoon? We know Ms. Hood had her running lights on at the time Mr. Johnson hit her. So we looked up the law about when headlights are required. It says, "Drivers must have their headlights on 30 minutes after sunset. You must have your headlights turned on at night, and from a half hour after sunset to a half hour before sunrise, and at any other time when you have to use

your windshield wipers."

So we wanted to know what time sunset was. This is an image --

MR. DANIEL: Your Honor, I mean, this is not in evidence.

MR. SMITH: Your Honor, I went over all these exhibits with Mr. Daniel before we started.

MR. DANIEL: I did -- I did not -- I did not see this one.

MR. SMITH: I went over every exhibit. It's a Power Point.

THE COURT: Okay. I don't need you arguing today in front of the jury. So do you need to approach?

MR. SMITH: Yes, ma'am. Sorry.

THE COURT: Come on up.

(Off-the-record discussion held.)

MR. SMITH: Excuse us for that.

Sunset. This is the GPS coordinates for the intersection where the collision happened, and it put sunset at 1729, all right, which is 5:29. Thirty minutes after is going to be 5:59 in the afternoon. 5:59 p.m., right?

Now, there's another source for sunset that puts it at 5:58 p.m, and you'll hear about that as well.

You'll hear the difference between the two is one, is the exact GPS coordinates, one is from another source. Mr. Daniel will tell you all about that.

What we do know is that the first 911 call came in at 5:58 and 46 seconds. Okay? That was the time the first 911 call was recorded that came in. And we also know several things happened before that call came in. And that's going to be important for you guys to see for yourselves and look at.

We know that the first collision with Mr. Johnson happened. We know the second collision happened. We know people get out of their cars. We know that people are already helping. And all this again is what's happening before 5:58 and 46 seconds.

We know that the people that have stopped to help and render aid, we know they've already gotten at least one person out of that vehicle. We know the caller is at the Dunkin' Donuts over here, and she's out on the patio taking a break. She leaves the patio, she goes inside, she goes behind the counter, she dials 911.

But when she first dials 911, she doesn't get Beaufort dispatch, she gets Hilton Head. When she starts talking to the first dispatcher, before this time starts, she testifies the phone rings a couple

of times and that the Hilton Head dispatcher answers. She speaks to the dispatcher. She describes where it happened, she describes what happened, she obviously gives them her name.

And then at that point the Hilton Head dispatch calls the first responders. Now, like I said, when this call comes in, all of this had already happened.

Well, you can easily see that if you find the more reliable -- the time for sunset y'all are going to depend on is 5:59, question answered. We know the first call came in before that, headlights are not required.

But if we use the other source, 5:58, then the question that's going to be in your mind is, did all of this take 47 seconds or more? If all of this took more than 47 seconds to take place, then the wreck happened before 5:58 p.m., and the law did not require headlights on at the time.

Now, keep in mind, she had her running lights on, but the law did not require headlights. And we're going to address this with you with the very first two witnesses. We're going to show you the 911 call, we're going to show you who made it, we're going to show you what time it came in. And then we're going to have video testimony from the person

who made that call, and she's going to tell you about all these things happening.

We believe the evidence will show the wreck happened before 5:58; therefore, no headlights were required by law. But we didn't stop there.

Being this close to the requirement for headlights, we wanted to take it a step further. We needed to determine whether or not Mr. Johnson should have seen her. We started by asking the people involved about lighting conditions. We spoke to Mr. Johnson first. He said it wasn't totally dark. A passenger in the vehicle that Ms. Hood hit head-on, up here, told us that it was just beginning to turn dark, that there was enough light to see the median, enough light to see the trees alongside the road, and enough light to see other vehicles, with or without headlights.

So, why didn't he see her? Why didn't he see the other car behind her with its headlights shining on her?

So in the end, the evidence will show, number one, Therese Hood had the right-of-way. Number two, that she was not required to have any headlights on. Number three, that Ms. Hood's vehicle was clearly visible had Mr. Johnson looked before crossing

Highway 278. And four, the reason he didn't see her is because he either didn't look, or he was distracted by something.

You'll see that he only went a few feet, barely crossing a single lane, before he ran into the side of Ms. Hood's car, pushing her into oncoming traffic. Y'all will have to decide if he was paying attention. That's why we're here.

Now, the last thing we needed to determine is what Therese's injuries were. Before presenting her injuries and damages to you, we needed to figure out if the things that she described were caused by the wreck.

We know from emergency responders that Therese and the other people up here were injured. Therese's ankle was shattered, she fractured two vertebrae in her neck. She fractured one vertebrae in her lower back. She had multiple rib fractures. And she was diagnosed with a dissection of her left vertebral artery. And this is an artery that runs up along the neck, close to where the neck fracture was.

For her shattered ankle, Therese has gone through a total of three surgeries so far. First, they were able to put her ankle back together, and then another surgery where they put in a steel plate

and screws. This is an x-ray of the surgical pins and screws.

Now, it's a long road from there, hardly any mobility. She was confined to her house. She had to depend on others to get where she needed to be. It's been three years since the wreck, and she's still being treated by her doctors. Now, her last surgery to remove these pins and screws was just a few months ago.

You will hear that she continues to be in pain, that she has limitations on what she can do. And Ms. Hood's treating doctor will go over the medical treatment she's got and what she'll have to deal with as time passes. This same doctor that treated her shattered ankle will explain that while the surgery was a success, the wreck also caused post traumatic arthritis.

He told us that post traumatic arthritis is not just causing problems now, but it's going to worsen over time. The result over time is worsening stiffness, increased pain, and even less mobility. This is what the future holds for Therese Hood. This is the sworn testimony of her treating doctor.

Now, before all this, Therese Hood served her country in the Army for 20 years. After her service,

she went back to school, got a degree in economics, and a Masters in education. From there, she went to work as a teacher for young children. When she retired from teaching, Therese looked forward to spending more time with her family, and volunteering with her church. This was her vision for retirement.

Before the wreck with Mr. Johnson, Therese loved to get together with her family and cook for them. At church, she volunteered a lot. She gave communion, and she was a member of a ladies' guild. You will hear how she was good at getting events at church organized, and was someone they could always count on when they needed a volunteer.

Where she was headed that day was a timeshare. Her timeshare in Hilton Head was her get-away. It wasn't much, but it's where she went when she had time to relax. Therese's life was about serving her family and her church.

Now, at the end of trial we will ask you to decide how much money should be in the verdict. It's one of the hardest jobs you'll have this week, to decide on an amount of money to make up for all the harms, the losses, and the permanent damage to Therese's body.

So we're here for two reasons. All right?

We're here to fix, and we're here to make up for it.

The first thing to do is fix. That deals with the cost of the medical treatment that Therese has gotten. Her medical bills total just over $220,000. That's how much her treatment has cost, and it's an easy fix because you'll see exactly how her bills add up to that amount. And that's an important number, $220,000, but it pales in comparison to the real damages here. And that brings us to the second part, to make up for it.

This is one of the most important and the hardest tasks that you will have as jurors, to try and decide how to assign an amount of money on the worst part of her injuries and damages. You see, Therese is permanently injured, and her doctor is going to explain that. She's going to live with chronic pain for the rest of her life. And as her treating doctor will explain, it's only going to get worse as time goes on. And as it does, it will become harder and harder to get around, to walk, to do the things that she used to enjoy doing.

So every time that Therese can't do something like she used to, or just can't do it at all, like stand and give communion at church, like volunteer with her church, like put together a big spread in

the kitchen. Y'all know how much time that takes on your feet.

Or when she's awoken at night because of the pain and feels tired the next day. Or when she's got to stop, she's got to elevate her ankle, she's got to soak it in ice, soak it in Epsom Salts just to endure the pain from moving it.

And most importantly, every time she is stuck at home, rather than enjoying the life and the retirement that she has earned, you can't fix that. You can't even help it. But you can make up for that.

Now, it's my job to give you the tools to do just that. It's also my job to suggest what that number ought to be. It's too early. You haven't seen the whole case. But I will be up front with you and tell you the number will be significant.

Now, I'm not sure what the lawyer sitting at Mr. Johnson's table will say when he gets up here in a few minutes. I anticipate it will range from it's not Mr. Johnson's fault, it's all Therese's fault. But even if it is a little bit Mr. Johnson's fault, it really wasn't that bad. He may even say he's sorry.

Well, ladies and gentlemen, time to say sorry

has passed. Sorry doesn't fix, it doesn't make up for it, and it doesn't tell Mr. Johnson to look before crossing a busy highway.

As of today, that's your job. You not only have the right, but you have the power to fix what was broken and to make up for what cannot be fixed. And by doing this, you enforce the safety rules in your community, and you fulfill your oath to administer justice.

Thank you.

THE COURT: Mr. Daniel.

MR. DANIEL: Thank you, Your Honor.

OPENING STATEMENT BY DEFENSE

MR. DANIEL: We can't see in the dark. We, as human beings, all have limitations, and that's a fact of life.

Antoine Johnson, the Defendant in this case, can only be held to the standard of what a reasonable person can do, what an ordinary driver being careful and paying attention can do.

You just heard a lot about safety rules and avoiding killing somebody. Let's get one thing clear. No one died in this accident, fortunately. And I'll be up front, yeah, I don't hide from it, I am sorry that we're here. I'm not hiding that.

Antoine Johnson doesn't want to be here. He's not happy that Mrs. Hood was hurt. We're not -- we're not trying to hide that fact either.

There was a lot about this intersection. One thing I want you to keep in mind is that where this J is, where Antoine Johnson is, it is lawful -- lawful to make a left turn there. You're allowed to make a left turn if you check traffic, and there's nothing there.

Now, you heard me object, and that's usually considered bad form in opening statement, but the law is not about what's posted on some website. Counsel read from some manual over there, but that's not law.

Your Honor is the expert and authority on the law. She's going to tell you what the law is and what rules to apply to the facts in this case. I don't get to decide that, and Mr. Smith doesn't get to decide that.

But the reality is, why we chose you as jurors, is you all have common sense. You didn't leave it at your house when you left and came to the courthouse today. You all have the everyday experience. What you know is that on a dark road, at night, when something's coming from a distance, and if there aren't headlights on, you know, we all have limited

ability to see things. Antoine Johnson, there'll be testimony, and there's claims that he was texting or he was on the phone, he wasn't paying attention. I remind you to pay close attention to that. There's going to be no proof, there's to be no -- they're the ones, the Plaintiff, is the ones with the burden of proof in this case. There should be no one to say that they saw him texting on his phone or calling somebody or reading a text.

What you will hear is, he'll get on the stand, he'll tell you he looked to the left, and he was honest, it wasn't totally dark. But you listen to all the factual witnesses, all the witnesses that saw this, and you decide. I submit to you credible evidence was that it was pretty well dark out there.

And Hilton Head, at that intersection, at around 6:00, at around 5:50, 5:55, whatever the general time is, whatever these witnesses say, it'll be crystal clear to you it was pretty well dark. Antoine Johnson checked to his left, he didn't see anything because there were no headlights on.

There will be independent witnesses. Your Honor has talked about you being the judges of credibility. You got to think about bias. There will be witnesses that take the stand that have nothing to gain from

being here, and they'll tell you they didn't see headlights either. And they'll verify what Antoine Johnson says, that Mrs. Johnson (sic) did not have her headlights on, and that it was dark.

You may hear other things about the accident and things that you can use your common sense to draw conclusions from. What have you just seen? You've seen pictures of the side of this vehicle, what looks like a scraping motion, a sideswipe sort of impact. There's no one that's going to tell you Antoine Johnson was speeding. And Plaintiffs hired engineers, they characterized that impact as a minor one.

The real accident happened down the road, several hundred feet down the road, between Mrs. Hood and a Chevy Tahoe. Her Equinox went clear across traffic and hit a Chevy Tahoe head-on causing severe damage to the front of her vehicle and severe damage to the Kucks' vehicle, causing injury both to her and both to William and Mary Kuck.

William and Mary Kuck will testify, and listen to what they have to say about the headlights, too.

The Plaintiff has the burden of proof in this case, not Antoine Johnson. The Plaintiff has to prove to you more likely than not that Mr. Johnson is

the reason why this accident happened. What he did caused the accident. I submit to you that when the evidence has ended, and you've heard from the witnesses, it'll be the opposite way around.

You will see that more likely than not the Plaintiff unfortunately is the one that caused this accident, and she is responsible for her own injuries. And you'll hear from some engineers, they may call these engineers that they've hired, and they'll talk about science and some issues with headlights and headlight bulbs. I ask you to keep an open mind about that, and to -- can you cut that off, please.

MR. SMITH: The TV is just on. Do you want me to turn it off?

MR. DANIEL: I ask you to keep an open mind. Think to yourself at the end of the day to the unanswered questions, Does what they say add up? Did they, the experts, do all the investigation they were supposed to do before they came to certain conclusions about these headlights.

As far as when the 911 call was made, what time, whether it was 5:58, 5:57, 5:59, it doesn't matter. It's what the conditions on the roadway were at the time. It's whether there was the ability to see this

car coming on a dark road, no street lights, it's tree lined, as the sun, by the way, is already set. Sunset was at 5:20-something, 5:30 that day.

Antoine Johnson will get up on the stand, and he'll tell what he saw. He'll tell you the truth. You get to judge the credibility of all these witnesses. The fact witnesses that have no stake in this matter, they will tell you what they saw. And incredibly, the unbiased evidence will be that Mr. Johnson didn't cause the accident. You cannot be held responsible for seeing something through darkness at a distance.

Now, Mr. Johnson has been named as Defendant. Again, there was some talk about the Plaintiff's medical bills, and we can all have sympathy for her. Thee's nothing wrong with that. But a judgment for Plaintiff is also a judgment against the Defendant, and when you swore to be a member of this jury you agreed to be fair to both sides. You can't award money damages in this case, you cannot render a verdict against the Defendant unless you believe that he is the reason why the accident happened, and he is the reason -- and his actions are what caused the wreck.

If you decide the Plaintiff, at the very least

is -- her actions were a greater cause, you can end up deciding maybe they're both a little bit at fault. But if she was more responsible for the accident than Antoine Johnson was, then you also, again, under the law, have to render a verdict for the Defendant in this case.

There will be witnesses that, again, have nothing to gain by what they say. They will tell you what they saw that night. On that road, where there's no streetlights, and what the objective evidence will bear out, will be that Antoine Johnson did not cause this wreck. And because of that, you'll have to render a verdict for the Defendant.

THE COURT: Thank you. Plaintiffs call your first witness.

MR. SMITH: Yes, ma'am. Plaintiffs call Tasha Haupt.

THE COURT: Come forward, Ms. Haupt. Right around here.

Thereupon,

TASHA HAUPT

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Good morning. Good afternoon. Can you tell us your name, please?

A Tasha Haupt.

Q Ms. Haupt, my name is Kevin Smith. Thank you for being here today.

A Okay.

Q Did you used to work for the Beaufort County dispatch?

A The Sheriff's Office, yes.

Q Sheriff's Office. And the reason we've called you -- what was your job?

A I was the records custodian.

Q Okay. The reason we've called you here today is to identify some records and tell us a little bit about it. Okay?

A Okay.

Q All right. Did you get a request to produce and print some information from the 911 calls that came in about the wreck that we're here about today?

A Yes, sir.

Q Okay.

MR. SMITH: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. SMITH

Q Ms. Haupt, do you recognize that?

A Yes, sir.

Q And, in fact, does it have an indication on those records as to who printed them?

A Yes, sir.

Q And who is that?

A Myself.

Q All right. Do they appear genuine to you?

A Yes, sir.

Q All right. And were these records kept in the ordinary course of business where you work?

A Yes, sir.

Q Will they be helpful to you in explaining the timing of the 911 calls?

A Yes, sir.

MR. SMITH: Your Honor, at this time, I'll offer to admit this into evidence as Exhibit No. 1.

THE COURT: Has Mr. Daniel seen it?

MR. SMITH: Yes, ma'am. He's got a copy.

MR. DANIEL: I have no objection.

THE COURT: Without objection, it's in evidence.

MR. SMITH: Thank you.

(Whereupon, Plaintiff's Exhibit No(s). 1 marked for identification and received in evidence.)

BY MR. SMITH:

Q Ms. Haupt, let's begin on Page 1. I believe I had a copy up here, too.

Okay. We'll start on Page 1. Is that what you're looking at?

A Yes.

Q So did Beaufort dispatch receive a call, a 911 call, from a lady named Tami Melnick?

A Yes, sir.

Q All right. And you see Tami's name on the sheet itself?

A Yes, sir.

Q Okay. Is -- does it indicate where she was calling from?

A I'm looking now. I -- it says in the remarks, "at Dunkin' Donuts."

Q Okay. Also says down there under business name, "Dunkin' Donuts."

A Yes.

Q All right. And was this the first 911 call that came in?

A It appears so, yes, sir.

Q All right. And if we turn around -- if you can turn to the back page for me, the very last page. We see a listing of the different 911 calls.

A Yes, sir.

Q All right. And E-911-7 looks like it came in at 5:58 and 46 seconds; do you see that?

A Yes, sir.

Q Is that the first 911 call that came in that Ms. Melnick made?

A Yes.

MR. DANIEL: Where are we now?

MR. SMITH: Last page, first entry. Can we blow that up at all?

I don't know if that's going to be terribly visible to y'all.

BY MR. SMITH

Q All right. So first call, 5:58 and 46 seconds, true?

A Yes, sir.

MR. SMITH: That's all the questions I have, ma'am. Thank you.

THE COURT: Anything?

MR. DANIEL: Ms. Haupt? Yes, briefly.

CROSS EXAMINATION

BY MR. DANIEL:

Q How do you pronounce your last name? Just --

A Haupt.

Q Okay. That first page of this record has

Ms. Melnick's name on there. Is there a time that actually indicates on this page when she called in?

A When she actually called in the phone system, no, sir, I can tell that the call was created at the Dunkin' Donuts, what time that was created.

Q Right. There are a number of calls, I'm looking on the last page, with different times. The one that says, 5:58 and 46 seconds?

A Yes, sir.

Q That does not have a name by it, does it?

A No, not on that one.

Q But none of them do; is that right?

A Correct.

Q How many calls are on that page?

A One, two, three, four -- five.

Q Okay. Is this -- is someone -- are you the person that inputs who called, or the record of --

A No, sir.

Q Who does that?

A The dispatchers in the 911 center.

Q Someone other than you?

A Yes, sir.

Q So really as far as Ms. Melnick or, say, a gentleman named Dustin Lee, or one of the three or four people -- other people that saw this accident and actually

called 911, you can't say whether Ms. Melnick was the first one to call? You --

A I can't, other than comparing the times and listening to the phone call.

Q And the times -- right. And, again, the last page, the one that has 5:58 there as the listed time, there's nothing to indicate that Ms. Melnick was the one that called at 5:58; do you agree?

A Not on that page, no.

Q What was there -- is there a designated time next to her name anywhere in this document?

A Other than on that first page when the call was created.

Q Right. When the call was created, and someone else creates this record other than you?

A The information that's put into the CAD system --

Q Someone else does that?

A The dispatchers, as they get the information.

Q All right. And it's possible that, you know, someone else could have called first, but that dispatcher, as they're going through, and there's five or six different people that called in, they may have put Tami Melnick in there as one of the callers, and she's just listed right there when they create the CAD document.

A No, sir. For each call, there should be a designated CAD call in the system.

Q Okay. Well, where's the designated CAD call for the other -- for the -- these are the entire set of records that your offices has. Where are the designated CAD calls for the other --

A It looks like there is narrative. There are other calls that were received.

Q Right.

A On Page 3.

Q What was the -- the record actually for this alarm time, Tami Melnick, do you see up here it says, 1759 on the front page?

A Yes, sir.

Q So that's actually 5:59 when the alarm on this first page that has Tami Melnick's name, that's what it says.

A Yes, correct.

Q So there's nothing really that definitively says Tami Melnick called in at 5:58?

A Other than listening to the phone call and when it comes into the system.

Q Okay. And have you done that?

A When I created the call, correct.

Q When you created this?

A When I created the copy of the call, yes, on the disk.

Q Where is that?

A I don't know.

Q Okay. But you haven't -- is that on the audio, or is that in another document somewhere?

A No, that's audio.

Q Okay. And we haven't heard that. That hasn't been played?

A Okay.

Q Right? I mean, today?

A Correct, yes.

Q Okay. That's in the -- that's in the audio, the actual recorded call?

A The name, yes, that she gives.

Q I'm talking about the time.

A No, the time is not time stamped in the audio.

Q Right. So would you agree with me though that there's no -- there's no designated time on this sheet of paper right here, the front sheet that has Tami Melnick's name on it that says 5:58, that's when she called?

A No, there's not.

Q And the different phone calls on here from the last page, there's no name assigned to those -- those phone calls that were made. You know, this person called

911 versus this one called at this time?

A Not on that page, no.

Q Is there a specific time listed for other callers?

A Yes.

Q Okay.

A Page 3, 1801, a call was put in from Dustin Lee about an accident. That's pretty much the only other call that I see.

Q Where does it say 1801?

A 1855 there was --

Q Where does it say 1801 for Dustin Lee?

A See narrative No. 3 toward the bottom.

Q And doesn't it say 1800 above that?

A I'm sorry?

Q Doesn't it say 1800 above that? 38?

A At the very top. But that --

Q Yeah, right about right --

A It's a completely different narrative. Look toward the bottom where it says, "Created by Garnes, Matthew, date 11/7, time 1801."

Q Okay. Is that when he enters it, Garnes?

A Correct. That's putting the information in from the call into the system.

Q Okay. So that's when the dispatcher is actually

typing the man's name in?
A Correct.
Q So did you know that Dustin Lee actually was transferred -- he was actually transferred from another dispatch to central dispatch to your unit? And so he was on the call longer before someone probably actually doing data entry?
A I'm not aware of that, no.
Q Would that be unusual though?
A No. Because it's on Hilton Head.
Q It's certainly possible?
A Yes, anything is possible.
Q And as far as Tami Melnick, the page that has her name on it, actually says, 5:59, doesn't it?
A Correct.
Q Okay. So, that's when that --
A That initial call was created in the CAD system. That has nothing to do with the phone system.
MR. DANIEL: Thank you.
THE WITNESS: You're welcome.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Ms. Haupt, it's on the last page -- now, first of all, was it Mr. Daniel's office that requested these

records in the first place?
A I'm not sure who requested. I don't have access to any of those records anymore.
Q Okay. But you provided them a long time ago before today, right?
A To someone, yes.
Q Okay. Now, on that last page again, each call is given a resource number; is that right?
A Yes.
Q And that E-911-7?
A Yes. That is actual 911 line. And it would be Line 7 in the 911 system.
Q And did you listen to the audio recording for E-911-7?
A Yes, sir.
Q And did the person state her name on E-911-7?
A Yes, sir.
Q And what did the person say her name was?
A Tami Melnick.
Q All right. Does that tell you that Tami Melnick was connected to the Beaufort dispatch at 5:58 and 46 seconds?
A Yes, sir.
Q Are you sure about that?
A Yes, sir.

Q Thank you.

RE-CROSS EXAMINATION

BY MR. DANIEL:
Q Do you agree that that -- that doesn't affect when some of these other people may have called 911?
A Her calling?
Q Right.
A It doesn't affect it, no.
Q And that E -- that time, as far as the -- that's the start time of the call?
A Correct.
Q Do you know how quickly she got to the phone?
A I do not.
MR. DANIEL: Thank you.
THE COURT: Anything further from the witness?
MR. SMITH: No, ma'am.
THE COURT: Any objection to her being excused?
MR. DANIEL: No, Your Honor.
THE COURT: You're excused. Thank you.
Ladies and gentlemen of the jury, we're going to take a very brief recess. Again, do not discuss this case. It would be inappropriate to do so.
And I would like to know from the foreperson, when you go back to the jury room, how late the jury is willing to stay. I would like to get to 5

o'clock, or even a little later than that.
But probably more importantly than that, I need to know what time you all are willing to start working tomorrow morning. We can start at 9:00, 9:30, or 10:00. Any of those times, you just let me know.
Again, just realize that we're going to be here all day. Okay?
So, again, you're excused to go back to the jury room. Do not discuss this case.
(Jury exits the courtroom.)
THE COURT: All right. We're going to be at ease. Mr. Lee just came back, I'm going to give you an opportunity to talk to him. We'll probably go ahead and get him up, if you can.
Mr. Lee, there were just a couple of things that I had spoken to them about, what you can testify or not testify to. The most important one is probably that no one is to address you as "Judge." If they ask you what you do and who you are, you're a lawyer. Okay?
And, again, it doesn't really matter if you're a plaintiff's lawyer, defense lawyer, or what exactly that you do. But anyway, there's to be no mention of being a judge.

There's a couple other things that I stated that I didn't want you testifying to. Obviously, you can't come to conclusions and you certainly can't testify as to the law.

But Mr. Wiley is going to talk to you -- or Mr. Willey, I apologize, is going to talk to you about what you can or cannot do.

Like I said, Mr. Daniel, if he does start testifying to something that is objectionable, just say "objection" for the record. The good news is Mr. Lee will understand my ruling. So he'll know what he can or cannot say.

So how about if we're going to take a break just very quickly. Five minutes. Okay? Thank you.

(Whereupon, a brief recess was taken.)

MR. WILLEY: Judge, not to alarm you. But just as I would in live testimony, during the course of the video, when she refers to something I will check it off. I would do that if she were live, but she's not.

THE COURT: Who are we talking about?

MR. SMITH: Tami Melnick, she is next by video. And then we will get Dustin Lee out of here. And then after Dustin Lee, it is the officer, and is that is what we plan on today.

(The jury enters the courtroom.)

THE COURT: All right. Y'all may be seated. Welcome back. At this point in time the next witness is Tami Melnich. My understanding is that it's by deposition.

MR. SMITH: Yes, ma'am.

THE COURT: Ladies and gentlemen, a deposition is simply testimony given by a witness. It is usually taken at a lawyer's office or the courthouse where everyone has an opportunity to ask that witness questions.

And again, you are to judge that just as if she were sitting here testifying. Are you ready?

MR. SMITH: Yes, ma'am.

THE COURT: Okay, let's go ahead and play it.

(Video deposition being played of Tami Melnick.)

MR. DANIEL: Your Honor, may we approach about one thing while this is being queued up?

THE COURT: You may.

MR. WILLEY: I don't know how high it is. If it's too loud. Let us know on the volume.

(Off-the-record discussion held.)

THE COURT: It is their witness, if they want it up there, they can have it up. Just play it.

THE COURT: Okay. Turn that off and call your

next witness.

MR. WILLEY: We call Dustin Lee.

Thereupon,

DUSTIN LEE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLEY:

Q Mr. Lee, would you please introduce yourself to this jury?

A I'm Dustin Lee.

Q And, Mr. Lee, what do you do for a living?

A I have a private law firm on Hilton Head. So I'm a solo practitioner.

Q Okay. How long have you been a lawyer?

A I got sworn in, I believe it was November 17th of 2008. So that puts me not quite at nine years yet.

Q Okay. And are you married?

A Yes.

Q And where do y'all live?

A We live in Bluffton.

Q And you are here today because you were a witness to a wreck that occurred on November 7th, 2014; is that correct?

A Yes.

Q And are you familiar with the area on 278 where this occurred?

A Yes. I was raised on Hilton Head in the area, so I am. Thank you.

Q You travel that road frequently?

A I do.

Q You know there's a Yummy House, Batters' Box, and Dunkin' Donuts all to the right down frontage road?

A I definitely know that Dunkin' Donuts is still there, but --

Q Okay. Fair enough.

And earlier we had a drawing. I'll just show this to you as best I can. You -- with the Judge's permission, you can actually step down, if that's agreeable.

THE COURT: Certainly, if he'd like to.

THE WITNESS: All right.

(Witness complies.)

BY MR. WILLEY

Q Mr. Lee, I will submit to you that this is 278. Okay? And back over here is the Dunkin' Donuts. All right.

And this is roughly a fair depiction of that intersection as you remember it?

A Basically, yes. Of course, this is South [illegible]

Road, it's kind of a frontage road right here in front of Dunkin' Donuts.

Q Right.

A It kind of goes parallel with 278.

Q Right. Let me see if we have a picture.

A Basically that curves around the front there.

Q Are you talking about this right here, this is Southwood Park Drive?

A Yes.

Q You got the Yummy House here, correct?

A Yes.

Q And the Dunkin' Donuts back over here.

A Yes. I knew that the Dunkin' Donuts was there. The Yummy House is new to me.

Q Okay. The Dunkin' Donuts has a front patio here with some umbrellas on it. Is that what you recall? Do you recall that?

A I don't recall going in that direction. That's kind of new in my general vicinity of where I was.

Q All right. And on this particular day, November 7th, 2014, you're headed east on 278, correct?

A Yes. Kind of deeper unto the island. I think I was going to where Sam's Club used to be in Port Royal Plaza.

Q Right. So if we take this, put it like that,

this is the Defendant, Mr. Johnson's vehicle. And you recall seeing his vehicle at that time, correct?

A Yes.

Q Okay. And this "H" depicts Ms. Hood's vehicle. And you recall seeing her vehicle?

A Yes.

Q Okay. And then down here, on the other lane, the outside lane here, we've drawn a box, and who would that be?

A That would probably be me.

Q Okay. And between and you Ms. Hood, there were no other vehicles, correct?

A None that I recall.

Q Okay. As you recall, it was you in the outside lane, her up ahead~on the inside lane, correct?

A Yes.

Q Okay. And prior to this wreck, had you seen Ms. Hood's vehicle?

A I was in the right lane and her vehicle had passed me heading the same direction, just a little while before.

Q Okay. And as she passed, were you able to discern anything about -- about her vehicle?

A I remember it was South Carolina veterans license plate, and it was kind of a third row, a crossover

type vehicle. It reminded me a lot of -- I have a best friend from growing up, his wife has a Chrysler Pacifica, not the new minivan one, but kind of the older style, so it looked like that, kind of curved in back, third row, darker color, crossover vehicle.

Q And this -- this picture here is all banged up, but this is roughly what you remember as her vehicle before the wreck?

A Yes. And as I said, I saw on the back, the South Carolina veterans license plate.

Q Correct. Okay. You can take your seat.

A Yes, sir. Excuse me.

Q Now, Mr. Lee, as you were traveling down 278, your vehicle had automatic headlights, correct?

A Yes, I -- I had them on.

Q Okay. And what kind of vehicle were you driving at the time?

A It's a Genesis. It's got -- I believe they're Xenon headlights. So it's a four-door sedan, rear wheel drive. It's silver in color.

Q Okay. And those Xenon headlights, why -- why is that important to you? What is a Xenon headlight?

A Xenon headlights are -- they're a bit brighter, in my opinion. I don't know, there's the marketing out there, but I've got a truck that I got back when I was in

college, and so generally I drive a car with better headlights when I'm at night just because -- especially if I'm going in back roads or, you know, during the wintertime, or if I'm going somewhere kind of on island. It's not very well lit in the low country at night, so it just lights up the road a little bit better because my truck, I got to put the fog lights on to kind of compare a little bit.

Q And on this particular day, where were you headed to?

A I was either going to Sam's Club or to Kroger, or both. There's a Kroger kind of mid-island, where the mall used to be a long time ago.

Q Okay. So you were going out to do some grocery shopping and whatnot?

A Exactly.

Q All right. So you planned to be out for a little while, right?

A For, you know, however long it'd take me to go through those stores exactly.

Q Past dark?

A Yes.

Q Okay. And at the time of this wreck, you did not see anything after the first collision, correct?

A I did not.

Q Okay. And why is that?
A I was -- I know you got your --
Q You can come show it, if you want. You can step down if that's easier for you.
A Okay. It may make better sense with the photo.
Q Right.
A So I was coming up this direction. I don't know if this is accurate as to distance, per se. But as I was coming up here, I saw -- there was a vehicle kind of coming out, I kind of -- just a bad feeling as I saw something going on there. I started hitting my brakes.

This vehicle, the H vehicle, kind of went over. This car was here -- I was able -- this kind of -- it happened really quickly, because I was still at -- I guess I was slowing down, but I was close enough where I was kind of myself trying to avoid this accident. I was -- I glanced very, very quickly at this J vehicle. I saw it was a car. Of course, I'd seen this car was pulling out, but then this car went kind of over, and there are bushes and some other stuff right here, so then my visibility wasn't there.

After that, I kind of pulled up to the right so I could -- my adrenaline was really pumping, but I pulled over to the right so I could try to call 911, so I got all the way off the road.

Did I answer your question?

Q Yes. And in this picture, you can actually see those bushes a little bit better than in my co-counsel's drawing. He didn't go to art school, as he said.

So at the time of this wreck, you were actually so close that you thought you might be involved in it; is that accurate?

MR. DANIEL: Objection. Mischaracterization.

THE COURT: Okay. Rephrase it, if you would.

BY MR. WILLEY
Q Okay. Explain, again, why -- why you were slowing down as you saw that car come out?
A It looked like there was going to be, in my opinion, some type of potential collision, so I slowed down to get out of the way, as far as whether --
Q Okay. And you had your headlights on, your Xenon headlights on?
A Yes. I have a little green indicater on my dash that was on that showed my lights were on. My car, I keep in the auto position unless I'm going in a gated community.
Q Right. And at this particular entrance on the 278, this intersection, Mr. Johnson would have had a stop sign there. Are you familiar with that or not? If not, just say, "not."
A I am from maybe a year ago. At that particular

time, I don't know whether it was there or not.
Q Okay. You haven't been there recently. Okay. Thank you, sir. Take your seat.
A (Witness complies.)
Q And so after you saw the wreck, you indicated that you went up 700 or so feet or --
A I don't know exactly how far it would be. I believe it was before. There's a community there called The Oaks that has their sign. I think I was before that sign. I don't know exactly how far that would be, but I pulled all the way over right to get out of 278 William Hilton Parkway completely, and parked on the side of the road.
Q All right. And we -- we've heard that somebody beat you to the 911 call. But explain your sequence of trying to dial -- to try to dial 911.
A I had that car for about a month, so I pressed a little button, and I think I said, "Call 911." And it said, "I'm sorry, I don't get it. Call 911. I'm sorry."

So then -- then I said, "Call Beaufort County dispatch." Because through my private law practice, sometimes I have to call law enforcement, et cetera, so I pressed the button and said, "Call Beaufort County dispatch." Same thing. So I had -- I parked the car, I turned off the radio, and then I had to dig. I have -- it's

kind of in the charger between the console thing, so I had to, I think, pull the thing out, unlock the phone, go through the whole process, and then call. I don't know if I dialed 911 or if I dialed Beaufort County dispatch, which I think goes to the same place. But that was kind of the delay.
Q And when you got finally connected through, what did -- what did you learn?
A Well, I spoke with someone, I don't remember if it was Hilton Head or what, and then I remember hearing something along the lines of we're going to -- "this person saw the accident." I believe they connected me to someone else that kind of asked me what happened.
Q Okay. And when did you first hear the sirens and the first responders?
A I don't remember exactly. It was before I pulled out completely. I don't remember if I stayed an extra minute or two afterwards, because as I said, my adrenaline was really pumping. And just trying to -- because after I left, I end up going to Starbucks not too far and getting a hot chocolate, just kind of sit down and calm down a little bit.
Q And, Mr. Lee, at the time that Mr. Johnson pulled out, you -- you could clearly see Ms. Hood's SUV, correct?

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

A They were both still in my sight.
Q Okay. And at the time that Mr. Johnson pulled out, you were able to see Mr. Johnson, correct?
A I was able to see, again, that it was a car. I couldn't tell you what type or make, model, of car, but I knew there was a car pulling out. I could see the H vehicle as well.
Q Okay. And Ms. Hood would have actually been closer in distance to Ms. Johnson than you were at that point, correct? You were behind her?
A Yes, I was behind her.
MR. WILLEY: Thank you, sir.

CROSS EXAMINATION

BY MS. SUTTIE:
Q Good afternoon, Mr. Lee.
A Good afternoon.
Q I'm Madison Suttie, I'm here for the Defendant.
You answered a number of questions about what you witnessed. I want to start from kind of the end, if you will.
You called 911, correct?
A Yes.
Q Would it have been within one or two minutes of you witnessing the accident?
A I thought it was very close. When I pulled

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

over, as I said, however long it took me to kind of get over, press the buttons on the car a few times, and actually connect. And if I had to guess, I'd say it was within that two-minute time period.
Q In other words, it was a fast turnaround, the connection.
A It was kind of as fast as I could, again, pull over, park, do all that with my adrenaline pumping.
Q And you're familiar with that stretch of road on Highway 278?
A Yes.
Q Okay. And are there any streetlights on in that area?
A Not that I recall. Hilton Head is not very well known for having a lot of kind of -- I went to school at USC in Columbia. And when you kind of leave there, you got those big overhead lights. Again, I don't recall any then, and I still don't really remember any now.
Q I did, too. You're right about that.
But does it get fairly dark at night along those stretches of road?
A Yes. And in kind of in general, again, there aren't any overhead streetlights. So you're kind of on your own as far as that's concerned.
Q And from what you recall, at the time of the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

accident, was it getting dark?
A Yes, it was getting dark.
Q In your opinion, as a driver on the road at that night, did you feel like you had to have your headlights on --
MR. WILLEY: I'm going to object, Your Honor. He's not an expert witness. He's not qualified to give opinion testimony. She can ask him about his observations, what he saw or heard.
THE COURT: Agreed. Sustained.
BY MS. SUTTIE:
Q Were there other vehicles on the road that night besides you and Mrs. Hood and Mr. Johnson?
A There were. There was some traffic coming the other way, and there were -- I don't remember, at the exact time if there were cars behind me. But there were, of course, other cars on the road as a general principle.
Q Of all those other vehicles, did anyone else have their headlights off, from what you recall?
A Not that I recall. Everyone, again, that I recall immediately seeing around me had their headlights on.
Q That brings me back. When did you first notice this vehicle?
A I was in the right lane, and it passed me on the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

left-hand side.
Q And was she tailgating?
MR. WILLEY: Objection, Your Honor.
THE COURT: Okay. Sustained. It's not appropriate.
Ladies and gentlemen, just strike that question.
BY MS. SUTTIE
Q When Mrs. Hood's vehicle passed you, you said that you had looked and you noticed a veterans tag; is that correct?
A Yes. There was a South Carolina veterans tag.
Q What made you notice her veterans tag?
A It was, again, something that I just recall specifically on that particular evening. I guess when I was younger, I actually watched, it was like a Jason Bourne movie. I saw him remember all the license plates when he came out. So certain cars, I would, for better, for worse, kind of just remember license plates. So it as that, you know, again, going past me, I remember that particular vehicle again.
I don't know if that answers your question.
Q Is there -- it kind of does.
But did you notice that the Plaintiff's SUV traveling behind you didn't have lights on; is that correct?

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

A As I was traveling, again, east on 278, the -- I guess the H car --

Q We can pull this out. Okay?

A No, it's fine. I -- I remember that.

The H car, I don't remember having the headlights on. I remember it was either daytime running lights or it was parking lights. I couldn't tell you which, but I -- I remember it did not have its headlights on.

Q And you were shown a photo of Mrs. Hood's vehicle. It was a darker in color vehicle, right?

A Yes.

Q And did you agree it was difficult to see at the time; is that correct? When it was behind you. Sorry, when it was behind.

A Yes, it was -- it was difficult to see.

Q Was that because the headlights weren't on?

A Again, that certainly made it quite a bit more difficult to not see. And, again, it was dark in color and the headlights were not on. So, again, it was kind of there.

Q You let Mrs. Hood's vehicle pass you. You moved into the right lane and let her pass. Do you -- can you estimate how many cars lengths ahead of you that she got by the time the collision had happened? I mean, was there a fair distance or --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

A It was -- I mean, I could still see everything. I played baseball growing up, so I kind of said it was at least three pitcher's mounds, which I think is 60, 65 feet. So we're looking at more -- probably at least 200 feet in front of me. But I couldn't tell you -- and it wasn't, you know, two miles down the road. It was definitely still clear, but it was however many cars can fit in that. If you've got a car that's 15 feet long, then you've got a minimum of ten cars to be 150 feet if that's --

Q So ten cars between you and --

A That would be probably a minimum. But, again, it wasn't a mile or anything like that. I could still see it well enough.

Q But there was a fair distance between the point -- between you and the Plaintiff's vehicle after she had passed you and the collision; is that fair?

A Yes.

Q At any point from the moment you first noticed Mrs. Hood's vehicle to the moment that you called 911, did you ever see the vehicle with its low beams on?

A As far as the H vehicle?

MR. WILLEY: Objection, Your Honor. Calls for speculation. The vehicle was up ahead of him. I don't know --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

THE COURT: Okay. He can answer if he knows.

BY MS. SUTTIE

Q Based on your observation.

A As far as the H vehicle, the Ms. Hood vehicle, I never saw that vehicle with its headlights on. Just that I saw it with its either daytime running lights or its parking lots on.

Q Did those daytime running lights or parking lots, in your opinion, what you observed, did they illuminate the vehicle at all?

MR. WILLEY: I'm going to object, Your Honor.

THE COURT: Okay. At this point, I'm not sure he can answer that.

MS. SUTTIE: Okay. Let me confer with --

(Off-the-record discussion held.)

MS. SUTTIE: Sorry for the brief intermission.

BY MS. SUTTIE

Q As a licensed driver, did you feel that you needed --

MR. WILLEY: Objection, Your Honor. This is the same question with a different wording.

MS. SUTTIE: I'm asking about his opinion -- observation of his surroundings.

THE COURT: Again, I think it calls for speculation. I think you need to move on.

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

MS. SUTTIE: Okay.

(Pause.)

BY MS. SUTTIE

Q You called 911 after this accident, correct?

A Yes, or the Beaufort County dispatch, because I believe it goes to the same general line.

Q Sure. And did you tell 911 dispatch or the operator that Ms. Hood's vehicle only had its parking lights on, or running lights?

A I believe I told them it only had either it's parking lights or daytime running lights. I may have said DRL, but I don't -- just daytime running lights. But --

Q Okay. Why did you feel that was -- why did you do that? Why did you tell the operator that it only had daytime running lights on?

A Again, I don't recall other than, you know, it was kind of that almost dark, not quite dark time, and it just kind of hit me based on other vehicles on the road had their headlights on at that time that I saw.

MS. SUTTIE: No further questions. Thank you.

MR. WILLEY: Just briefly, Mr. Lee.

REDIRECT EXAMINATION

BY MR. WILLEY:

Q Back to my trusty Picasso here.

No doubt in your mind that Ms. Hood's

vehicle had its running lights on when it was up ahead of you, correct?

A As it was, I guess, passing me, it had either its daytime running lights or its parking lights on. As far as what it had on at the time, I'm not sure. It was ahead of me.

Q Correct. And you don't recall the exact timing of how long it had been since the SUV passed you when the wreck occurred, correct?

A The exact time, no, I don't.

Q Well, it -- what you know is that enough time had elapsed for her to at least get a ten-car length, a gap, between you and herself, correct?

A Yes.

Q Probably more?

A Again, it wasn't 200 cars, but it was --

Q Right. But at that point, you could still see her?

A I could -- could I -- I could still see the back of her vehicle, and I could see, I believe, you have as the J car coming out.

Q So at that point, where she's a minimum ten car lengths away from you, you could still see her up ahead, correct?

A Yes.

Q And you could see the Defendant's vehicle, which was even farther away, correct?

A Yes.

Q Okay. And if you had not had your headlights on, do you believe that you still would have been able to read her license plate as she went by?

A I recall reading her license plate initially, when it was right almost next to me. So it would probably be like this court reporter's head. So it was very close in distance when I first read it.

So, again, I had my -- my headlights on. So I think -- and, again, if I didn't, I don't know, but I had my lights on, and I saw it passing me. So I'll let that answer your question.

Q Do you remember saying that without the lights, you think you still could have read the license plate?

A Well, again, I initially paid attention to it when it was right at the hood of my car.

Q And is that because at that particular point, it wasn't a hundred percent dark yet, correct?

A It was probably 90 percent, but not a hundred percent. It was -- it was getting there, but it wasn't quite. It wasn't pitch black, by any means.

Q Right. And Ms. Hood's vehicle would have been closer to Mr. Johnson at the point of impact, when he ran

into the side of her, than it would have been to you, correct?

A Again, I was farther back. So were those two cars closer together, absolutely.

Q So at the point of impact, clearly Ms. Hood's car was closer to Mr. Johnson, correct?

A Yes. Again, I was in that right lane. I eventually got in the left lane to get around it.

Q And at that time, you could still see Ms. Hood's vehicle, correct?

A At the --

Q Before the time --

A Right before the collision occurred, I could still see the two vehicles.

Q Right. You could still see Mr. Johnson's vehicle, right?

A Yes, with my -- again, I had my headlights on, but I could see them.

Q Right. And when this wreck occurred, you slammed on your brakes, I think you testified, to get over because you didn't want to get caught up in it, correct?

A I don't know if I slammed, but I definitely decelerated and kind of -- it was more than a standard, just kind of turn the cruise control off or something type slow down. It was more of a deliberate slow down, but I

don't -- I don't think that I slammed on the brakes, like to squeal or anything like that.

Q My point is, as you went by this collision, the second collision, you didn't look over. You were focused on what you were doing to try to stay out of it, correct?

A The -- I saw the H vehicle hit kind of that median section --

Q Right.

A -- and then kind of right after that I was focused on making sure I got around whatever this was without hitting anyone, damaging any property. And then I thought as soon as the second I kind of got past there, pull over, let's call 911.

Q Thank you, sir.

THE COURT: Anything further?

RE-CROSS EXAMINATION

BY MS. SUTTIE:

Q Mr. Lee, do you recall whether the accident happened within moments of Ms. Hood's vehicle passing your vehicle?

A Moments, like two or three seconds, no.

Q How many seconds; do you recall?

A I -- again, I don't recall exactly. I'd say probably a minimum of 25, 30 seconds, a maximum of maybe a minute and a half, somewhere in that time range. And

RECROSS EXAMINATION OF D. LEE BY MS. SUTTIE

again, it's -- it was --
Q Two years ago?
A Three -- almost three years ago.
Q More, yeah. But it was a short time frame, correct?
A It was a relatively short time frame, yes.
Q Do you recall how fast you were going that evening?
MR. WILLEY: I'm going to object, Your Honor. It's not relevant how fast Mr. Lee was going.
THE COURT: Can you tell me what the relevance is? Do you need to approach?
MR. DANIEL: I think so.
THE COURT: Sure.
(Off-the-record discussion held.)
THE COURT: You can answer the question, Mr. Lee.
THE WITNESS: Okay.
BY MS. SUTTIE
Q Do you recall how fast you were going?
A I had my cruise control set at 49 miles per hour.
Q What made you choose 49 miles per hour?
A It's -- again, I have these weird things. It's kind of like I don't like to tell people necessarily to be

RECROSS EXAMINATION OF D. LEE BY MS. SUTTIE

somewhere at 9 o'clock, because they might be five, ten minutes late either way. So you say be there at 9:03. But in my private practice, when I have clients, they kind of joke, and they say "I only go five miles per hour over the speed limit." I say, "just go four over."
Or they say, "Cops don't mess with me at five." I say, "go four over." So it's kind of a practice what you preach type thing. So, as I said, I try to really -- it's just kind of a habit I always get into.
Q What's the speed limit on that stretch of road where the accident happened?
A It was 45 miles per hour.
Q And the accident happened within, you know, 25 to 30, and less than a minute of Mrs. Hood's vehicle passing you, correct?
A Yes.
Q And she was ten car vehicles, at minimum, ahead of you; is that what you testified?
A I believe so, yes, if you kind of calculate about 15 feet per vehicle.
Q And you were going four over the speed limit?
A Yes. I was -- I was basically speeding four miles per hour over, yes.
Q Mr. Lee, one further question.
Do you recall if Mr. Johnson's vehicle had

RECROSS EXAMINATION OF D. LEE BY MS. SUTTIE

its headlights on?
A Is that the J car that was crossing?
Q Yes.
A I don't necessarily. As I said, I saw from a distance, from whatever distance that was, that there was a car coming across. But, you know, it's almost three years ago. I noticed the car from that distance coming across, and as I said, I just don't recall at this point why I kind of had that feeling that something was going to happen kind of immediately thereafter.
MS. SUTTIE: No further questions, Your Honor.
THE COURT: Anything further?
MR. WILLEY: May the witness be excused?
THE COURT: Any objection?
MR. DANIEL: Your Honor, just what we discussed earlier.
THE COURT: Okay. Mr. Lee, you're excused. If I need you, I'll find you. Thank you.
THE WITNESS: All right. Thank you.
THE COURT: All right. Call your next witness.
MR. WILLEY: Plaintiff calls Sergeant Welch.
THE COURT: Come on, Sergeant Welch.
Thereupon,
SERGEANT JENNIFER WELCH
was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

was examined and testified as follows:
DIRECT EXAMINATION
BY MR. WILLEY:
Q Sergeant Welch, will you introduce yourself to the jury.
A Sergeant Jennifer Welch. I've been with the Beaufort County Sheriff's Office since 2007, which is about ten years in August. Been working the road south and north for those ten years.
Q And Sergeant Welch, are you still with the Beaufort County Sheriff's Office?
A Yes, sir.
Q I assumed they didn't let you borrow the uniform just for the day.
Where did you go to college?
A Delaware Valley College in Pennsylvania.
Q Okay. And where did you attend the criminal justice academy?
A Here in South Carolina, in Columbia.
Q And when -- when approximately were you there?
A That was February of 2008.
Q And when you got out of the academy, where was your first job?
A With Beaufort County.
Q And at the time of November 7th, 2014, what

your rank?

A In 2007?

Q November 7th, 2014.

A '14, I was corporal.

Q And so you have elevated through the ranks since that time?

A Yes, sir.

Q When you were a corporal in 2014, what were some of your primary duties with the sheriff's department?

A Mainly the same as now, to respond to calls for service, 911 calls, motor vehicle collisions, traffic enforcement.

Q And at that time, were you certified in accident reconstruction?

A Yes.

Q And what does that mean, just for the benefit of the jury?

A Basically it's -- there are three classes. There's three phases. Both are two weeks long each, and it teaches you about the physics and basically all the math you have to do to figure out what happened in a collision.

Q And is that obviously important to what you do with the Sheriff's Department?

A Yes.

Q And respect to motor vehicle wrecks, what are your roles and responsibilities?

A First and foremost would be injuries, and then making sure that the scene is safe and that no more injuries occur once we arrive. Then I would interview all parties, whether it be on scene or at the hospital, if they get transported. And then I would either complete a report, issue a ticket, if I felt need be.

Q And Sergeant Welch, I'm going to hand you a copy of a code section, South Carolina code section. As part of your roles and responsibilities, are you --

THE COURT: Hold on a second. Can I take a look at that?

Do y'all need to come talk to me?

(Off-the-record discussion held.)

BY MR. WILLEY

Q All right. Sergeant Welch, you would agree with me that when a driver is on the roadway they have certain responsibilities that -- you know, that they've got to look after, correct?

A Correct.

Q Like look where you're going, right?

A Yes.

Q Make sure it's safe before you cross a busy highway, correct?

A Correct.

Q Okay. And those things are important to prevent harm to other folks, correct?

A Correct.

Q Now, I know it's been almost three years, but do you recall, based on reviewing your notes and report, this wreck that we're here about today?

A Yes.

Q Okay.

MR. WILLEY: Your Honor, may Sergeant Welch step down?

THE COURT: Yes.

BY MR. WILLEY

Q Sergeant Welch, can you describe to the jury, you know, what this image shows?

A Yes. Right here in the middle, it is labeled William Hilton Parkway at 278. This direction towards me would be eastbound. This side would be westbound. Southwood Park Drive runs, as they discussed earlier, in front of Dunkin' Donuts and Yummy House, parallel to 278.

Q And you were notified -- how did you get notified about this wreck?

A By dispatch.

Q And do you have any idea what happened prior to dispatch notifying you? Or do you -- you just get the

call straight from dispatch?

A Straight from dispatch.

Q Okay. And when you arrived, what did you see?

A I saw the -- if we want to stick with the same picture that you have, the J vehicle was right around in here. And then Ms. Hood's vehicle had left skid marks across the grass, and then hit another vehicle over around in here somewhere, head-on.

Q And did you interview all the witnesses at the scene?

A Yes. The ones that stayed, yes.

Q You didn't interview Mr. Lee, for example?

A No, I didn't know who he was.

Q Okay. But you were able to interview the Defendant, Mr. Johnson?

A Yes.

Q You were able to interview the Kucks?

A Correct. I'm not sure if that was at the hospital or both on scene.

Q Okay. And you were able to also interview Ms. Hood at the hospital?

A Correct.

Q Okay. And as far as when you got there, how would you describe the damage to Ms. Hood's vehicle? What did you observe?

A It was major damage.
Q Was Ms. Hood already gone in the EMS when you arrived?
A If I remember correctly, I believe she was on the grass right about here, where they were treating her, but I didn't have an opportunity to speak with her because they were treating her.
Q Okay. And you spoke with her later?
A Yes.
Q All right. Thank you.
Sergeant Welch, I'm just going to show this photograph here. Do you recognize this image?
A Yeah. That would be the passenger side of Ms. Hood's vehicle.
Q Okay. And is that a fair and accurate representation of the damage to Ms. Hood's vehicle as you observed it that day?
A Yes, the damage to the side, yeah.
Q To the side, correct.
A Yeah.
MR. WILLEY: Your Honor, at this time, we would move Plaintiff's Exhibit 3 into evidence.
THE COURT: Any objection?
MR. DANIEL: The side view?
THE COURT: Just look at it.

MR. DANIEL: The side view, no.
THE COURT: Any objection?
MS. SUTTIE: No objection, Your Honor.
THE COURT: Without objection, it's in evidence.
(Whereupon, Plaintiff's Exhibit No(s). 3 marked for identification and received in evidence.)
BY MR. WILLEY:
Q And Sergeant Welch, you were able to ascertain what about this damage? What did this damage tell you?
A With my experience in I couldn't tell you how many accidents I've, it appeared to me that another vehicle, which I believe was Mr. Johnson's vehicle, hit that vehicle in the front passenger side close to the wheel. And due to her traveling, it then created the scratch marks down the end of the vehicle.
Q And how many motor vehicle wrecks would you say you've investigated?
A Being that I was on the traffic team for two years, I -- hundreds. I couldn't -- maybe even a thousand. I couldn't put a number on it.
Q And you're still investigating traffic wrecks, correct?
A Yes.
Q More than your fair share of those wrecks for every nine minutes, according to your Department of Public

Safety?
A Yes.
Q Okay. Were you also able to get a look at this vehicle?
A Yes.
Q Okay. And was this a picture of Mr. Johnson's vehicle as you remember it?
A Correct, yes.
Q And was all -- this front-end damage existing to his vehicle at the time that you saw it?
A Yes.
Q Okay. And is this a fair and accurate representation of his vehicle, as you saw it?
A Yes.
MR. WILLEY: At this time, we would move to enter into evidence Plaintiff's Exhibit No. 4.
THE COURT: Any objection?
MS. SUTTIE: No objection, Your Honor.
THE COURT: Without objection, it's in evidence.
(Whereupon, Plaintiff's Exhibit No(s). 4 marked for identification and received in evidence.)
BY MR. WILLEY:
Q And just -- just so we're clear, was it your understanding that the entirety of this damage was caused by his impact with Ms. Hood?

A Yes.
Q Okay. As far as you know, Mr. Johnson did not impact another vehicle or object on the roadway that day?
A Correct.
Q I'll show you what I'll mark for ID as Plaintiff's 5. And this is an image of 276 looking down the eastbound lane. And this is the intersection area, and you're familiar with that intersection?
A Yes.
Q Okay. And can you -- let me step over here. Can you show the jury where Mr. Johnson's vehicle would have been located?
A He would have been down here at the stop line and pulled out into this first lane.
Q Okay. So as he began to pull out to the first lane, if you look left, this would be his view basically?
A Correct, yes.
Q And is this photograph a fair and accurate representation of that?
A Yes.
MR. WILLEY: Your Honor, at this time, we're going to move to enter into evidence Plaintiff's Exhibit 5.
MS. SUTTIE: No objection, Your Honor.
THE COURT: It's without objection. It's in

evidence.

(Whereupon, Plaintiff's Exhibit No(s). 5 marked for identification and received in evidence.)

BY MR. WILLEY:

Q And Sergeant Welch, this book was talked about during opening. You familiar with the South Carolina Driver's Manual?

A I've never actually held one or seen one, but --

Q Okay.

A I know they're one.

Q I'm going to hand you one.

What does that book say on the cover?

A South Carolina Driver's Manual.

Q Okay. And does that appear to be a fair and accurate copy of the driver's manual? Or are you just not familiar enough with it to say?

A I'm just not familiar because I didn't -- I didn't get a license in South Carolina.

Q Okay. That's fine.

But you are familiar with the law as it relates to headlight usage in South Carolina, correct?

A Correct.

Q Okay. And one of your responsibilities in investigating a traffic accident, would be to cite a driver who wasn't following the law, correct?

A Correct.

Q Okay. And that statute requires, correct me if I am wrong, but it requires headlight use 30 minutes after sunset and 30 minutes before sunrise, correct?

A Correct.

Q Okay. And it also gives a list of other times when headlight usage might be required. You're familiar with that?

A Yes.

Q Okay. And can you tell this jury when some of those -- what those times are?

A It would depend on the circumstance, such as maybe fog or snow. Rain is the big one. If there were some other kind of circumstance, like there was a fire in the area and you couldn't see the road maybe. Just as some examples.

Q Okay. So the big one is when you have your windshield wipers on, correct?

A Correct.

Q Except if you have them on just intermittently for misting, then you're not required to, right?

A I'm not familiar if it's got a subsection about that in there.

Q But the other environmental factors that are spelled out are like fog and smoke, correct?

A Correct, yeah.

Q The statute specifically deals with when you have to have them on with respect to nighttime, correct?

A Correct.

Q All right. Another example might be, for example, if it got dark in the middle of the day, like, if we had an eclipse, right?

A Correct.

Q That would be an environmental factor that would require you to have your lights on, right? And we just had one of those.

So let me ask you: On this particular day, at this particular time, was there any fog in the area?

A No.

Q Was there any snow in the area?

A No.

Q Was there any rain in the area?

A No.

Q Okay. Was there a fire nearby such as that it was creating smoke?

A No.

Q Okay. And finally, we didn't have an eclipse just before dark that day, did we?

A No.

Q Okay. So the only factor that, in this case

would have required the headlights, is whether or not it was 30 minutes after sunset, according to the statute, correct?

A Correct.

Q And in this case, when you spoke with Mr. Johnson, isn't it true that he actually told you that Ms. Hood hit him?

A Yes.

Q You remember -- you have that in your notes and remember that?

A Yes.

Q And upon looking at the damage from their vehicles, is there any doubt in your mind that actually he hit Ms. Hood?

A No, there's no doubt in my mind.

Q Based on your investigation in this case, how fast was Ms. Hood traveling?

A I just put an estimated, which is what the actual speed limit of the road was. Because of the extent of the damage, I knew it was at least 45.

Q You estimate around 45 miles an hour?

A Correct.

Q And there was no evidence in your investigation statement or otherwise that led you to believe that she was speeding, correct?

MS. SUTTIE: Objection.

THE COURT: Well, she can answer the question if she can answer it.

THE WITNESS: Correct.

BY MR. WILLEY:

Q There was no information in your investigation, based on your investigation, that led you to believe she was speeding, correct?

A Correct. There were not any skid marks behind the car.

Q And you did not write Ms. Hood a citation for this incident, did you?

A No.

MR. WILLEY: Thank you. Nothing further, Your Honor.

MR. DANIEL: May we approach?

THE COURT: You may.

(Off-the-record discussion held.)

CROSS EXAMINATION

BY MS. SUTTIE:

Q Hello. I'm Madison Suttie.

You were asked a number of questions about statute, 30 minutes, and all of this kind of stuff, when you should have your headlights on; is that correct?

A Yes, yes.

Q You can pull people over for having no headlights on; is that fair?

A Yes.

Q And does the visibility of a vehicle go into that determination?

A Yes.

Q So if you were having trouble seeing a vehicle on a roadway, you'd pull it over; is that fair?

A Correct, yeah.

Q If it is 28 minutes past sunset, and you've having issues seeing that vehicle and you assume other drivers on the road have the same difficulty, would you pull that vehicle over?

A Yes.

Q You were shown some pictures of damage that you would assume that Mr. Johnson and Mrs. Hood's vehicle, by Mr. Willey -- bear with me one second.

Do you recall off of the top of your head the tag on Mrs. Hood's vehicle?

A The license plates, no.

Q Would you like to see a copy of your accident report to refresh your recollection as to the license plate?

A If you wanted the exact number, yes.

MR. WILLEY: We can stipulate to the license

plate number.

MR. SMITH: She can just read it, Your Honor.

MR. WILLEY: Yeah, she can just read it. That's fine.

BY MS. SUTTIE

Q Here you go. Can you read the license plate for me for Mrs. Hood's vehicle?

A It's V32138.

Q Okay. And I'm going to show you a picture and ask you if that is the same license plate number on that vehicle.

A Yes.

Q Okay. So fair to say, does that look like the Plaintiff's vehicle in that photo I just handed to you?

A Yes.

Q Okay. You can keep that photo in front of you.

You were also shown -- this is Plaintiff's exhibit, but I can show you on the large copy -- this is the damage to the side of Mrs. Hood's vehicle, correct?

A Yes.

Q And that was the damage you found contributed -- caused by the collision with Mr. Johnson's vehicle; is that fair?

A Yes.

Q Okay. There was another impact in this

incident, correct?

A Yes.

Q And that was with Mrs. Hood's vehicle and the vehicle belonging to the Kucks?

A Correct.

Q Okay. I'm going to show you a photo and ask you if that looks representative of the damage to the front of the Plaintiff's vehicle caused by the collision with the Kucks?

A Yes, correct.

Q Little more severe than the one with Mr. Johnson; is that fair?

A Yes, very fair.

Q And you were shown a photo of Mr. Johnson's vehicle after the accident. Do you remember all these years later whether his front bumper had fallen off or not, in the accident?

A I remember there being debris on the roadway, but I don't remember specifically a bumper on the road.

Q Okay. And then the third vehicle, belonging to the Kucks, does this look like that vehicle to you?

A Yes.

Q That's pretty severe damage, correct?

A Correct, yes.

Q Okay. And that was caused by the collision with

the Plaintiff's vehicle and the Kucks; is that fair?
A Correct, yes.
Q You were asked by Plaintiff's counsel whether or not you performed a full accident reconstruction, and you didn't in this case, correct?
A Correct.
Q Okay. So you wouldn't have any opinion on whether Mrs. Hood was pushed into oncoming traffic or whether she overcorrected; is that fair?
A I don't think that I would need to take measurements to form that opinion.
Q Okay. Is it correct to say that it could have been a bit of both?
A Both what?
Q Of being -- of overcorrecting and also from the collision with Mr. Johnson?
A Yes, I would say they both contributed.
Q Okay. Can you say how much either one of those contributed to the --
A To that, I would need to do the math for.
Q And you didn't do the math in this?
A No, ma'am.
Q What time did you arrive at the subject -- at the accident scene?
A Is it okay to refer to the report?

Q Yes, of course.
A Arrived at 1809, which would be 6:09.
Q Okay. 6:09, and from what I understood, Mr. Hood was still there sitting on the grass; is that correct?
A Correct.
Q Okay. When you arrived on the scene, was Mrs. Hood's vehicle still running?
A I believe it was, yes.
Q And how did you make that determination?
A I could hear it running. The engine was on.
Q Does your squad car have an in-car video?
A Yes.
Q Did you review your in-car video prior to completing your accident report?
A I did.
Q Why did you do that?
A Because there were -- there was discussion about her lights being on, and I had different stories about -- they weren't all matching.
Q The Plaintiff's running lights weren't on in that video; is that correct?
A Correct.
Q What does that indicate to you about her headlights?

A That the headlights were not on.
Q And that they were not on that night?
A Correct.
Q So her car was still on after the accident, but her headlights weren't on?
A Correct.
Q But the running lights were still on?
A When I referred to the camera, the running lights were not on, which would be consistent with the brake lights, because I pulled in behind her when I arrived on scene.
Q Bear with me one second.
You were shown an aerial view of the intersection.
MS. SUTTIE: You've already marked it?
MR. WILLEY: I had marked it.
MS. SUTTIE: Okay. Would you mind if I showed the witness?
MR. WILLEY: No, sure.
MS. SUTTIE: Thank you very much.
BY MS. SUTTIE
Q Can you see this okay?
A Yeah, I can -- for the most part, I can see it. I know the intersection well enough.
Q Okay. So Mr. Johnson made his turn starting

here on Southwood Park Drive; is that correct?
A Correct.
Q And it is legal to make a left turn onto this westbound lane of 278?
A Correct.
Q As long as you check for any oncoming hazards, fair?
A Yes.
Q That are visible, fair?
A Yes.
Q So was Mrs. Hood's vehicle traveling in this -- what lane would you call this on eastbound?
A I call it the number one lane.
Q Number one lane. Okay. She was traveling here.
When you arrived at the accident, where was this vehicle?
A It was on the white lines on the other side of the road.
Q All the way over here?
A Yes, ma'am.
Q So she went over to -- in lane one, she went over this median; is that correct?
A Correct, yes.
Q And this turning lane?
A Yes.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

Q And landed all the way over here?
A Yeah. A little farther down on the road, probably down by where that -- in between the two arrows.
Q Okay. Oh, so all the way down here?
A Yes, ma'am.
Q And so if Mr. Johnson was trying to come straight across, that collision happened around here; is that fair?
A Yes.
Q And she ended up between the two arrows?
A Somewhere around that area, yes.
Q Thank you.
Did you give Mr. Johnson a citation for this incident?
A I don't recall. Not according to the report. I would have listed it on the report.
Q And did you note on your report how many yards away Ms. Hood's vehicle ended up from the collision with Mr. Johnson?
A I did not.
Q Would it have been about, if you were to estimate based on what we discussed from the picture, about 100 hundred to 200 yards?
A I would say around a hundred.
Q And do you recall what speed Mr. Johnson was

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

going at the time of the accident?
A I put 15. It's hard to accelerate from a stop sign that fast, so --
Q Right. And you can't really gain that much motion.
A Right.
Q And you put 45 on your accident report, correct?
A For the speed limit?
Q For Ms. Hood's speed limit.
A Right, as an estimate.
Q And that was just an estimate based on the speed limit that was posted?
A Correct. I take that into account and the damage, so it could have been faster or slower.
MS. SUTTIE: I'd like to offer in the photo that I have shown earlier into evidence.
THE COURT: Which ones are they? Have you marked them?
MR. SMITH: May I see them?
MS. SUTTIE: Yeah, sure.
THE COURT: These aren't duplicates of what's already in evidence?
MR. WILLEY: No, ma'am.
THE COURT: Okay. Any objection?
MR. WILLEY: To those three, no.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

THE COURT: Okay. So let's go ahead and mark those for the court reporter. Just go give them to the court reporter.
(Whereupon, Defendant's Exhibit No(s). 1-3 marked for identification and received in evidence.)

THE COURT: Anything, Mr. Willey?
MR. WILLEY: Just briefly.
THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. WILLEY:
Q So Sergeant Welch, she asked you whether or not if there had been overcorrecting, if that could have also contributed along with the impact of Mr. Johnson.
In this case, did you find any evidence that Ms. Hood overcorrected?
There were no skid marks, correct?
A Well, she -- correct.
Q And she ended up just over the median in this other lane down aways, correct?
A Correct.
Q Okay. The physical evidence clearly establishes that the impact between her vehicle and Mr. Johnson's vehicle was quite an impact, correct?

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

MS. SUTTIE: Objection.
MR. WILLEY: Basis?
MS. SUTTIE: Mischaracterization.
THE COURT: Okay. I don't know if she actually testified as to that.
MR. WILLEY: I'll rephrase it.

BY MR. WILLEY
Q Sergeant Welch, how would you characterize the impact, based on these photos, between Mr. Johnson's vehicle and Ms. Hood's vehicle?
A If it were just those two alone, I would consider it to be minor.
Q Okay. And in this particular case, his front end is smashed in, correct?
A Correct.
Q And the inside of her door along the wheel well is smashed in, correct?
A Correct.
Q And that impact is enough to move a vehicle that's traveling that speed; you would agree with that?
A Yes.
Q Okay. And that's -- in this case, her vehicle did move, correct?
A Yes.
Q You arrived just after 6 o'clock -- 6:09,

correct?
A Yes.
Q Where did you come from?
A I don't remember where I was originally, but I know that I came -- I was headed eastbound on 278.
Q Okay. But you were not right there at that particular intersection, correct?
A Correct. It took me about three minutes to get there.
Q You had a three-minute transit time from the time you got the call?
A Correct.
Q You don't know what happened prior to that?
A No.
THE COURT: Is that a "no," for the record?
THE WITNESS: No. Sorry. It was a little quiet.
BY MR. WILLEY
Q And when you arrived at 6:09, which was sometime after the wreck, there was still some light visibility, correct?
A Correct.
Q Okay. And as you sit here today, and as you told us in your deposition, you cannot say one way or the other, whether or not, at the time of the wreck, Ms. Hood

had her lights on, lights off, running lights on, running lights off, any of that, can you?
A Other than what I pulled up on the video.
Q Right. When you arrived at 6:09.
A Right. I was not paying attention.
Q And at that particular time, she had already been extracted from the vehicle, correct?
A Yes.
Q And she was laying over on the grass being treated?
A Correct.
Q Do you have any information as to whether she changed anything in the vehicle as she was getting out or anything that she did prior to being extracted by the paramedics?
A No.
Q Okay. And in this particular case, there's a stop sign here at the end of Southwood Park Drive, correct?
A Yes.
Q And who would have had that stop sign?
A Mr. Johnson.
Q All right. And if a vehicle is traveling east on 278 and a vehicle was stopped at that stop sign attempting to cross, who would have the right-of-way?

A Ms. Hood would.
Q Thank you.

RE-CROSS EXAMINATION

BY MS. SUTTIE:
Q Officer Welch, is it fair to say that Ms. Hood would only have the roadway if her vehicle were visible?
MR. WILLEY: Object. It's a mischaracterization of the law.
THE COURT: You can ask the question.
If you can answer it, answer it.
THE WITNESS: Can you ask it again?
BY MS. SUTTIE
Q Is it fair to say that Mrs. Hood would only have the right-of-way if her vehicle were visible? Or I can rephrase it.
Do you have to give way to oncoming traffic that you cannot see?
A I would say that would make it difficult.
Q Great. You were asked by Mr. Willey whether you can say one way or the other whether she overcorrected or whether she was pushed. Actually, you list it in your accident report that she overcorrected, correct?
A Correct.
MS. SUTTIE: No further questions.
THE COURT: Anything further?

FURTHER REDIRECT EXAMINATION

BY MR. WILLEY:
Q Just the one portion in the accident report. That was one data point in your investigation, correct?
A Yes.
Q Okay. And in this accident, you actually had pretty good physical evidence, which we don't always have, correct?
A Correct.
Q And there were no skid marks in this case?
A No.
Q Okay. There was no indication from skid marks or otherwise that she made a sharp maneuver to the left, correct?
A Correct.
Q Other than the fact that her vehicle crossed the median, correct?
A Correct.
Q And, again, you did not have the benefit of talking to Mr. Lee, who indicated that once the vehicle entered that median, it got a little airborne, correct?
A Correct.
Q Thank you.
THE COURT: Anything further?

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

MS. SUTTIE: No, Your Honor.

THE COURT: Okay. Any objection to Sergeant Welch being excused from anyone?

MR. WILLEY: None.

THE COURT: You're excused. Thank you.

All right. Ladies and gentlemen, I think this is a very good time to wrap up for the evening.

Madam Foreperson, I do not want to start as early as 9 o'clock tomorrow morning because, in fact, I was reminded I have a conference call.

THE FOREPERSON: Well, we had decided on ten, if that works for you.

THE COURT: Absolutely. 10 o'clock sounds good.

Ladies and gentlemen, I need to remind you, do not discuss this case. It would be inappropriate to do so. Don't do any independent research. Ladies and gentlemen, don't go look at the scene. If you happen to have to drive by to go home, just drive by it. All right?

I look forward to seeing you all at 10:00 a.m. tomorrow morning. I expect to run to roughly 5 o'clock again tomorrow, ladies and gentlemen. So I suggest get a good night's sleep, have a good breakfast. We look forward to seeing you.

Also, it was real cold in here earlier today.

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

They warned me as I walked in. They told me it was 64 degrees. But I have the benefit of wearing a robe. So bring a sweater or a jacket or something, ladies and gentlemen. I know we're on the tail end of summer, but I suggest bringing the same thing, so you can shed it if it gets hot in here.

And, again, we look forward to seeing you all at 10:00 a.m tomorrow morning. You all are excused. Thank you.

(Jury exits the courtroom at 5:22 p.m.)

THE COURT: All right. Any exceptions or additions from anyone?

Anything to add? Anything that you need to place on the record?

MR. SMITH: No, Your Honor.

MR. DANIEL: No.

THE COURT: Yes, ma'am.

THE CLERK: There's a juror that says he needs to speak with you because he has made his decision already. He's biased.

THE COURT: Okay. Well, I'll take that up afterwards. So you can pull him out of the jury room and go stick him somewhere separate, if you can. Okay?

THE CLERK: Everybody else has gone now.

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

THE COURT: Yeah, he can't stay in there right now though. You need to take him out and put him in the hall.

THE CLERK: The other people have gone downstairs.

THE COURT: Oh, they are. Okay. He can sit right there.

Anything else? Tomorrow morning, if they want to start at 10 o'clock, so we will begin and you all can be here by roughly 9:45. Is that acceptable to everybody? Okay?

MR. SMITH: Yes, ma'am.

THE COURT: Anything else from anyone? No? All right.

Well, I'm going to talk to this juror. You're welcome to sit tight while I speak with him. The rest of you, if you want to leave, you're welcome to, whichever way.

So let's bring him out.

(Juror enters the courtroom.)

THE CLERK: This is Mr. Clevinger.

JUROR: Yes, where would you like me to stand?

THE COURT: Right where you are.

JUROR: I don't want to disrespect your court any, but I've come to a biased information, and I've

JUROR EXCUSED FROM THE JURY

already made my decision and know which way I would like to go with this, based on the information that's already been provided.

THE COURT: You weren't able to follow my instruction that I told you at the beginning of this case that you weren't to make any decisions until you've heard all the evidence?

JUROR: I can't help that. I can't help that.

THE COURT: You can't help that?

JUROR: No. Being and --

THE COURT: So you can't follow the law?

JUROR: No. Being an intelligent human being, I've just come to my decision based on the information provided.

THE COURT: Okay. Well, with all due respect, that's not the law. So to qualify this being an intelligent human being would be a mischaracterization.

I am going to remove you from the jury of this case, but I am going to have you sit and watch the rest of the trial with us.

JUROR: Yes, ma'am.

THE COURT: So I look forward to seeing you back at 10:00 a.m. I trust that you didn't say any of that to any of the other jurors.

JUROR: Not at all, ma'am.

THE COURT: All right. Well, we look forward to seeing you back at 10:00 a.m. back in the gallery. Thank you.

JUROR: Thank you so much.

MR. WILLEY: Your Honor, will you instruct him not to talk to any other jurors.

JUROR: No, you have my word. I won't do that.

THE COURT: He knows that. You were right, Mr. Willey.

You can just go out the front door.

JUROR: Thank you, Your Honor.

THE COURT: Anything else?

MR. DANIEL: No, Your Honor. Not from the Defendant.

THE COURT: All right. We'll see you here tomorrow morning.

MR. SMITH: Thank you.

(Whereupon, the Court was in recess for the day.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 3rd day of January, 2018.

/s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs.

Antoine Johnson,

Defendant.

Transcript of Record

VOLUME 3

September 6, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

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AND

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PROCEEDINGS

THE COURT: Good morning. What do we want to take up before the jury comes in this morning?

MR. SMITH: Nothing.

THE COURT: Nothing.

MR. DANIEL: Your Honor, one matter.

THE COURT: Yes, sir.

MR. DANIEL: There's an expert witness in the courtroom that's been retained by the Plaintiffs. Unless she's called first, I wouldn't have any objection to her obviously being in the courtroom right now. But if we've got some fact witnesses that are going to testify, I would again renew my motion to sequester witnesses. A retained expert --

MR. WILLEY: Your Honor, sequestration isn't appropriate for experts. They're able to rely on testimony at trial, that's why we brought her here today, so she can hear the first few witnesses.

THE COURT: Okay. Thank you. I would agree with Mr. Willey. She can't rely on what their testimony is, so she can remain.

Anything else this morning?

MR. WILLEY: Now, I would just tell the Court we do have our first four witnesses that are in or around the courthouse, and we are attempting to get

more here so we can move through this expeditiously.

THE COURT: Very good. So who are your first four witnesses for this morning? And how long do you expect each of them to --

MR. WILLEY: We expect to have enough folks here to go through lunchtime.

THE COURT: Okay. Very good. Let's bring the jury in.

(Jury enters the courtroom.)

THE COURT: Good morning, ladies and gentlemen. Good morning. You all may be seated.

Ms. Hamilton, ma'am, I lost another juror. So you are now part of this jury as well. I'm going to go ahead and place you up here if you would.

Are we missing someone?

THE CLERK: Someone must be up in there.

THE COURT: Come on. And then there were 13. All right.

. Well, again, good morning ladies and gentlemen. At this time we're going to go ahead and continue with the Plaintiff's case.

Mr. Willey, or gentlemen, if you'll call your first witness for this morning.

MR. SMITH: Yes, ma'am. The Plaintiff calls Mary Kuck.

THE COURT: All right. Come on forward, Ms. Kuck, to be sworn. Right here.

Thereupon,

MARY E. KUCK

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Good morning.

A Good morning.

Q Tell us your name.

A Mary Elizabeth Ira Kuck.

Q Ms. Kuck, thank you for being here today. Where did you drive in from?

A Orangeburg.

Q All right. And are you married?

A Yes, sir.

Q And is that your husband back there?

A Yes, sir.

Q What do y'all do for work?

A I'm a school nurse at Orangeburg Preparatory Schools in Orangeburg. And he is -- he works for The Kuckery, which is a local restaurant and catering company.

Q That's y'all's restaurant?

A No, sir. It's his daughter's restaurant.

Q Oh, okay. I'm going to be very brief with you and get you guys out of here very quickly. But what I want to ask you about is the wreck back in November of 2014. Okay?

A Yes, sir.

Q And was one of -- were you in one of the vehicles that was involved in that wreck?

A Yes, sir.

Q We've been referring to this flip chart for a while now. Can you see it from there okay?

A Yes, sir.

Q Is that podium blocking you?

A A little bit.

Q Would you mind just stepping down for just a minute?

THE COURT: You're welcome, Ms. Kuck, to go ahead and step down to better see it.

MR. SMITH: It'll be just a second.

A (Witness complies.)

Q So, Ms. Kuck, this is something that we've drawn up here. Okay?

A Yes, sir.

Q And you weren't here to hear everyone else's explanation, but this is right where the Dunkin' Donuts is and Southwood Park Drive, and where Mr. Johnson's vehicle

was coming out. And Ms. Hood, we've got an "H" for her car. She's coming up this way. There was a collision into oncoming traffic. I've got that "K" there.

Is that the vehicle that you were riding in?

A Yes, sir.

Q All right. You can go ahead and take your seat. Sorry.

A Okay. (Witness complies.)

Q Ms. Kuck, now, what type of vehicle were you in that day?

A A Chevrolet Tahoe.

Q And where were y'all coming from and going to at the time?

A We had left the Hampton Inn, and we were going to our grandson's ballgame.

Q Where was the ballgame?

A At Hilton Head Christian School.

Q And as we described here, you're riding along Highway 278. Did another vehicle cross the center line and hit y'all?

A Yes, sir.

Q All right. Ms. Kuck, I'd like to hand you a photo.

MR. SMITH: May I approach the witness, Your

Honor?

THE COURT: You may.

BY MR. SMITH

Q I know it's hard, but do you recognize that picture?

A Yes, sir.

Q Is that the vehicle that you and your husband were riding in?

A Yes, sir.

Q Does that picture fairly and accurately describe the damage from the wreck?

A Yes, sir.

MR. SMITH: At this time, Your Honor, I'd like to admit as Plaintiff's Exhibit -- I don't know what number though -- Number 6.

THE COURT: Any objection?

MR. DANIEL: No, Your Honor.

THE COURT: Without objection, it's in evidence.

(Whereupon, Plaintiff's Exhibit No(s). 6 marked for identification and received in evidence.)

MR. SMITH: Your Honor, may I publish the picture to the jury?

THE COURT: You may.

(Plaintiff's Exhibit No. 6 published to jury.)

BY MR. SMITH

Q Ms. Kuck, were you hurt?

A Yes, sir.

Q Was your husband hurt?

A Yes, sir.

Q I'm sorry that happened to both of you.

What I'd like to ask you about are the lighting conditions that day. And I've asked you these same questions before. Do you recall that?

A Yes, sir.

Q Okay. We're going to go through this very shortly.

Was it just beginning to turn dark?

A Yes, sir.

Q Was it totally dark yet?

A No, sir.

Q Was it enough light outside to see the median?

A Yes, sir.

Q Was it enough light outside that you could see the trees lining the highway?

A Yes, sir.

Q And was it light enough outside that you could see other vehicles on the road?

A Yes, sir.

Q And that would be vehicles with or without headlights on?

DIRECT EXAMINATION OF MS. KUCK BY SMITH

A Yes, sir.
Q Ms. Kuck, that's all the questions I have for you. Thank you for your time today.
A Thank you.
THE COURT: Sit tight. Go ahead.
MR. DANIEL: I'm sorry. Thank you, Your Honor.
THE COURT: Mr. Daniel, whenever you're ready, sir.
MR. DANIEL: Your Honor, may I approach the witness?
THE COURT: You may.

CROSS EXAMINATION

BY MR. DANIEL:
Q Good morning, Mrs. Kuck. I'm just going to hand you two more while we're -- for efficiency purposes.
A Okay.
Q You were just shown some photos of your Tahoe you were in. Those two photographs that I just handed you, do those look like additional photographs of the same Tahoe that you were riding in on the night, or evening, late afternoon of this accident?
A Yes, sir.
Q Okay.
MR. DANIEL: At this time, I'd like to have these marked as Defendant's 4.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

(Whereupon, Defendant's Exhibit No(s). 4 marked for identification,)

BY MR. DANIEL
Q Now, you were just asked some questions about the lighting outside at the time of this accident. You said it wasn't all the way dark, and I'm paraphrasing.
Was it pretty dark out there?
A It -- it was hard to see because there's no lights on the road.
Q Yes, ma'am. And you -- the Plaintiff's counsel was asking you questions about this diagram.
First of all, it's not -- as far as where the vehicle with this -- with a K on it, you agree this thing is not necessarily drawn to scale, right?
A Not necessarily.
Q The vehicle with a K could have been even farther back down the road; is that right?
A Yes, sir.
Q Could it be --
MR. SMITH: Jack, Jack, Jack, Jack. You're drawing on my exhibit. Draw on your own.
MR. DANIEL: Okay. Your Honor -- it could have been farther back now -- I think I can use it, Your Honor.
THE COURT: Actually he can refer to it, he just

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

can't write on it. That's fine. He can't write on it.
MR. SMITH: We don't mind him using it.
MR. WILLEY: Because we have to use it for our expert.
THE COURT: He just can't write on it. That's fine.
MR. SMITH: Thank you.
BY MR. DANIEL
Q But where this K is, I'll do this so, you know, you can see it and the jury can see it clearly.
Where this K is, that's not necessarily where your Tahoe was at the time it was hit; do you agree?
A Yes, sir.
Q And, ma'am, it could have been farther up back down the road on US 278; is that right?
A Yes, sir.
Q Okay. And trees lined this roadway; is that right?
A I believe so.
Q It's Hilton Head, there's trees -- this is like a frontage road. You know, they don't allow them to have like a lot of commercial businesses right on -- right up on the highway; is that right? Is that your understanding of how Hilton Head works?

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

A Yes, sir.
Q And I can show you some -- some other photographs that have been marked as exhibits.
Looking at Plaintiff's Exhibit 5, now, ma'am, I'm not asking you to identify the intersection, but there's been testimony already yesterday establishing that this is the intersection of where Southwood Park Drive is and US 278.
Now, for the purposes of this series of questions, if you're back farther down the road this way, outside of the picture, over to the left from where the little sticker is, Exhibit 5 on the bottom, the bottom side of this corner, you see all these trees right there, right?
A Yes, sir.
Q And they're pretty tall trees, right?
A Yes, sir.
Q And once the sun starts going down, just common sense, those trees, they're going to obstruct sunlight; do you agree?
A Yes, sir.
MR. SMITH: Objection, Your Honor. Excuse me. Objection, Your Honor. I think without a proper foundation of the positioning of the sun and what this witness' point of view is, this calls for

speculation.

THE COURT: Well, if she can answer, she can answer the question. So, go ahead.

BY MR. DANIEL

Q When this accident happened, had the sun started to go down?

A Yes, sir.

Q It was starting to get dark, wasn't it?

A Yes, sir.

Q The sun was a good well on its way down?

A Yes, sir.

Q And when the sun starts going down, you'd agree that just common sense, what people know is that once it starts going down below trees it's going to make that roadway even darker; is that right?

A Yes, sir.

Q Okay. Do you see any streetlights in this photo?

A No, sir.

Q Okay. Do you remember giving a deposition --

A Yes, sir.

Q -- in this case that was noticed by the Plaintiff's attorney, Mr. Smith, and he had you on video and all that? Do you remember that?

A Yes, sir.

Q And you were there for pretty much the whole day; is that right?

A Yes, sir.

Q Do you remember describing what you saw right before you were hit head on?

A Yes, sir.

Q Okay. Tell the jury what you saw.

A I just saw an object coming towards us very fast, and then it was only a matter of seconds and we were hit.

Q Okay. And you were in that Chevy Tahoe, we got photos there; is that right?

A Yes, sir.

Q Was your husband driving?

A Yes, sir.

Q And what is your husband's name?

A William Kuck.

Q Where were you?

A I was in the passenger seat.

Q And you said an object coming at you fast. Your husband, did he have his headlights on?

A He did.

Q Okay. Could you make out what was coming at you, whether it was a car? SUV?

A I didn't -- I -- no, sir. I did not know what

was coming, but I could see something coming fast.

Q Mrs. Kuck, did you see headlights coming at you in the moments before you were hit?

A No, sir.

Q So that -- then you found out after the fact what ended up hitting you, it was another SUV; was it not?

A Yes, sir.

Q Was it your understanding that SUV was driven by the Plaintiff in this case, Mrs. Hood?

A Yes, sir.

Q You'd agree with me those photos there, there's some severe damage to your vehicle?

A Yes, sir.

Q Just based on what you know, common sense as a driver and the impact you experienced, you believe that Mrs. Hood was traveling at a high rate of speed?

A Yes, sir.

Q And you never saw headlights?

A No, sir.

Q In your deposition, and I didn't ask these questions, Plaintiff's counsel did, it was on video, but I think he tried to go through the timing --

MR. SMITH: Your Honor, I object. I don't know what exactly he's doing with the deposition here. I believe the proper procedure would be to use it for

impeachment in some way, but not simply to review the questions that I asked.

THE COURT: I agree. You have to ask her a question. And once you've asked her the question, if it's something different than she answered in the deposition, then you impeach her with it.

MR. DANIEL: Yes, ma'am.

BY MR. DANIEL

Q Mrs. Kuck, you saw something coming at you, and you said it was moving fast?

A Yes, sir.

MR. SMITH: Your Honor, he just did it again. He just said what she said in the deposition, despite the instruction.

THE COURT: Okay. He can ask the question, but you can't say, "in your deposition." You just need to ask the question.

MR. SMITH: I didn't say it.

THE COURT: Okay. Well, go ahead.

BY MR. DANIEL

Q I'll just put it this way: What was coming, was it coming slow?

A No, sir.

Q And you didn't see headlights, we've established that.

A That's correct.
Q Okay. Now, as far as the time frame, at some point you first noticed something coming down the roadway at you; is that correct?
A Yes, sir.
Q How long was it in your view before it hit?
A A few seconds.
Q Do you think it was longer than one second?
A Yes, sir.
Q Did -- where was the object coming from? If you were -- I'm not going to draw on this. But if you were in the vehicle labeled K, you're farther back down the road or somewhere there, just for demonstrative purposes, this vehicle that is identified with a K, in which direction was the object coming from that struck you?
A It came this way (indicating.)
Q Will you come down here and just show the jury?
A (Witness complies.)
Q You can just point, don't mark on it.
A Okay. It was coming down this way.
Q So something was coming from the direction where this vehicle labeled with an H is?
A Yes, sir.
Q And then struck you head on --
A Right.

Q -- on the other side of traffic?
A Yes.
Q Okay. Y'all were not stopped; is that right?
A No, sir.
Q You were driving somewhere, and did -- were you looking -- was your husband looking at GPS or anything like that?
A No, sir. I was -- I was navigating. I mean, I was telling him where to go.
Q We just looked at this basic diagram. You're in the passenger seat.
A Right.
Q What we now know, based on what you saw that evening, late afternoon, as the sun's going down, is an object coming at you from what would be your left, headed toward you at an angle?
A Right.
Q And striking your vehicle head on; is that right?
A Yes. Yes, sir.
Q And you believe that you saw that object for more than one second?
A Yes, sir.
Q Was it more than two seconds?
A It was probably around three seconds.

Q So -- so one, 1,000; two, 1,000; three, 1,000 --
A Boom.
Q Did you have time to say anything before you were hit?
A No, sir.
Q Do you think your husband had time to avoid this accident?
A No, sir.
Q As far as what happened with vehicles farther up the road, before this other SUV came and struck yours, did you see anything take place?
A No, sir.
Q Antoine Johnson is the Defendant named in this case, sitting over at the table next to Ms. Suttie. Do you know him?
A No, sir.
Q Okay. Never talked to him? Never met him before?
A No, sir.
Q Okay. I'll represent to you that he was in a vehicle that night, and there was another impact between his vehicle and Mrs. Hood's vehicle. Did you see that take place?
A No, sir.
Q Did you ever talk with me before that deposition

that's been, I don't know, months ago, maybe a year? It's been a while.
A No, sir.
MR. DANIEL: That's all I have.
MR. SMITH: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Ms. Kuck, you didn't speak to me either before that deposition, did you?
A No, sir.
Q I want to go back to the basics. Mr. Daniel just talked about what we all know, right? We all know about the trees and the sun.
Ms. Kuck, is it true that the sun rises in the east and sets in the west?
A I don't know.
Q If we assume that's true, the sun rises in the east and sets in the west -- now, y'all were going west on Highway 278, right?
A Yes, sir.
Q And the road, Highway 278, runs east to west; right?
A Yes, sir.
Q So if the sun sets in the west, the sun wasn't behind all these trees, the sun was right in front of y

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

wasn't it? As it was setting.

MR. DANIEL: Objection, Your Honor.

THE WITNESS: I don't recall.

MR. DANIEL: What's the objection?

THE COURT: Okay. Let's just ask the question. That's fine.

MR. SMITH: I withdraw it.

BY MR. SMITH

Q Now, Ms. Kuck, in this case, your testimony, no headlights, right?

A Yes, sir.

Q One of the issues that we have, and the testimony that we will receive, and the argument so far is Mr. Johnson couldn't see Ms. Hood's vehicle because she didn't have headlights on. Is that what you understand this to be about?

A You said Ms. Kuck's vehicle?

Q I'm sorry, Ms. Hood. Right?

One of the issues is Mr. Johnson says he couldn't see her because her headlights weren't on. Do you understand that?

A Yes, sir.

Q And that goes back to my questions that I asked you in the very beginning. There was enough light outside for you to see vehicles, vehicles with or without

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

headlights? Is that your testimony?

A Yes, sir.

Q And is that the truth?

A Yes, sir.

Q And no matter what Mr. Daniel comes up here and says to you, are you going to change that testimony for him in any way?

A No, sir.

MR. SMITH: Okay. Thank you.

THE COURT: Anything further?

MR. DANIEL: Yeah. I just want --

THE COURT: Ms. Kuck, you need to speak up a little bit. Okay?

THE WITNESS: Okay.

RE-CROSS EXAMINATION

BY MR. DANIEL:

Q I want to put a little finer point on that though. I'm not asking you to change your testimony, but what you did testify to is, you saw an object coming at you. You couldn't even -- it was dark enough out where you couldn't tell whether it was a truck or car; is that right?

A True.

Q It was dark enough out where you couldn't make details of what was coming; is that right?

RECROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

A Yes, sir. Yes, sir.

Q And you agree with me that as things get farther away in the dark, or in dark conditions, it's hard to see them?

A Yes, sir.

Q And you're not here to testify to what Antoine Johnson could or couldn't see at the time of this accident; is that right?

A Yes, sir.

Q Would you agree with me that Exhibit 5 that's been entered by the Plaintiffs, it was a heck of lot darker out by the time of this accident than what Exhibit 5 depicts?

A Yes, sir.

Q Okay. Did you see running lights or parking lights lit up, or anything lit up on the object that hit your vehicle?

A No, sir.

MR. DANIEL: Thank you.

THE COURT: Anything further of this witness?

MR. SMITH: Just one question, Your Honor.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. SMITH:

Q I'm not going to ask you what Mr. Johnson could

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

see. But you, as one of the people there that day, one of the vehicles involved, not far away from all this that's happening, you, yourself, you could see other vehicles with or without headlights on. Right?

A I -- I could not.

Q Okay. I'm sorry. You could see other -- there was enough light outside that you, not Mr. Johnson I'm talking about, but there was enough light outside that you could see vehicles with or without headlights?

A No, sir, I could not.

Q Are you confused by the question? I've asked you that, it seems, three or four times. Am I confusing you with the question?

THE COURT: You need to rephrase it. You need to rephrase it.

THE WITNESS: No.

BY MR. SMITH

Q Let me just ask the original question I asked you from before.

Was it light enough outside that you could see other vehicles on the road?

A No, sir.

Q You don't remember testifying under direct with me just now that there was enough light outside that you could see other vehicles on the road?

A I guess I didn't understand what you was asking.
Q Did you understand it when I asked it in your deposition as well?
A (No response.)
Q I asked you this question before, didn't I?
A Yes, sir.
Q In your deposition, the exact same question, word for word; did I not?
A Yes, sir.
Q And you told me in your deposition, when you swore to tell the truth, you told me that there was enough light outside that you could see other vehicles with or without headlights. That was your sworn testimony; was it not?
A Yes, sir.
Q And again, today, you took the same oath, and your sworn testimony was, "it was just beginning to turn dark, there was enough light outside you could see the median. There was enough light outside you could see the trees lining the highway. And there was enough light outside you could see other vehicles on the road with or without headlights."
That was your sworn testimony when you got up on the stand, right?
A Yes, sir.

Q And then you told me you were not going to change that testimony, no matter what Mr. Daniel had asked; you remember that?
A Yes, sir.
Q But now you're changing that testimony?
A I was --
MR. DANIEL: Objection, Your Honor, argumentative.
THE COURT: Okay. Agreed. Don't argue with her. Just ask the question.

BY MR. SMITH
Q Okay. Were you confused by my --
A Yes, sir.
Q -- last question?
A Yes, sir.
Q Do you stand by your original response?
A Yes, sir.
MR. SMITH: I'm sorry. Thank you.
MR. DANIEL: Very briefly, Your Honor. I just want to put a finer point on this.

FURTHER RE-CROSS EXAMINATION

BY MR. DANIEL:
Q You were confused. You were asked a general question, "Could you see vehicles out there?"
A Right.

Q Now, that question was not prefaced with vehicles 10 feet from you, 15 feet from you, 20 or 30 feet from you, 100 yards from you. That question was not prefaced in that manner, was it?
A No, sir.
Q And you could see the trees lining the roadway. He didn't ask you, you know, was it dark where those trees -- was it dark when you looked at the trees, or was the sun shining on the trees? He didn't ask you that question, did he?
A No, sir.
Q And was the sun shining on those trees at that time of day?
A No, sir.
Q Was the sun setting at that time of day?
A It was.
Q Was the sun in your husband's face, or in your face, as y'all were headed off of Hilton Head Island towards Beaufort at the time of this accident?
A No, sir.
Q So you would agree that a vehicle on this road that's getting dark, or pretty well dark, if it's off in the distance from you might be pretty hard to see; is that right? If it didn't have its headlights on.
A Yes, sir.

MR. DANIEL: Thank you.
THE COURT: Anything further?
MR. SMITH: No, ma'am.
THE COURT: Okay. You may step down.
THE WITNESS: Thank you.
THE COURT: Call your next witness.
MR. SMITH: Plaintiff calls Antoine Johnson. Your Honor, may this witness be excused?
THE COURT: He may.

Thereupon,

ANTOINE JOHNSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH
Q Mr. Johnson, good morning.
A Good morning.
Q How are you doing today?
A Pretty good.
Q I want to start out with some basics with you. Okay?
Do you believe all drivers must pay attention to the road to prevent injury or death to other people?
A Yes, sir.

MR. DANIEL: Objection, Your Honor.
THE COURT: Basis?
MR. DANIEL: May we approach?
THE COURT: You may.
(Off-the-record discussion held.)
BY MR. SMITH:
Q Mr. Johnson, do you believe all drivers must pay attention to the road to prevent injury or death to other people using the road?
A Yes, sir.
Q Could you speak up for us, please?
A Yes, sir.
Q Do you believe all drivers must look before crossing a busy highway to prevent injury or death to other people using the road?
A Yes, sir.
Q These are the rules of the road; are they not?
A Yes.
Q Rules everyone must follow?
A Yes.
Q And, Mr. Johnson, if these rules aren't enforced, they don't mean anything, do they?
A Yes.
Q Now, the first thing we need to do is, we need to establish who hit who. Okay?

THE COURT: Is that a question?
MR. DANIEL: Well, just telling --
THE COURT: Okay. You need to ask a question. Okay? I know he's an adverse witness, I know you can lead him. But, again, ask him a question.
MR. SMITH: Yes, ma'am.
BY MR. SMITH
Q Mr. Johnson, who hit who? Did you hit Ms. Hood, or did she hit your vehicle?
A I hit Ms. Hood.
Q All right. Now, that's not what you told the police officer, is it?
A I don't recall.
Q If the police officer testified you told her at the scene that Ms. Hood hit you, would you have any reason to disagree with that?
A She can say anything, but I don't recall what I told her at the time.
Q Okay. Don't know either way?
A I don't recall.
Q Okay. And the next thing that happened after the collision was Ms. Hood's car was sent across the median into oncoming traffic, true?
A Yes.
MR. DANIEL: Objection, Your Honor. Facts not

in evidence.
THE COURT: And, again, I haven't heard it. So I don't know.
MR. SMITH: Well, I'm asking him. After he hit Ms. Hood, her office (SIC) went across the median into oncoming traffic.
MR. DANIEL: He said "sent."
THE COURT: Okay. You can say "did." But go ahead, ask him a question.
BY MR. SMITH
Q After you hit Ms. Hood's vehicle, did her car go across into oncoming traffic?
A Yes.
Q Just like what's pictured here?
A Yes.
Q I know this isn't to scale, but does this generally represent what happened?
A Yes, sir.
Q I'm sorry?
A Yes.
Q Okay. And what caused Ms. Hood's car to go into oncoming traffic? Was it because you hit her?
A I can't be the one to call that.
Q When I took your deposition, you took the same oath that you took here today; do you remember that?

A I do.
Q "And what do you think caused her direction change to have her careen across the highway?"
Answer: "I guess us colliding."
Does that sound correct?
A If that's what the deposition said, then I guess that's my statement.
Q Okay. It had nothing to do with overcorrecting, did it?
A I don't know.
Q It was a bad wreck, a head-on collision?
A Yes.
Q From what you saw, someone could have died, true?
MR. DANIEL: Objection, Your Honor, speculation.
THE COURT: Well, it's irrelevant as well.
So move on. It's not an appropriate question.
BY MR. SMITH:
Q Did you see smoke?
A I don't recall.
Q But you did not immediately get out of your car, did you?
A I don't believe so.
Q But you were able to get out of your car, weren't you?

A Yeah.
Q But you chose not to.
A No.
Q You chose not to render aid or go check on the people involved?
MR. DANIEL: Objection, Your Honor, relevance.
MR. SMITH: Your Honor, there's going to be a jury charge on this.
THE COURT: Well, just go ahead and if he can answer the question, he can answer the question.
BY MR. SMITH:
Q You chose not to go check on the people or render aid after this happened, true?
A I called help for myself.
Q For yourself. But you did not get out of your vehicle to go check on the people?
A No.
Q And you called help for yourself, but you did not call 911? You did not call an ambulance, did you?
A No.
Q You sat in the car?
A Yeah.
Q And you got on the phone, right?
A I did.
Q And when you finally got out of the car, the

reason you got out of the car was to check the damage to your own vehicle; is that true?
A I don't recall.
(Pause.)
BY MR. SMITH:
Q Mr. Johnson, is this a copy of the deposition transcript from when you testified previously?
A Yes.
Q Okay. Could you turn to Page 126 for me, sir? Are you there?
A Almost.
Q Okay.
A All right.
Q Can you see the little numbers down on the left side of the page?
A Yes, sir.
Q Those are line numbers. Okay?
So, I'd like -- I'm going to ask you about Page 126, lines 20 to 24. Okay? I'm going to ask the question and you read the answer.
"Where was the first place you -- what was the first reason you got out of your vehicle; do you remember?"
And what was your answer, sir?
A "To check the damage."

Q Keep going.
A "To check the damage to my car."
Q To check the damage to your car. Does that refresh your recollection as to why you finally got out of your vehicle?
A Yeah.
Q Who had the stop sign in front of them, was it you or Ms. Hood?
A I did.
Q And you can put that down. I'm sorry.
Who had the responsibility to yield to traffic, would that have been you or Ms. Hood?
A Me.
Q Now, just before the wreck, you were at Dunkin' Donuts, right?
A Yes.
Q Okay. And you were dropping off your cousin, Scooby.
A Yeah.
Q Because somebody else was coming to pick him up?
A Yeah.
Q I'm sorry. Can you say that again?
A Yes.
Q And your plan, if we refer to this chart over here, your plan was, you were going to turn left and go

west on Highway 278.
A Yes.
Q Right? But before you were going to make this left onto that road, was your intention to get to the median, stop, and then proceed the rest of the way through?
A Yes.
MR. DANIEL: I just want to be able to see.
THE COURT: Pardon?
MR. DANIEL: I just want to be able to see.
THE COURT: That's fine.
BY MR. SMITH
Q Now, when you reached the stop sign -- when you looked left, that would have been your point of view; would it not?
A Yes.
Q Nothing obstructing your vision at this intersection, right?
A No.
Q And left, this is where Ms. Hood was coming from, right?
A Yes.
Q Now, you've been to this intersection before?
A Yes.
Q And you know it's a busy road.

A Yes.
Q And you knew you needed to look very carefully before crossing?
A Yes.
Q Yes?
A Yes.
Q Not just glance, but really look, right?
A Right.
MR. DANIEL: Objection, Your Honor.
THE COURT: Basis?
MR. DANIEL: He's asked and answered the question.
THE COURT: Okay. Overruled. Go ahead.
BY MR. SMITH:
Q And at the time that this happened, your testimony is it wasn't totally dark, there was still a little bit of light out, right?
A Right.
Q But you didn't see anyone coming?
A I waited for one car to pass me, but then I looked left again.
Q Yeah. But after that car had passed you, I think you said it was a Hyundai or something, right?
A All I know, it was a silver car.
Q Okay. After the silver car passed and you

looked left, you didn't see anyone?
A Nothing.
Q You didn't see a car with running lights in the left lane?
A Not at all.
Q Coming down this inside lane to the median?
A Not at all.
Q And you didn't see a car with Xenon headlights about ten car lengths back, with full headlights on, coming from the outside lane, did you?
A No.
Q You didn't see either one of them.
A They probably was at that stop light, I don't know.
Q And when you hit the gas and decided to cross Highway 278, you had no idea two vehicles were approaching from your left, did you?
A I didn't see two vehicles.
Q You had no idea who was in those cars.
A Not at all.
Q You didn't know if it was a man, woman, mother, daughter, grandmother? Had no idea who was coming down the road?
A I didn't see no car.
Q But as soon as you pulled out, she was right

there?
A Yeah.
Q Never sounded your horn?
A No.
Q You had no time to react whatsoever?
A No.
Q Now, you started from a complete stop; did you not?
A I did.
Q Okay. And you were accelerating toward the median?
A I was.
Q All right. Now, I just want to make absolutely certain here, okay, to this point. This is not a situation where you saw Ms. Hood but misjudged how much time you had and ended up hitting her?
A Rephrase the question.
Q This is not the situation where you saw her, misjudged how much distance you had, or how much time you had to get in front, and ended up being wrong about that. You just never saw her in the first place.
A I never saw her at all.
Q Okay. And when you decided to hit the gas and cross the road, you can't say how close Ms. Hood was because you never saw her?

A No.
Q Or Dustin Lee, you don't know how close he was either?
MR. DANIEL: Asked and answered, Judge.
MR. SMITH: I'll withdraw it, Your Honor.
BY MR. SMITH:
Q So you don't know what lights Ms. Hood had on. You're just assuming they were off because you say, if she had headlights on, you think you would have seen her; is that true?
MR. DANIEL: Objection, Your Honor, mischaracterization. He didn't testify to that.
THE COURT: Okay. You need to rephrase the question.
BY MR. SMITH:
Q Mr. Johnson, are you assuming that Ms. Hood's headlights were off?
A I didn't see no headlights.
Q But you didn't see her car, period, right?
A If I would have seen her headlights, I would have seen her car.
Q But my question is: You didn't see her car, so you don't know if her headlights were on or off. You're just assuming they were off because you -- that's why you didn't see her.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

A I didn't see no headlights, so I didn't see no car.
Q Do you remember telling the police officer that you saw her car and that she did not have headlights on?
A I don't recall.
Q You might have said that. You don't recall either way.
A I don't recall.
Q Mr. Johnson, do you have a cell phone?
A I do.
Q Is the phone number (843)338-4115?
A It was.
Q Sprint?
A It was.
Q Is that a smart phone?
A It is.
Q Does it have a keyboard for texting?
A Yeah.
Q Are you on that phone a lot?
A Sort of, yeah.
Q Sort of?
A Yeah.
Q Mostly texting?
A I do a little of everything.
Q And you had your phone on you at the time of the

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

wreck, didn't you?
A My phone's always on.
Q No, I mean it was -- it was with you?
A Yeah.
Q And you had it in your car?
A It was.
Q Now, at the time of the wreck, were you feeling alert?
A I was very alert.
Q Very alert?
A Yes.
Q You were not tired or drowsy?
A Not at all.
Q Do you remember how late you were up the night before?
A Probably until about -- I can't even say.
Q Do you recall getting off the phone the night before at 12:17 a.m.?
A Don't recall.
Q A three-hour call?
A Don't recall.
MR. SMITH: Your Honor, may I approach?
THE COURT: You may.
MR. DANIEL: May I approach, Your Honor?
THE COURT: Sure.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

MR. DANIEL: At least look at what he's handing the witness.
MR. SMITH: Oh, I'm sorry. Can you give Jack a copy?
MR. WILLEY: You have all of the copies. He's seen it before.
BY MR. SMITH
Q Mr. Johnson, is your phone number (843)338-4115?
A That was the number I had at the time.
Q Okay. And if we start here in this first entry, on 11-6-2014, so that would be November the 6th, 2014, the night before the wreck, right?
A Uh-huh.
Q Is that a "yes"?
A Yes.
Q We see a call that starts -- a voice call that starts at 2114. That 's 9:14, right?
A Yes.
Q And that's a three-hour call that ends at 0017. That's at 12:17 a.m., just after midnight.
A Yeah.
Q All right. So if you hung up the phone at 12:17, just after midnight the day before the wreck, does that refresh your recollection as to how late you were up that night?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

A It doesn't show that I hung up the phone though. The caller on the other end could have hung up the phone. I could have been sleeping.
Q So you're saying that this entry for an inbound call -- right?
A Yeah. I answered the call, but that doesn't mean I ended the call though.
Q Okay. So you're saying what may have happened was, you didn't talk to this person, you just answered the phone and you sat the phone down for three hours and didn't talk to them --
A I could have had a phone conversation and fell asleep on the phone. I'm known for doing that.
Q Okay. What do you think's more likely? That you had a conversation until just after midnight, or that you fell asleep during the phone call?
A I don't know what happened. I can't tell you.
Q Well, let me ask you this: Do you remember who is 473-5686? Who were you talking to?
A Don't recall.
Q You don't know who that number is?
A I don't recall. I haven't had that number in three years.
Q No, no, no. Your number -- I'm sorry.
A That's the caller's number.

Q Do you remember calling --

A That's the caller number. I didn't have this phone in three years, so I don't remember whose number that is.

Q Okay. But, what you want the jury to believe is that this voice call that came in from this number that lasted three hours, that you don't think you were on the phone that late, you went to bed earlier. Is that what you're saying?

MR. DANIEL: Objection, mischaracterization.

BY MR. SMITH:

Q Well, what are you saying?

A I could have been on the phone, but I don't know how long I was on the phone. I don't know if I ended the call or not.

Q Well, if you were on the phone, as these records suggest through just after midnight -- I mean, do you stay up after midnight? Is that unusual for you?

A Sometimes, depending on the time of the week.

Q Okay. Now, Mr. Johnson, do you recall what time you woke up that morning?

A I usually get up for work about 6:00.

Q Okay. You see here, the next entry, 11-7, okay, it's the day of the wreck, we've got an outbound call. So that is -- I'm sorry, an outbound text.

Do you see that next entry?

A Yep.

Q So that is your sending a text. And what time of the morning are you sending your first text of the day?

A 4:44.

Q 4:44 in the morning?

A Yeah.

Q So, about four and a half hours between the last call and the first text in the morning. Would you agree with that?

A Yes.

Q Mr. Johnson, is it fair to say that the last thing that you did at night was hang up the phone, and the very first thing you did in the morning was grab your phone?

A I can't say that far that the first thing I did in the morning was grab my phone.

THE COURT: Mr. Johnson, you need to sit up and get the microphone to your mouth, sir, so we can hear you.

BY MR. SMITH:

Q Can you tell us?

A I can't say that the last thing I did was hang up the phone, but I know the first thing I did was pick up the phone. That's usually what I do in the morning.

Q Is that normal for you? The second you wake up, you reach for that phone and you either make a call or send a text?

A After I do what I got to do, yeah, I usually go to my phone.

Q Okay. And you went to work that day sometime between 5:00 and 7:00 a.m., true?

A I usually get to work about 6:45.

Q Sometime between 5:00 and 7:00 a.m.?

A About 6:45.

Q Okay. Between 7:30 and 9:30, did you use your phone 26 times?

A I guess.

Q Okay. I mean, we can go through them and count them up, if you like.

So between 7:30 a.m. and 9:30 a.m. --

MR. DANIEL: Your Honor, I'm going to object to --

THE COURT: What's your objection?

MR. DANIEL: Can we approach unless you want me to make the objection?

THE COURT: Sure.

(Off-the-record discussion held.)

BY MR. SMITH:

Q So Mr. Johnson -- I'm sorry. Would you come

down here, please? I don't think you're going to be able to see it from up there.

A (Witness complies.)

Q So the question was: Between 7:30 in the morning to 9:30 in the morning, I count 26 phone activities, one of those being a voice call.

Does that seem right to you?

A I guess.

Q I'm sorry. Can you -- you got to speak up.

A I guess.

Q Okay. The court reporter is right behind you as well, and she's going to need to hear you. Okay?

And then from 10:25 a.m. through 11:56 a.m., I count another 35 times. You're welcome to count them if you like.

Does that seem accurate to you?

A Okay.

Q Okay. And now from 11:57 a.m. through 3:50 p.m., we're getting into military time here, 350, we got another 25 times.

Does that seem correct?

A Correct.

Q And you got off work at 4:00 that day; is that true?

A About 2:30, 3:30.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

Q Okay. So from 7:00 a.m. to 4:00 p.m -- well, from 7:30 a.m. to 4:00 p.m., we've got 26, 35, and 25. That's 93 times, 93 uses of the phone up to this point; is that right?

A Yes.

Q And this is while you're at work, right? Yes?

A Right.

Q Okay. And then you went home.

A No, I didn't.

Q Okay. You went to go cut Scooby's hair?

A Yeah.

Q And from 4:02 through 4:26 -- I'm sorry. From 4:02 to 4:26, another 29 times.

Does that seem correct?

A Correct.

Q And then you got back in the car to take Scooby up to Dunkin' Donuts a little after 4:30 -- well, after 4:30; is that fair to say?

A I don't really recall what time we left the house.

Q Okay. So we know the wreck happened somewhere around 6 o'clock at night, right?

A Yeah.

Q Okay. And it happened at just outside the Dunkin' Donuts, right?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

A Yes.

Q Okay. So is it fair to say -- you don't live an hour and a half away from Dunkin' Donuts, do you?

A About an hour -- about 45 minutes.

Q About 45 minutes. So you would have gone up to -- and you didn't get anything to eat at Dunkin' Donuts, right?

A No.

Q You were just dropping him off, right?

A Yes.

Q So sometime after 4:30 is when you went to Dunkin' Donuts to go drop Scooby off?

A Yeah, sometime after that.

Q And then as we start getting a little closer in time here we see voice calls at 4:42, 4:50, and 5:43; you see that?

A That's a text message.

Q Okay. Text message there.

And these two text messages here, they're just 16 seconds apart at 5:43 p.m.; do you see that? It's got the seconds on here, 5:43:12 and 5:43:28.

A Okay.

Q Did you say "okay"?

A Right.

Q I'm not trying to be rude, I'm just making sure

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

the court reporter can hear you. Okay?

And at this point, from the time you went to work, right -- from the time you went to work, you had used your phone 93 plus 29 plus 2 -- that's 124 times.

MR. DANIEL: Objection, Your Honor. This document doesn't show that he's using the phone every time. A lot of it --

THE COURT: That's a mischaracterization.

MR. DANIEL: Yes, ma'am. Some of these are inbound texts. I'll deal with it with a question, but objection.

THE COURT: Okay.

BY MR. SMITH:

Q Mr. Johnson, is it true that generally when you receive a text message, you look at it?

A Not always.

Q Not always? If you used your phone -- well, if your phone log shows phone activity 124 times from the time you went to work at 5:45, your testimony is "sometimes you look at them, sometimes you don't."

A I mean, I look at them, but not always right away.

Q Okay. And then at 5:57, you receive a text message; do you not?

A I do.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

Q And you understand that we contend this is when the wreck happened, at 5:57 or earlier?

A I can't recall.

Q You've been sitting here through the trial. You don't know that that's --

A I don't know the actual time of the wreck.

Q All right. Mr. Johnson, can you see how some people might believe that explains why you didn't see the vehicles coming down the road, because you were looking at this text that came in in the exact minute of the wreck?

MR. DANIEL: Objection, speculation.

THE WITNESS: There's no guarantee I opened the text message though.

BY MR. SMITH

Q I'm sorry?

A There's no guarantee I opened the text message.

Q No, there's no guarantee, but my question is: Can you see how people might think that explains why you didn't see Ms. Hood coming down the road to your left, and why you didn't see Dustin Lee with his Xenon headlights ten car lengths behind?

MR. DANIEL: Your Honor, objection. He's asking the witness to speculate.

THE COURT: Agreed. It's a speculative question.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

BY MR. SMITH:

Q Mr. Johnson, do you expect the jury to believe that you were not looking at your phone as you crossed Highway 278 at 5:57 p.m.?

A Say that again?

Q Do you expect the jury to believe that you were not looking at your phone when you crossed the highway at 5:57 p.m.?

A I can't think for the jury.

Q Are you asking them to believe that? You understand that's one of the things that we're claiming, right?

A I don't know.

Q I want to get -- you know, I want to be straight with you and tell -- and give you an opportunity to answer this question because this is what we're claiming. All right?

A Okay.

Q And so my question to you is: Is that what you want the jury to believe? Do you want the jury to believe you were not looking at this text at 5:57, when you crossed Highway 278?

A I wasn't.

Q You were not?

A I wasn't.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

Q Okay. Then what were you looking at?

A The road.

Q Can you offer any other reason why you didn't see Ms. Hood coming down the road with her running lights on, and Mr. Dustin Lee ten car lengths behind with his Xenon lights on?

A If I would have seen her with her running lights on, I would have stayed at the stop sign.

Q Mr. Johnson, is it possible that maybe you just didn't look as close as you needed to?

A Not at all, because I looked twice.

THE COURT: Okay. If you're done with whatever your exhibit is, come take a seat, sir.

MR. SMITH: I'm sorry.

THE WITNESS: (Complies.)

BY MR. SMITH:

Q Mr. Johnson, is it possible you just didn't look as close as you needed to? Maybe it was more of a glance?

A I looked twice. There was a silver car that passed me before I pulled out, and I didn't see no cars passing after that.

Q So you looked two times then?

A Yes.

Q And neither one of those times you saw either one, Ms. Hood, or the Xenon headlight, Dustin Lee?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

A I seen a silver car pass me first.

MR. SMITH: May I have just a moment, Your Honor?

THE COURT: You may.

(Pause.)

BY MR. SMITH:

Q Mr. Johnson, I want to ask you one more thing about the last slide. You can stay where you are. I'll come to you.

We talked earlier about after the wreck happened and you stayed in your car and you made a phone call. Do you remember that?

A Yes.

Q Okay. You made that phone call -- this is the next entry we've got at 5:59:04.

A Correct.

Q Right? So -- and who was it that you called? Who's 837-1126?

A My mama.

Q Okay. But you didn't stop there, did you?

A No.

Q You sat in your car and continued to make phone calls, send text messages through 6:48 p.m.?

A After the time I was in the hospital.

Q How long did it take you -- if the wreck was at

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

5:57, how long did it take you to get to the hospital or leave the scene? How would -- they didn't come to you first, did they?

A I don't recall.

Q All right. They treated Ms. Hood and the Kucks, I imagine, before they came to you?

A Correct.

Q All right. So how quickly do you think you left the scene? Because from 5:59 -- 25 minutes? You think it took them 25 minutes to talk to you and get you away? Or do you think that it was 48 minutes? Or somewhere in between?

MR. DANIEL: Your Honor, speculation.

MR. SMITH: I'm just asking.

THE COURT: Ask him "do you know?"

BY MR. SMITH

Q Do you know?

A I don't recall.

Q Okay. But you would agree with me, these records show that 5:59 through 6:48, one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 -- 27.

So in the 48 minutes after the wreck, your phone records show 27 activities. Does that sound correct?

A Uh-huh. (Indicating affirmatively.)
Q You sat in your car and used your phone a lot, right?
A I wasn't on my phone while I was in the car.
Q Okay. Were you in your car at 17 -- at 5:59, when you called your mom?
A I made two calls while I was in the car, and I didn't have my phone until I got back in the hospital. And that was to my mom and my brother.
Q Okay. You called at 5:59. You made another call at 6 o'clock, another call at 6:03. I'm sorry, a text at 6:03, another text at 6:03, another text at 6:03. None of these were in your car?
A That was to my brother. He lives -- he was living across the street, so I was telling him what was going on.
Q I know, but what I'm saying is, you sat in your car and started talking on the phone and sending text messages.
MR. DANIEL: Objection, leading.
THE COURT: He can. He's an adverse witness. He can. Go ahead.
BY MR. SMITH:
Q Mr. Johnson, you sat in your car after the wreck, and got on the phone and start sending text

messages. Right?
A You can say that, I guess.
Q Well, I don't want to say that, I'm not testifying. If you know, you know. The records are the records.
A You can say that.
Q Well, okay. Well, these are your records; are they not?
A They are.
Q I sent these to your lawyer well in advance of today, right? And he agrees these are genuine accurate records of your phone.
A Correct.
Q Okay. And you don't argue with the accuracy of those records, do you?
A Not at all.
Q All right.
MR. SMITH: And, Your Honor, I'd like to offer these exhibits as 7 through 12.
MR. DANIEL: No objection.
THE COURT: Without objection.
(Whereupon, Plaintiff's Exhibit No(s). 7-12 marked for identification and received in evidence.)
MR. SMITH: I have no further questions, Your Honor.

THE COURT: Okay. Anything, Mr. Daniel?
MR. SMITH: Go ahead. I'm sorry.

CROSS EXAMINATION

BY MR. DANIEL:
Q Antoine, I'm 40 years old. How are you -- how old are you?
A Twenty-three.
Q I text some, but, you've grown up with it, right?
A Yes.
Q They haven't shown you a single substantive text in this series of texts --
MR. SMITH: Objection, leading.
MR. DANIEL: Your Honor, he called the witness.
THE COURT: He's your witness. Don't lead him.
BY MR. DANIEL:
Q Okay. Did they show you any texts, actual texts that were sent back and forth in this call log that we're looking at?
A No.
Q Who's your cell phone carrier?
A Sprint.
Q Looking at Exhibit 7, the one that Mr. Smith was asking you questions about, where this thing's highlighted right at 175743, it says, that's a -- is that a text?

175743? You see call type?
A Correct.
Q What does it say?
A A text to me, too.
Q And then what does it say over here on this side?
A Inbound.
Q So that's someone sending you a text?
A Correct.
Q Do you see -- you're not sending a text back to that number?
MR. SMITH: Your Honor, object, leading.
THE COURT: Basis -- to some extent, just ask the question.
BY MR. DANIEL:
Q When's the next time on this record we looked at where you send an outbound text?
A 1803.
Q 1803 is 6:03; is that right?
A Correct.
Q Had you called your mom before that?
A Correct.
Q Because you had just gotten in an accident?
A Correct.
Q You wanted to let -- did you want to let her

know?
A Yeah.
Q And then who did you text?
A My brother.
Q Can you text fast?
A Pretty so.
Q Are your messages brief?
A Yeah.
Q When you're working during the course of the day, is there downtime?
A All the time.
Q How old were you at the time?
A Nineteen, I believe.
Q So sometimes you stay up till midnight?
A Depending on the time of the day.
Q That text that was at -- that they were asking you about at 4-something in the morning, do you know if that was something that -- do you ever wake up in the middle of the night and see something and send a text and go back to sleep?
A Yes. Sometime I stay up.
Q Do you know that morning, and this happened a long time ago, do you know that morning, at 4:40, whatever the time was, whether you sent that text and then you started doing things that morning, or whether you rolled

back over and went back to sleep?
A I don't recall.
Q Do you keep your phone right there by your bedside?
A Yeah.
Q Is it possible you just looked at something and went back to sleep?
MR. SMITH: Objection, leading.
THE COURT: It's not a leading question. He said, "Is it possible".
THE WITNESS: Say again.
BY MR. DANIEL
Q Is it possible that you looked at something, sent a text, and then rolled over and went back to sleep?
A It could happen.
Q Have you ever done that before?
A Yes.
Q You would agree that just -- he's asking you, you've said, you know, the jury, you can't speak for the jury. That's what you just testified to, right?
A Yes.
Q But I want to ask you, and I want you to be very clear because it's important. Were you reading a text when you pulled out to make that left-hand turn?
A No.

Q How many times did you check traffic before you pulled out to make that left-hand turn?
A Twice.
Q You heard that lawyer testify yesterday. You were in the courtroom, right, Antoine?
A Yes.
Q Do you remember what he said about how dark it was?
MR. SMITH: Your Honor, I object. Pitting witnesses, lay witnesses.
THE COURT: Okay. Let's not pit witnesses. But, again, you did some to that extent as well, Mr. Smith. So --
THE WITNESS: Say again?
BY MR. DANIEL
Q Do you remember hearing the lawyer testify about how dark it was when this accident happened?
A Yes.
Q Do you remember hearing him put a percentage on it?
A Yes.
Q What did he say?
A I believe it was like 90 percent or something like that.
MR. SMITH: I -- I'm sorry. I --

THE COURT: Okay. You just need to repeat his testimony, and you can refer to him as Mr. Lee.
BY MR. DANIEL
Q Do you remember what Mr. Lee said?
A I believe it was 90 percent dark.
Q Do you know Mr. Lee?
A Not at all.
Q Have you ever met him before this accident?
A Not at all.
Q Did -- have you ever met him since the accident?
A Not at all.
Q Exhibit 5, is that the intersection where you were when this accident happened?
A Yes.
Q Where were you? Were you at --
A I was by -- at the stop sign.
Q Okay. Did you have to pull up to -- do you see that white line down there?
A Yes.
Q Is that a stop bar?
A Yes.
Q Did you pull up to that?
A Yes.
Q I guess you -- it looks like -- would you have to ease up even a little farther to see?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

A A little bit more, yes.
Q So you had to do that. And, again, you checked traffic how many times?
A Twice.
Q The first time you checked traffic, what did you see?
A A silver car.
Q Was it pretty dark when you saw that silver car go by?
A Yes.
Q Did the silver car have its lights on?
A I don't recall.
Q Did you have your lights on?
A Yes.
Q You have a mobile phone. Do you have a headset or Bluetooth in your car?
A Yes.
Q Did you have one in your Honda at the time of the accident?
A Yes.
Q Now, this intersection, there's -- is there a median?
A Yes.
Q Okay. And --
MR. DANIEL: Your Honor, may I approach?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

THE COURT: You may.
MR. DANIEL: Antoine, I'm just handing you a black and white photo. Take your time and look at that for a second.
MR. SMITH: May I?
MR. DANIEL: Here, you can look.
MR. SMITH: You don't have one for me? I just want to follow along.
BY MR. DANIEL:
Q I'll just stand right here.
Have you looked at it?
A Yes.
Q Do you see in the top left of the photo, it's kind of upside down, but you see what that -- can you read what that writing says?
A Have I asked them?
Q I'm looking at the top left. Top left.
A Oh, the William -- William Hilton Parkway.
Q No. It's upside down, right -- you've got it turned the other way. Right -- right there. Or -- yeah, just turn it this way. Sorry.
A Southwood Park -- Southwood Park Trail.
Q What road were you on?
A Southwood Park Drive.
Q And there's that stop bar right there, and then

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

like the little walkway, right?
A Yes.
Q So this is the picture where the accident happened, an overhead view?
A Yes.
MR. DANIEL: Your Honor, at this time I'd admit that as Defendant's Exhibit 5.
THE COURT: Okay. Any objection?
MR. SMITH: No. No, ma'am.
THE COURT: It's in evidence then.
(Whereupon, Defendant's Exhibit No(s). 5 marked for identification and received in evidence.)
BY MR. DANIEL:
Q You see in this photograph that there's this median, and when you look at it you can answer. And then in the Google overhead view, there's like a little white car where the median is; do you see that?
A Correct.
Q Were you going to turn right or left?
A Turn left.
Q Turn left from Southwood Park Drive?
A Yes.
Q Okay. To head back off Hilton Head Island toward Beaufort?
A Back toward Ridgeland. Towards Ridgeland.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Toward Ridgeland.
A Yep.
Q Okay. So you check traffic to your left. You've already said you checked it twice. You start to move. Did you ever check traffic to the right, what's coming across the other way, over on the other side of that median?
A Yes.
Q What did you see?
A More cars.
Q There were -- there were cars coming?
A Yes.
Q Okay. So those cars would have been coming from your right, but on the other side of the road?
A Yes.
Q Do you remember seeing some cars with headlights on?
A Yes.
Q So the cars over there had their headlights on?
A Yes.
Q So when you looked to your left and didn't see anything, and you started to move forward, was your focus moving forward just to get to that median?
A To get to the median and come to another stop.
Q Because there were cars on the side?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

A Coming up.
Q Do you know whether you may have hit Mrs. Hood on her front tire? Or that's where the contact was? You didn't know?
A I don't know. I just know it was on the front passenger side somewhere.
Q You've seen these photos. Have you been able to look at the photos from where you're sitting of her vehicle?
A Yes.
Q The impact was up front; do you agree?
A Yes.
Q Were you driving fast?
A No.
Q Had you barely hit the gas?
A Barely, yes.
Q Were you -- were you into that left lane? Or was most of your car still in that right lane? Do you know where you were as far as the body of your car in that overhead view?
A I want to say I was still in the right lane a little bit.
Q Okay. You didn't hit -- did you hit her hard enough to spin her around?
A I don't believe so.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q The vehicle that you made contact with, did it keep going down the road, or did it spin like a top?
A I don't recall.
Q You didn't -- once you hit it, you -- it went -- did it go down the road out of your vision?
A Yeah.
Q Were people on the scene quickly --
A Yeah.
Q Or did it take a while?
A They was there pretty quick.
Q Did you see the impact between Mrs. Hood's vehicle and the Tahoe that some witnesses have been talking about earlier this morning?
A No, I just heard it.
Q Was it too far down the road for you to see, or was it too dark to see?
A It was farther down the road, so I could barely see what was going on.
Q Did you see people around those vehicles going to help?
A Yes.
Q How quickly were those people there?
A I can't put an estimated time on how fast they got there, but it was -- I guess you could say pretty quick.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Are you familiar with that intersection?
A Yes.
Q Is it straight as far as the eye can see? Is there a bend?
A It's pretty straight.
Q Yeah. Is there a gradual bend though, do you think?
A Yeah.
Q You didn't see anything coming when you looked left?
A No.
Q Your cousin, you cut his hair that day?
A Yes.
Q Were you cutting his hair the whole time or -- when you went to his house?
A No.
Q Okay. What do you remember doing? I know it was a long time ago.
A I got off from work, cut his hair, and played like this a game of Madden, I believe.
MR. SMITH: Played what?
THE WITNESS: Madden.
BY MR. DANIEL:
Q Is it the Madden football?
A Yeah, I believe.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Okay. And I just started right in with the text messages, Antoine. Tell me about yourself. Where did you grow up?
A Hardeeville and Ridgeland.
Q Have you lived in Hardeeville and Ridgeland all your life?
A Ten years.
Q Okay. Where did you go to high school?
A Ridgeland High.
Q Did you play sports?
A Football and track.
Q Football and track?
A Yes.
Q Did you -- what did you -- what events did you compete in in track?
A A 110-meter hurdles and 400 hurdles, four by one, 200, and the four by four.
Q Did you go to State in track?
A For the 110 hurdles, 400 hurdles, and the four by four.
Q Did you win or place in any event?
A Placed top three in all. I won the 110.
Q You won the State champion in the 110?
A Yeah.
Q You were working at the time of this accident?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

A Correct.
Q Where were you working?
A The Greenery.
Q And is that a landscaping business?
A Yes.
Q You working now?
A Yes.
Q Where are you working?
A I detail cars in the auto mall.
Q How long -- how long have you been working there?
A I just started back working there, so about two months.
Q You were there before?
A Yes.
Q Why did you leave?
A I was going back to school.
Q What were you going to school for?
A Barbering.
Q Who do you live with?
A My mama and daddy.
Q And what are their names?
A Richard and Lativia Johnson.
Q How long have you lived there?
A All my life.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Those text messages that were inbound that Mr. Smith was asking you about, looking at -- are you looking at those phone records now?
A Yes.
Q Does it say whether you were reading them?
A No.
Q The text messages that you sent that were outbound, does that record say how long those messages were, or how long you were on the phone?
A No. As far as how long --
Q How long the text message is, or how long it took you to send it?
A Oh, no.
Q Do you ever answer "yes", "okay," or "no," "can't", things like that?
A All the time.
Q Short. Sometimes your texts are pretty short?
A Yes.
Q Are your texts usually short?
A All the time mostly.
Q So you looked to your left, didn't see anything, Antoine, you looked -- you looked to your left, you didn't see anything, you started to move forward to make a left turn?
A I looked to the left, and I looked again after

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

the car passed, then I looked again, then I tried to move forward.
Q Okay. You didn't see a vehicle when you started to move forward and hit the gas; is that right?
A No.
Q And then a vehicle was just there?
A Yes.
Q Have you seen the color of that vehicle now, after the fact?
A Yes, sir.
Q Is it dark in color?
A Yes, sir.
Q And I realize this happened fast but -- and I don't want to put words in your mouth, but was what ended up being right in front of you the car you made contact with, that SUV, going slow? Fast? Do you have any idea?
A I don't recall.
Q How quick did that contact happen?
A Pretty quick.
Q They have some photos of your Honda.
Is Exhibit 4, is that your car?
A Yes.
Q Do you remember whether your bumper was torn off at the scene?
A During -- during the accident?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Yes. Yes.
A I don't believe it were.
Q Is this at the scene?
A No.
Q It looks like it's at a tow yard somewhere, right?
A Correct.
Q There was damage to your vehicle, but you don't -- as far as you remember, the bumper wasn't completely off?
A No.
Q Mr. Smith asked you about not getting out to help people. When you looked over and saw that there had been another accident, were people already there rendering aid?
A Yes.
MR. DANIEL: Thank you, Antoine.
THE COURT: Anything further?
MR. SMITH: Yes, ma'am.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Mr. Johnson, I want to try to get something straight, a couple of things here.
Number one, you said that during the day you got breaks, right?

A Yeah.
Q But if we review these records from the time you were at work --
MR. SMITH: Just put them up one through -- yeah. Okay.
BY MR. SMITH:
Q If we review these records from while you were at work -- sorry.
You said you got to work around what time?
A About 6:45.
Q Six-forty-five. So did you have a break at 7:29? At 7:42? At 7:49? At 8:13? At 8:14? At 8:30; At 8:34? At 8:35? At eight -- did you have a break all those times?
A The job description I had at the time, it was a lot of us standing around. So if there is nothing going on, we can be on our phones.
Q So what you're asking the jury to believe -- you understand the jury is -- they're assessing credibility today; do you understand that?
A Yes.
Q Okay. And you -- but you want the jury to believe, when they receive these phone records and they go back to the jury box and they're looking at them, you want them to believe that every entry between 7:30 in the

morning and 4 o'clock in the afternoon, 90-something times, that each one of those, you were on a break?
A Probably was one of my free periods.
Q I'm sorry?
A Probably was one of my free periods, when there wasn't nothing going on. I was on the pine straw crew at the time, so if our job was done we ain't have nothing to do but ride the clock out.
Q Okay. Mr. Johnson, I also want to ask you about the call you made the night before, the one -- the call that you made the night before, or the entry that we see for the night before, the three-hour phone call -- I'm sorry. No. My mistake.
The 4:44 entry, the day of the collision, the very first activity on your cell phone that day, who are you getting a text from?
A I'm sending a text.
Q Okay. Who are you sending a text to at 4:44 a.m., the day of the wreck?
A To one of my friends.
Q 1200?
A Yeah.
Q Okay. That's one of your friends?
A Yeah.
Q And you know that. What's that friend's name?

A I don't think --
Q What's that?
A Travia.
Q Tray what?
A Travia.
Q Okay. Now, you said this text that came in at 5:57 p.m., when we say the wreck happened, you say you didn't look at that text, right?
A Correct.
Q And that's from the same number, 1200, isn't it?
A Correct.
Q So the very first thing you do in the morning, the day of, is reach for your phone and you send a text to this person. The very first thing.
A You can't say that's the first thing that I did that morning.
Q How -- when did you wake up?
A There's no telling when I got up.
Q Well, we know the first text you sent was at 4:44 a.m. Did you wake up -- well, let me rephrase the question.
Do you recall waking up sooner than 4:44 a.m., or was that about when you woke up that day?
A I tend to get up in the middle of the night at random times between 2:00 and 3:00 -- between 2:00 and

4:00 in the morning. So there's no telling when I got up. I could have got up, went back to sleep, and then got back up and started messaging. I don't know.
Q Well, if you got up at 2 o'clock in the morning, and your last phone call ended at 12 -- just after midnight, that gives you about an hour and 45 minutes of sleep the night --
A Well, like I said the first time, there's no, guarantee that I ended that phone call at 12 o'clock. I'm known for getting on the phone and going to sleep on the phone.
Q I get you. But Mr. Johnson, your memory is not perfect back to this day and what time you got up and all that; would you -- is that fair to say?
A Correct.
Q Okay. And all that we have to rely on here is your cell phone records; is that correct?
A Correct.
Q All right. And those cell phone records show that at 4:44 a.m. you called this number, you sent a text to this fellow, Travia.
A Female, yeah.
Q Right?
A Correct.
Q Okay. That was the first activity on your phone

that day, the very first activity we see on your phone that day, right?

A Correct.

Q All right. And that same exact person, who was your first activity, that exact same person was the one that sent you the text at 5:57, when we contend you were crossing Highway 278. And you want the jury to believe you didn't read that text that came from the same person that your very first activity of the day was with.

A Correct.

Q That you grabbed that phone and sent a text?

A Correct.

THE COURT: All right. Let's move on, y'all.

MR. SMITH: Okay. Your Honor, may I ask one more question?

THE COURT: One.

BY MR. SMITH:

Q Who's Travia?

MR. DANIEL: Your Honor, relevance.

THE COURT: Okay. Go ahead and ask that.

THE WITNESS: That was my girlfriend.

BY MR. SMITH:

Q I thought you met your girlfriend in the hospital after the wreck?

A At the time she was my girlfriend.

Q Okay. Okay. Thank you.

THE COURT: Anything further?

MR. DANIEL: No, Your Honor.

THE COURT: You may step down, sir.

Ladies and gentlemen, this is a good time for a break.

Again, do not discuss the case. It would be inappropriate to do so.

Depending on how long the next witness is, I have to get the next witness up and then break for lunch. Or if there's another short witness, we're likely to do that.

But I'm looking at somewhere between 12:30 and 1:30 breaking for lunch today. Okay? Just to let you know.

Go back, get a coffee, ladies and gentlemen, stretch your legs. We'll be back with you. Do not discuss this case, it would be inappropriate to do that.

(Jury exits the courtroom.)

THE COURT: All right. Anything on the record before we go on break for just about ten minutes, from the Plaintiff?

MR. WILLEY: Yeah, we -- before our expert is called we will have some matters of law that we just

want to discuss and get out of the way.

THE COURT: Okay. Which expert?

MR. WILLEY: Ms. Borzendowski -- Dr. Borzendowski.

THE COURT: Okay. Your human factors expert; is that correct?

MR. WILLEY: Yes, ma'em.

THE COURT: Okay. Well, y'all take a five-minute break and we'll come back and we'll talk about her testimony. Okay?

MR. WILLEY: Okay. Thank you.

(Whereupon, the Court stood in recess.)

THE COURT: All right. Anything you need to put on the record, Mr. Willey?

MR. WILLEY: Yes, ma'am. We -- our second witness that we will call is Dr. Stephanie Borzendowski. In pretrial we moved in limine to prohibit counsel from making any reference to any black box data until those witnesses came forward or any witness as to the speed, as it's not a proximate cause and for other reasons.

And in this case, when we call Ms. Borzendowski we expect, because he just told us as much, him to make reference to the speed of the vehicles. And in her deposition, specifically on Pages 23 through --

THE COURT: He's not going to say "the speed from the black box said." He's going to ask her if she considered speed in making her -- or forming her opinion as to this case. Read her deposition, she says "no."

MR. WILLEY: Right. And our position is that's as far as they can go. Because what happened yesterday is Your Honor ruled that they cannot mention tailgating. And on the third question it specifically came out with that word from counsel about that specific incident. And I'm afraid that's going to happen again because before that occurred, I believe Mr. Daniel is going to address this witness, Ms. Suttie went over to him, and I believe based on what I could hear instructed her to do that.

So I want to make sure that this is not going to happen with this witness. If she says no, that will be the end of that as to speed.

MR. DANIEL: Your Honor, we did talk about this briefly in chambers. It's our position that, and I don't believe Your Honor has ruled on it, it's a standard jury instruction, or standard instruction on speed. It is certainly our position that speed is a factor in this case, that speed -- the jury can draw, based on their own common knowledge and common

that speed may have been a contributing cause or proximate cause of the accident.

This witness, this particular expert, provided a number of things, not by us. Plaintiff's expert provided a number of things that are in reply, including Woody Poplin's deposition. I simply wanted to ask her if in her testimony she testifies that she read his deposition and recalls certain things about what Woody Poplin found, what he pulled from the vehicle.

I should be able to at least ask her what Woody Poplin found, what he documented, and whether she considered it.

THE COURT: Okay. What I'm going to let you do is, you can ask to the extent in Woody Poplin's deposition he talks about or testifies to speed. I'm not going to let you say, "Did you consider that in forming your opinion?"

And she's going to say yes or no.

But, again, you can't testify as to what Woody Poplin found in his deposition until and unless Woody Poplin testifies to that. Okay?

MR. DANIEL: Your Honor, just -- I do think that if she's going to be evaluating and drawing conclusions and inferences from --

THE COURT: If she says she didn't use it, then she isn't.

MR. DANIEL: You're right. But, Your Honor, I think it is admissible what evidence an expert did not consider that's in the record.

THE COURT: You get that in there by saying --

MR. DANIEL: She has documentation --

THE COURT: Don't talk over me.

You get that in there by saying you didn't consider speed in this case.

Let's bring the jury in.

MR. WILLEY: Okay. One more thing, Your Honor, as to that witness, and that's as to the Parkinson's, because it's the same concern. You already ruled on it, but again we got into it with the tailgating. She says in her deposition on Page 86 and 87 she didn't consider it, she didn't even know she had it. It played no role at all in her analysis and would not play a role. So I just want to make it perfectly clear that they're not able to bring that out through this witness without some medical testimony to say that it played a role or otherwise. We're not claiming exacerbation or anything else.

MR. DANIEL: Your Honor, she's a human factors expert. And she can say she's not a medical doctor,

but there's some things that people have common knowledge of that affect driving. I think we should be allowed to at least show her a few medical records, not going to be a lot, but a few things and ask her whether she considered it.

THE COURT: She didn't consider. I think the only thing you -- I think you can ask whether or not you considered whether her Parkinson's and any residual side effects had an effect. She's either going to say one of two things. She is either going to say, "No, I didn't consider it;" or "No, I'm not a medical doctor, and that's not an appropriate thing for me to consider."

Or she's going to say, "I flat out didn't consider it."

MR. DANIEL: I'll try and lay a foundation for things, if it's improper.

THE COURT: That's fine.

MR. WILLEY: Your Honor, I just want to --

THE COURT: That's fine. He just does it at his own peril.

MR. WILLEY: Well, I also, just to be clear, just in the case he's going to introduce some medical records through a non-medical expert. I don't think you can do that.

THE COURT: You're not going to give her any medical records on her Parkinson's. Unless she tells me -- listen, you tell me you've got an expert in this case that's gong to say her Parkinson's caused this wreck or in some way affected her ability?

MR. DANIEL: That's not what I have.

THE COURT: Well, I don't know what you have.

MR. DANIEL: I can -- I can proffer it now. And it's records they have as well. They stipulated to the authentication of them, they're --

MR. WILLEY: We what?

MR. DANIEL: Stipulated to the authentication of these records before trial. They're the Plaintiff's VA records that say she had -- she was complaining of blurred vision on the morning of the accident.

THE COURT: Okay. And, again, you tell me how that affects her being in her lane bound straight, blurred vision. If I were alleging speed on her behalf --

MR. DANIEL: Also, too, you can keep a proper lookout as well. I mean, it's not my decision.

Your Honor, I don't have -- the Defendant doesn't have the burden of proof. There's a record --

MR. WILLEY: You do as to affirmative defenses.

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

Mr. Daniel.

THE COURT: Okay. Let's just do this. We're going to bring -- let's just bring the jury out, put the next witness up, and then --

MR. WILLEY: Can I get just a preliminary ruling on the Parkinson's one way or the other? I don't think he can use the medical records, and once he does it, we're prejudiced by it.

THE COURT: Well, I think that would have been more properly asked a question of her when she was up on the stand. Did you or did you not complain about, you know, you had blurred vision on the morning of this accident to a doctor?

It's not appropriate to put it in through the human factors expert. Okay.

MR. WILLEY: Thank you.

(The jury enters the courtroom at 12:18 p.m.)

THE COURT: Welcome back, ladies and gentlemen. All right. Call your next witness.

MR. SMITH: Ma'am, we call Cindy Bryan.

Thereupon,

CINDY BRYAN

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. SMITH: Judge, before we begin, I've been

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

seeing a lot of shiver up here. Is there any way we could bring the AC down a little bit?

THE CLERK: I'm texting them now.

MR. SMITH: Okay. Thanks.

DIRECT EXAMINATION

BY MR. SMITH:

Q Ms. Bryan, please tell us your name.

A Cindy Bryan.

Q Ms. Bryan, where do you live?

A In Goose Creek.

Q And what do you do for work?

A I work for the Diocese of Charleston.

Q How long have you been doing that kind of thing?

A Going on 19 years.

Q All right. Do you know Therese Hood?

A I do.

Q Where do you know Therese from?

A I know Therese from church.

Q All right. And what church is that?

A Immaculate Conception Church in Goose Creek.

Q Are you what's called a Eucharistic minister?

A I am.

Q And what does a Eucharistic minister do? What's the function?

A They help the priest at Mass to distribute

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

communion to all the parishioners.

Q And when you say "communion", what are you distributing?

A We believe that the -- at the time when communion is distributed, Jesus is actually physically present in the wine and in the host, in the bread.

Q Let me stop you for just a second. We don't need to go -- I don't know who here is Catholic and who here is not.

So, communion, what are you distributing? I know you're about to tell us what it stands for, but what --

A You would know it as bread and wine. We distribute the bread and wine.

Q Okay. So the Eucharistic minister helps the priest distribute the bread and wine, which is the communion.

A Yes.

Q Now, is that something that you can just volunteer for or do? Or is it something that has to be approved?

A You can try to volunteer, but the priest has to know something about you and would approve it.

Q Okay. Now, I guess that's for -- we're are not all Catholics here, not everybody knows what it means to

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

be a Eucharistic minister, so I want to give you an opportunity just to explain that to the jury, as a Catholic, and a church member with Ms. Hood, what does it mean to be a Eucharistic minister? And just talk to them.

A Okay. You would almost have to have a calling. You feel that this is where Jesus is leading you to be able to help the priest to distribute Holy Communion.

And at the time of the distribution of communion, we believe -- there's a point in the Mass where the priest will consecrate the bread and the wine to where Jesus actually becomes physically present in the bread and the wine. And so you're actually holding Jesus in your hands when you are doing this.

Q Now, you take your faith very seriously?

A I do.

Q All right. And from what you have observed through your observations of Therese Hood, does she take her faith very seriously as well?

A Yes, she does.

Q Okay. And you mentioned "a calling." Did you yourself feel the calling to become a Eucharistic minister?

MR. DANIEL: Your Honor, relevance.

THE COURT: Okay. You need to the wrap this up pretty quick as far as relevance is concerned, I

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

would agree. Let's go.

BY MR. SMITH

Q Ms. Bryan, how would you feel if the privilege of being a Eucharistic minister was taken away from you?

A I would feel a loss, a hurt, because I'm drawn to that ministry. And for it to be taken away, I would miss it, and it would be hard to sit there in church every week and watch other people that have that calling and just not be able to participate actively anymore.

Q Would there be a void in your life?

A I believe so.

Q Now, you visited Therese at her house after the wreck sometime. What did do you that for?

A I had to take communion to her for about a month when she couldn't get to church.

Q And what could you -- what could you see? Or how did she appear?

A She was in a wheelchair. I think at the very beginning she had, like, a brace on her -- I think that it was her right leg. I don't remember which leg, but it was in a cast. And there were pins and -- in her ankles and everything. It looked very painful.

Q Okay. All right. That's all the questions I have for you. Thank you.

CROSS EXAMINATION

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

BY MR. DANIEL:

Q I'm sorry. Just could you -- so you took communion to Mrs. Hood for how many -- how long was the period?

A About three or four weeks.

Q Okay. Was she able to come back to church after that three- or four-week period?

A It might have been another week or so, but yeah, she eventually returned back to church.

Q And she's given a deposition in the case. I'll represent to you that she says that she --

MR. SMITH: Your Honor.

THE COURT: Okay. Again, that's improper use of a deposition. So --

MR. DANIEL: Yes, ma'am.

BY MR. DANIEL:

Q Is it your understanding that she has also volunteered as a Eucharistic minister after this accident?

A She has.

Q And that involves standing up as the entire, I guess, members of the church, everybody in your church, the Catholic faith, they walk in a procession line to receive communion, right?

A Yes.

Q So if it's a busy Sunday or Saturday evening,

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

whenever y'all have Mass, the person handing out communion, the Eucharistic minister, they have to be on their feet for a while?

A Probably around ten, 15 minutes at the most, I would think.

Q Okay. But Mrs. Hood has been able to do that and can manage that after this accident?

A I believe she has for a little while.

Q Okay. And she is your friend?

A We're not close friends, we're just more like acquaintances. We're involved in some things, but not a lot of things together.

Q How often do you see her?

A Probably on a monthly basis.

Q Once a month? Is that -- I'm trying to be rude. Is that a "yes"? The court reporter has to write it down.

A I'd say about once a month.

Q Okay. You're not around her day-to-day everyday?

A No.

Q You don't know what medication she takes?

A No.

Q You don't know what medication she took before this accident?

A No.

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

Q You don't know what her health issues were before this accident?

A I know a little bit.

Q Okay. What do you know?

A I know --

MR. SMITH: Your Honor, I would object for relevance. I don't know exactly where he's going with this.

THE COURT: Okay. Come up and approach.

(Off-the-record discussion held.)

BY MR. DANIEL

Q And, Ms. Bryan, before the objection, I just -- you do know a little bit about Mrs. Hood's health condition, or conditions, before this accident?

A A little bit, yes.

Q Okay. Just tell us what you know.

A I just know she had MS.

THE COURT: Anything further?

BY MR. DANIEL

Q Do you live near Ms. Hood?

A It would probably take me -- not real close. It would probably take me about ten minutes, 15 minutes to get to her house.

Q And as far as how frequently you would see her, you would see her about once a month before the accident?

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

as well?

A Yes.

MR. DANIEL: Thank you, ma'am.

REDIRECT EXAMINATION

BY MR. SMITH:

Q Ms. Bryan, that once a month that you saw her, was that at church?

A Yes.

Q I mean, y'all ain't going over to each other's house, getting together for dinner, and stuff like that. You're seeing each other at church, right?

A Yes.

Q And you're also in the ladies guild and she was in the ladies guild as well, right?

A Yes.

Q But Therese is not a Eucharistic minister anymore, is she?

A No, she's not.

Q She had an incident where her leg got shaky and she spilled the wine, the blood of Christ; did she not?

A That's what I was told.

Q Right. And the priest said, "You are no longer to do that function," right?

A Exactly.

Q And that's because Catholics regard the wine in

REDIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

that process as the actual blood of Christ. That's what you believe.

A Oh, yes. That's --

Q How do you think it felt for Therese to be standing there and spill the blood of Christ?

THE COURT: Calls for speculation. That's just not a good question. You need to move on.

MR. SMITH: I withdraw it. No more questions.

RE-CROSS EXAMINATION

BY MR. DANIEL:

Q Ma'am, were you there for that incident?

A No, I wasn't.

THE COURT: Anything further?

MR. SMITH: No, ma'am.

THE COURT: Anything objection to this witness being excused?

MR. SMITH: No objection.

THE COURT: You're excused, ma'am. Thank you. Call your next witness.

MR. WILLEY: The Plaintiff calls Dr. Stephanie Borzendowski.

THE COURT: Come on forward.

Thereupon,

DR. STEPHANIE BORZENDOWSKI

was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLEY:

Q Dr. Borzendowski, would you introduce yourself to the jury?

A Absolutely. I am Stephanie Wetzel Borzendowski.

Q And where do you live?

A I live in Summerville.

Q And how long have you lived in Summerville?

A A little over two years.

Q And do you do for work?

A I'm a human factors consultant with a company called Applied Building Sciences.

Q What does Applied Building Sciences do generally?

A A pretty wide range of things. But we do a lot of consultation on matters that are in litigation or have the potential to be in litigation.

Q And as part of your work, you mention that you have an expertise in human factors. What is that? Explain that to the jury.

A Human factors is basically the study of human interaction with their environment, and that can take the form of a lot of different things, including driving or walking.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

Q And tell the jury the educational background that you had to go through in order to become a doctorate in that field.

A Sure. I got my Bachelor's in Psychology from Hartwick College, which is in upstate New York. And I then got my Masters in Applied Psychology with a concentration in human factors from Clemson University. And I earned my Ph.D. in Human Factors Psychology also from Clemson University.

Q And what is applied psychology? How would you describe that?

A So my masters was in applied psychology and, in a nutshell, that's basically taking the principles of psychology and applying them to sort of real world problems.

Q So, is it fair to say that basically you look at how people act and react in different circumstances?

A Yes.

Q And you do that based on science and data?

A Correct.

Q And, Dr. Borzendowski, how long, including college, you know, did you have to go to school in order to get your doctorate in human factors?

A From college through graduate school. I was in school for nine years.

Q And that's why we call you Doctor. You earned it, right?

A Yeah. Try not to enforce it, people don't call me that too often.

Q Tell the jury a little bit about your experience in the field of human factors.

A Starting with graduate school?

Q Starting with graduate school.

A Okay. So while I was in graduate school, I worked in a visual perception lab, and I also served as a teaching assistant and later as an instructor. And my primary research area was in the nighttime conspicuity of pedestrians as well as driving safety kind of broadly at night.

Q And where was that lab? Where did you do those courses?

A That was all at Clemson University.

Q And we won't hold that against -- or for you.

A Oh, I think I sense some bitterness.

Q "Conspicuity" you mentioned. Will you explain to -- I think I said it right, "conspicuity"?

A You did.

Q I'll have to break it down each time.

Will you tell the jury what that is?

A Conspicuity, simple stated, is the extent to

which an object stands out from it's background.

Q And what sort of factors deal with conspicuity? What are you looking at specifically when you deal with that?

A There's a number of factors that you would consider, including the background or the environment in which the object is being viewed, as well as properties of the objects such as size, brightness, color.

Q And we deal with this field a lot in motor vehicle wrecks, correct?

A We do.

Q And is a portion of that conspicuity analysis also, you know, who was looking? The individual that is actually looking at the object?

A Yes, as far as characteristics associated with that individual.

Q And in terms of motor vehicle wrecks, what are some of the characteristics that you look for when you're making an analysis of the situation?

A We might look at things such as visual health. Do they wear corrective lenses? Were there any extenuating environment factors? Was the driver reasonably attentive? Things like that.

Q And in terms of your field, you have done both lab training and also field training, correct?

A I've conducted studies in both settings, yes.

Q And when we say, "field training," that just sort of means out -- out in the world, right?

A Yes. I've conducted a number of studies that were out on the road.

Q And have you been published in these fields?

A I have.

Q And have you been qualified as an expert in the fields of human factors, conspicuity before?

A Yes.

Q And for purposes of this matter, did you have the opportunity to review a lot of deposition transcripts, data points, and things like that?

A I did.

Q And in this case, did you have the data to analyze that would be normally accepted in the field in coming to a determination?

A Yes.

MR. WILLEY: Your Honor, at this time, we would move to qualify Dr. Borzendowski as an expert in the field of human factors with a specialty in conspicuity and attentiveness.

THE COURT: Okay. Do you have any voir dire for her?

MR. DANIEL: Your Honor, no. I just -- just an

expert in human factors, I believe.

THE COURT: And I agree with that.

Ladies and gentlemen, in this case, this witness is being qualified as an expert in human factors. That allows her to give her opinion and the reasons for her opinion. And that's for you to use as you see appropriate, and to assist you in any way as compared to other evidence in this case.

MR. WILLEY: She's qualified?

THE COURT: I just did.

BY MR. WILLEY

Q Dr. Borzendowski, you've had the opportunity to review the Department of Public Safety document in this case, the statistic?

A I have seen the page I think you're about to show me.

Q Okay. And Department of Public Safety says that an injury wreck occurs in South Carolina every nine minutes; is that accurate?

A Yes.

MR. DANIEL: I haven't seen this, Your Honor, as far as statistics.

THE COURT: Okay. If she can testify to that and she knows it of her own personal knowledge, fine.

BY MR. WILLEY:

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

Q Let me ask you this, Dr. Borzendowski, are statistics from the Department of Public Safety something you rely on in your field?

A A lot of times -- excuse me.

A lot of times I would rely on national data from the DOT and Federal Highway.

Q When you're looking at specific state instances, would you sometimes also look in that specific state's data relative to motor vehicle wrecks and timing and that sort of thing?

A If it's available.

Q And in this case, the data from the South Carolina Department of Public Safety is available, correct?

A I'm looking at it.

Q Okay. And what does it say about how often we have an injury wreck in South Carolina?

A According to this, in 2015, one person was injured every nine minutes.

Q So the point of that is, we keep you pretty busy, don't we?

A Yes.

Q In these sorts of cases. And you make your living analyzing these types of cases, both of a civil and criminal nature for the Court, correct?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

A Primarily, yes.

Q And you're paid for that?

A I am.

Q And how much are you being paid?

A My hourly rate for non-testimony time is $190, and my hourly rate for testimony time is $290.

Q You were also paid, when Mr. Daniel took your deposition by him, correct?

A I don't know if he's cut the check yet, but he has an invoice, I think.

Q Okay. And that's how you pay your bills, right?

A Those checks are paid to my company, and I am a salaried employee.

Q Just wanted to get that out of the way. It's paid for the deposition.

So in this case, did you have an opportunity to review the depositions of the parties that were involved?

A I did.

Q And did you have the opportunity to review the live testimony here this morning?

A Yes.

Q And in addition to the parties involved, did you also have the opportunity to review the depositions of witnesses and engineers?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

A A number of other individuals, yes.

Q And in those depositions from the engineers, did you -- what did you rely upon on those depositions?

A Primarily on their testimony regarding the timing and sequence of the events associated with the two collisions we're here about today.

Q Okay. And in terms of that, that was primarily just how the wreck occurred, basically who hit who first, second, third?

A Right.

Q And I'll show you this. I'll tell you what, for bad artwork it is sure getting some playing time here.

But this is a diagram that Kevin, Mr. Smith, drew in his opening statement which shows Ms. Hood's vehicle down here in the inside lane, Mr. Johnson's vehicle at the stop sign, and Mr. Lee's vehicle down here in the outside lane. Okay?

And is it your general understanding that the way this wreck occurred is Ms. Hood was broadsided by Mr. Johnson?

A That's my understanding, yes.

Q And then she was pushed over into another lane of travel?

A That's my understanding.

Q And that's what you use the accident

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

reconstruction depositions for, correct?

A Primarily.

Q Okay. Now, in terms of -- you had the opportunity in this case to review the cell phone records, correct, of the Defendant and testimony about those?

A Yes.

Q Okay. And so you are aware that at 12 -- well, let me ask you this. I'll step over here so you can see a little better.

At what time did his last call on 11/6 officially end?

A It looks like it ended at 12:17 a.m. on November 7th.

Q Okay. And the duration of that call in seconds?

A 10,978.

Q Okay. That's about three hours?

A I believe so.

Q Okay. And on 11/7, his first activity was at what time?

A 4:44 a.m.

Q Okay. And what was that?

A It appears to have been an outbound text message.

Q Okay. So that's a text message that he would have actually typed out?

A Presumably, yes.
Q And you had the opportunity in this case to review Ms. Melnick's deposition, correct?
A Yes.
Q And that's the exact same deposition that the jury saw, just saw it via video. So when I refer to testimony or deposition, it's the same. Okay.
And you also had the opportunity to review the 911 records, correct?
A I did.
Q And you were able to determine who made the first 911 call?
A I don't recall off of the top of my head, but there's a time stamp associated with it. I know that.
Q Okay. And I'll show you Plaintiff's Exhibit 1, which are those.
You understand that individual was Ms. Melnick?
A Yes.
Q Okay. Now, in reviewing Ms. Melnick's deposition, were you able to see some of the things between the time that she saw the wreck and actually made the 911 call that she did?
A Yes. I believe she described kind of what she did after she heard and saw the collision.

Q Okay. And describe for us, you know, basically, Ms. Melnick, what you remember about that.
A From what I recall, she was an employee of the Dunkin' Donuts along two -- the frontage road off 278, and she was putting umbrellas down, I believe and --
Q Let me stop you there.
MR. WILLEY: May the witness step down?
THE COURT: She may.
(Witness complies.)
BY MR. WILLEY:
Q The jury already knows what this is, we talked about it ad nauseam. Okay.
But up here is the Dunkin' Donuts. So just continue. Thought it might be helpful to have a visual.
A Okay. So my understanding is that she was out in this front patio area, and that she was putting umbrellas down. And I think the first thing she said is that she heard some kind of collision, and then looked through the trees and saw what she described as the aftermath. And then she --
Q So is it your understanding, based on her testimony, that that was the first impact, and that she saw the aftermath after the second impact?
MR. DANIEL: Objection, leading, Your Honor.
THE COURT: Sustained. Don't lead her.

BY MR. WILLEY:
Q Okay. What is your understanding about what aftermath she was referring to?
A Given the timing of events and the location of the Dunkin' Donuts, presumably the aftermath of Ms. Hood's collision with the Kuck's vehicle.
Q All right. And continue.
A So after she heard and saw collision activity, I believe Ms. Melnick testified that she had to go back inside the Dunkin' Donuts in order to call 911, and that involved going around a counter to get to the phone that was within the restaurant, coffeehouse.
Q Okay. So she left the patio, went inside and went behind the counter is your understanding?
A Correct.
Q Okay. And when Ms. Melnick testified that she was able to see the aftermath. Did she give any indication about whether people were out there and that sort of thing, by that point, that you recall?
A My recollection is that she could see that there were already some bystanders, perhaps, that were responding.
Q And when she got in off the patio, inside, around the counter, in the back, what did she do?
A I believe she then called 911.

Q And what time was that call?
A I believe the 911 numbers indicate 5:58.
Q And as a human factors expert, and just person with common sense, what does that tell you about the time of the wreck in this case, the initial wreck?
A That would suggest that at least some time had elapsed from the initial wreck to the 911 call, given that two wrecks had to happen and she had to witness the aftermath and get inside the restaurant before dialing 911.
Q Okay. Now, as part of this, you also had the opportunity -- excuse me -- to review what Mr. Johnson did after the wreck, correct?
A With his cell phone records.
Q In terms of his cell phone records.
A Yes.
Q I'll show you what's in evidence as Plaintiff's Exhibit No. 7. And what were you able, in your field of expertise, to gather from this wreck?
A Primarily that there was an inbound text message that arrived at Mr. Johnson's phone close in proximity to the time of the first impact.
Q And based on the timing of the 911 call at 5:58:46, about how long before that 911 call did that text message come in?

A It looks like almost exactly the minute.
Q And based on your expertise and human factors and about, you know, how long things would take, what do you then notice about the next -- next call log on his record?
A The next item is an outbound call at 1759, or 5:59.
Q And that call is basically, at 5:59 and four seconds. So right at 5:59?
A Yes.
Q And you had the opportunity to hear Mr. Johnson's testimony?
A I did.
Q And you, based on that, are able to obviously determine, he admitted, that that was after the wreck, correct?
A Correct. I believe he said he was calling his mother.
Q Okay. So we now walk through, basically, the wreck sequence and what occurred thereafter. And in terms of making your analyses in this case, what other data was important to you?
A Primarily the timing of the two collisions as well as any information about witness recollection from that time period.

Q And prior to this CAD record of 5:58:46, you were able to review this testimony about what Ms. Melnick went through before she got connected, correct?
A Correct.
Q And what was your understanding of that process? Was it she called and they just picked up? Or describe it for the jury.
A My recollection is that the phone obviously rang. And then I believe she was transferred at least once, perhaps, between operators.
Q All right. Before she spoke with someone?
A Correct.
Q And then, again, that would take additional time, correct?
A One would assume so, yes.
Q Okay. Now, with respect to the data, I'm going to show you a smaller version of what we are going to mark as Plaintiff's Exhibit 12 -- 13.
Are you familiar with that document?
A Yes.
Q And describe for the jury what it is.
A It is basically a map of the intersection where the collision occurred and off to the side of the map, we can see some data about sunrise and sunset on the day of impact.

Q Okay. And where does that data come from?
A This is from a website called "SunCalc."
MR. DANIEL: Your Honor, may we approach?
THE COURT: You may.
(Off-the-record discussion held.)
BY MR. WILLEY:
Q Okay. So, Dr. Borzendowski, this document in front of you you recognize?
A Yes.
Q It is from SunCalc, correct?
A Yes.
Q And what does SunCalc do? What does that document do?
A It basically provides information about the timing of sunrise and sunset, the day of the collision.
Q And is that a website that you would normally rely on in your field?
A I've used it before, yes.
Q You've used it before in other matters?
A Yes.
Q And there is another source as well that provides sunset and sunrise data. You are familiar with that?
A Yes.
Q Okay. Tell the jury about that source.

A Can I refer to the document, so I don't mess up the acronym?
Q Right. Just who puts out that data.
A I believe it is the Naval Observatory. The U.S. Naval Observatory.
Q Right. And is that data more general or more specific than SunCalc?
A So the Naval observatory data allows you to put in a kind of general location, such as Hilton Head broadly, whereas SunCalc you are able to pinpoint a more specific location.
Q Okay. So the SunCalc is more specific. And where does SunCalc derive their data?
A My understanding is that it's based on a European astronomy formula.
Q And in your deposition, you weren't able to specifically recall that, correct?
A Correct.
Q Were you able to go back and research that?
A Yes.
Q And as you sit here today, do you know exactly where the Naval Observatory derives their information?
A My understanding is it's a similar formula.
Q And that formula is accepted by experts in your field, correct?

A I certainly am not going to say I'm qualified to perform it myself. But we rely on this type of data regularly.

Q Okay. And that smaller version of Plaintiff's Exhibit 13 that you have, is that a fair and accurate representation of the SunCalc data, data point, for the particular day of this wreck?

A Yes.

MR. WILLEY: Your Honor, at this time we would move to enter into evidence the Plaintiff's Exhibit 13.

MR. DANIEL: This is the SunCalc record or the Naval Observatory?

MR. WILLEY: The SunCalc, the specific one.

MR. DANIEL: No objection.

THE COURT: With no objection, it's in evidence.

(Whereupon, Plaintiff's Exhibit No(s). 13 marked for identification and received in evidence.)

BY MR. WILLEY:

Q Dr. Borzendowski, would you mind stepping down? The jury is going to have this back in the jury room, so will you just explain to them what they're looking at here.

A So hopefully what you can see here is this is a map of the intersection where the both collisions

occurred, actually, approximately. So we can see here Southwood Park Drive, which is where Mr. Johnson's vehicle was stopped. And then we have William Hilton Parkway, where Ms. Hood was traveling east.

And over here in this little box, we can see some data regarding dawn, sunrise, noon, sunset, and dusk for this particular geographic location.

Q And with respect to sunset for this location, what does it saying?

A It is identified as having occurred at 1729, which would be 5:29 p.m.

Q And William Hilton Parkway, 278, that road runs east to west, correct?

A Yes.

Q And how does the -- where does the sun set?

A West.

Q In the west. So the sun would be setting closer to you than it is to me, correct?

A If I were driving here, yes.

Q And with respect to specific geographic coordinates, obviously those are more specific than just giving it for an entire town, correct?

A Right.

Q Is it fair to say that if you were somewhere else on Hilton Head, the sunset may be at a different

time?

A It's going to be slightly different, yes.

Q A minute or two?

A Possibly.

Q And in this particular case, you relied on this document, correct?

A Correct.

Q And the sunset again was at 5:29.

A Correct.

Q Okay. Thank you. Just to be clear, as the sun was setting in the west, it would be setting down on this end of the road, right?

A Yes.

Q It wouldn't be setting behind these trees or setting behind these trees, correct?

A It would be somewhere into that direction.

Q This direction. Okay.

So those are the data points that you use at arriving at your opinions in this case, correct?

A Correct.

Q And briefly, just before we break here, would you tell the jury your opinions in this case?

A Absolutely. The first being that, given the time of sunset --

MR. DANIEL: Your Honor, I object.

THE COURT: Basis?

MR. DANIEL: May we approach?

THE COURT: Sure.

(Off-the-record discussion held.)

BY MR. WILLEY

Q All right. Dr. Borzendowski, all right, will you tell -- we'll go through them later, but will you just tell the jury the opinions that you've reached in this matter.

THE COURT: Is this -- are you wrapping up everything with her or not?

MR. WILLEY: No.

THE COURT: Okay. Well, then now might be a very good time for us to break for lunch. It is close to 1 o'clock.

Ladies and gentlemen of the jury, you are not to discuss this case. It wouldn't be appropriate to do so. Go grab a bite to eat, I'm asking you to be back in your jury room by 2:15, when we're going to go ahead and continue the trial of this case. All right?

Have a nice lunch, everyone.

(The Jury exits the courtroom.)

THE COURT: Okay. We're going to go ahead and break for lunch. I know you know this, what the [illegible]

concerned about is you testifying to the law in some way, shape, or form that somebody is required by law from where the other two -- do something or do not do something. You're a professional, you're an expert. Presumably trained by Ellen Campbell, and the rest of the progeny. You know that you can't testify as to the law. The Court can probably say that you can just give your opinions based on your expertise in human factors.

I'm not concerned about what you're going to testify to, but apparently everyone else in this room is.

So with that said, I'm going to go ahead and we're going to excuse everyone for lunch. We'll be back just a little after 2 o'clock. If there's anything else we need to talk about, we'll go ahead and discuss that at that time.

If you have any questions or any concerns about you crossing the line -- but I can tell you that if you start to, he's going to object, I'm going to sustain it, and we'll go from there.

But I think we're fine. All right? Let's stick to what her expertise is. Okay?

MR. WILLEY: If you stick to the three things we talked about, in those words, you'll be fine.

MR. DANIEL: The one concern is whether someone was legally required or not required.

THE COURT: And she can't testify to that. Okay.?

THE WITNESS: Yes.

THE COURT: All right. She understands that.

Okay. We'll break for lunch. We'll see y'all just a little after 2:00. Okay.

MR. WILLEY: Any objection to me talking to her during lunch, so we can be clear on the exact wording, so it's not tactful for you?

MR. DANIEL: No. I mean, I can ask her what you talked about, but I --

THE COURT: Don't talk about it. Because he'll ask her.

MR. SMITH: This afternoon, we're going to go a little bit out of order. I'm having witnesses come in instead of tomorrow, today. So we'll going to take them a little bit out of order just to get through it. Okay?

THE COURT: Doesn't matter to me.

MR. SMITH: Okay. I mean, it may seem a little unusual, but I'm trying to fit it in.

THE COURT: Okay.

(Whereupon, the Court was in lunch recess.)

(Proceedings continue in Volume 4.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 4th day of January, 2018.

/s/ Mona L. Manley

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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs. **Transcript of Record**

Antoine Johnson,

Defendant.

VOLUME 4

September 6, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

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PROCEEDINGS

THE COURT: Okay. Let's bring the jury out.

(The jury enters the courtroom.)

THE COURT: Welcome back ladies and gentlemen. I'm going to go ahead and tell you right now that, interestingly enough, Jasper County Courthouse is controlled, the AC system, is controlled in Virginia. That happens all over this state. I can tell you that anytime that the courthouse has been redone or is fancy or brand new, which ours is, it gets controlled elsewhere. Because apparently they don't trust us to keep it.

But the good news is we'll -- go ahead, y'all can be seated.

The good news is that we do have running water, we do have hot water, so -- which was a problem we had for a few years back. Margaret knows that.

So anyway, I trust you all had a good lunch. We're going to keep moving forward. I just wanted to let you all know we've been watching just what's going on with Hurricane Irma. And we will let you know if there's

anything that you need to be concerned about whatsoever. It's absolutely fine right now, so let's not worry. But in case any of you are watching the weather, I just want you to know that we are on top of it and making sure everything is fine. Okay?

With that said, please go ahead and continue with this witness. Ladies and gentlemen, I just reminded her before you came in that she's still under oath and she knows that.

So Mr. Willey, whenever you're ready.

MR. WILLEY: Thank you, Judge.

Thereupon,

DR. STEPHANIE BORZENDOWSKI

was called as a witness, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION CONTINUED

BY MR. WILLEY:

Q Dr. Borzendowski, before lunch we went through your education and expertise and the data and information you relied on in this case, right?

A We did.

Q Okay. And just before we broke for lunch, you were about to tell us your findings of expert

opinions in this case, correct?

A Yes.

Q And, of course, during lunch, you and I had lunch together; correct?

A We did.

Q And we had -- what did we have?

A Wendy's.

Q Okay. There were a bunch of other people around, right?

A Yes.

Q And we -- did we discuss your testimony in any substantive way?

A Other than just making sure that we came up with wording that was comfortable for everyone.

Q Okay. So we wouldn't have another objection, right?

A Correct.

Q So with that said, will you tell the jury what your findings were in this case?

A Yes. The first being that this first collision occurred at 5:58 p.m. or earlier on the day of the collision. That Ms. Hood's -- that the vehicle would have been visible to Mr. Johnson. And that if Mr. Johnson were distracted at the time leading up to impact, that would have contributed to

his inability to avoid it.

Q Okay. So the first one was that the collision occurred at 5:58 or earlier, correct?

A Correct.

Q The second one was Hood's vehicle would have been visible to Johnson if he were looking, correct?

A Correct.

Q All right. And what was the third one?

A That if Mr. Johnson were distracted at the time of impact or shortly before that, it would have contributed to his ability to avoid a collision.

Q All right. And do you have any other findings in this matter at this time?

A Those are the primary findings.

Q Okay. Let me see what I wrote -- I basically just wrote what you said, but is this accurate as to what you said?

A It appears to be.

Q Okay. Handwriting is not the best.

With respect to your first opinion that the collision happened at 5:58 or earlier, what specifically did you base that upon?

A That's based primarily on the first 911 call in response to the collision.

Q And we know that that 911 call was placed when?

A 5:58 and 46 seconds, I believe.

Q Okay. And that 911 call was placed by Ms. Melnick?

A Yes.

Q And Ms. Melnick did all these things prior to placing that call, correct?

A That's my understanding, yes.

Q And obviously got transferred a few times before it was logged?

A That's her testimony, yes.

Q So in your opinion today, you are estimating that obviously that took longer -- all of this took longer than 46 seconds?

A I believe it would have.

Q Okay. And that's based on her testimony and your experience in human factors, correct?

A Correct.

Q With respect to your second opinion of that, Ms. Hood's vehicle would have been visible to Johnson if he was looking, what -- what did you base that up? Which specific data point helped you reach that conclusion?

A In part that it was not completely dark

outside based on the timing of the collision; and, therefore, there still would have been some illumination at the scene. And that there was also another vehicle coming from that direction of travel that would have been -- should have been visible to Mr. Johnson, and per his testimony, he did not see that one either.

Q And with respect to Mr. Lee's testimony, did you put any weight on the fact that he said he was able to see both the Plaintiff and the Defendant?

A Yes. So he did testify that he could see both vehicles prior to impact.

Q And today you had the opportunity to hear Ms. Kuck's testimony?

A Yes. Which was that they did see an object approaching them prior to impact with Ms. Hood's vehicle, and that it was light enough to see the roadway entry and other vehicles.

Q And specifically she said other vehicles with or without headlights?

A She did, yes.

Q And does that support your second opinion?

A It does.

Q And with respect to your third -- well,

let's stick there for a second.

So you also had the opportunity to hear Mr. Johnson's testimony today, correct?

A I did.

Q And Mr. Johnson testified that he did not see Ms. Hood's vehicle at all, correct?

A Yes.

Q Is that important when you are analyzing and reaching a finding on why something occurred?

In other words, an individual, whether they saw something and it was specifically one way, or just didn't see it at all? I mean, do you take that into account?

A In the sense that if there was visual information available, and that that observer failed to observe it, then that's an indicater of some extenuating factor potentially, yes.

Q Okay. And in this case, were you able to use the data available to you and the testimony of the parties and witnesses in order to reach a finding about potentially why Mr. Johnson did not see Ms. Hood?

A Potentially that he was distracted and did not -- either did not attend to that area of the intersection or failed to perceive it as a result of

the distraction.

Q And Dr. Borzendowski, I believe you prepared a demonstrative that deals with your third opinion?

A Yes.

Q Which you provided to Mr. Daniel last night, correct?

A I did.

Q And which he's, I assume, fine with you using.

So would you step down at this point with a copy of that exhibit? Do you have it?

A I do.

Q Okay.

A (Witness complies.)

Q And would you explain to the jury what it is that you prepared here?

A I apologize, it's kind of small. Bear with me.

Basically it's just illustrating some of the more common causes of distracted driving. So up at the top you'll see someone texting on a phone, and I think that's probably one that many people are familiar with, that texting while driving can be distracting, and this data supports that.

Similarly, reading text messages. So typing and reading text messages are goal activities that take your attention away from the task of driving.

And then talking on the phone, hopefully many people are familiar with that one. They are -- not in South Carolina, but other states do regulate cell phone use in vehicles because of the issues associated with distraction of talking while driving.

One that some of the ladies might be more familiar with, which is putting on makeup in the car. So that is certainly an activity that is going to take your attention away from the roadway.

And eating and drinking while driving, and not just alcohol. That -- again, that's a task that requires some physical abilities, obviously, and I don't know if you guys can see in this photo, this person is juggling a soda and a burger. But, again, it's taking away some visual and cognitive abilities as well.

And finally, there's data to suggest that interacting with voice commands in your vehicle can also distract you while you're driving.

Q And when you're talking about voice

commands, specifically that's dealing with the in-car system.

A Right. So if you have Bluetooth in your car and you can voice dial your contacts and things like that.

Q And in this particular case, which of these did you find to be relevant?

A The most relevant would be reading a text while driving, because we know that there is a record of an inbound text message prior to the collision.

Q And you had the opportunity to review the totality of Mr. Johnson's cell phone usage from that particular day and the evening before, correct?

A Correct.

Q And were you able to make any analysis of that? In other words, when you looked at that, what did you -- what did you see?

A Primarily what I think everyone heard during testimony this morning, which was that he had been using his phone pretty actively throughout the day, including up to shortly before the first collision.

Q Okay. And when you looked at the phone numbers that he was texting to, were you able to see

any similarities or draw any --

A My recollection is that there was one number in particular that there was correspondence between throughout the day.

Q And is that the 1200 -- ends in 1200?

A That sounds familiar, yes.

Q Okay. When you look at his texts in detail, is this the number you're talking about, this 305-1200?

A Yes.

Q Okay. And in terms of this record, obviously this is calling and called. So whoever sent the text would be here, whoever received it --

A Right.

Q What were you able to determine about his interaction with that person throughout the day?

A It seemed to be sort of a give and take conversation. We can see that there's a pretty healthy mix of inbound and outbound, indicating correspondence between Mr. Johnson and that party.

Q And was that the individual also that he texted at 4:40 that morning?

A I do not recall off of the top of my head, but I think it might be this one.

And that's 4:44, yes.

Q And at the time of this wreck, is that also the individual that he was --

A So he received a text from that individual at 5:57:43.

Q Okay. And we now know that individual was his girlfriend?

A From his testimony, it sounds that way.

Q Thank you.

Dr. Borzendowski, can you tell the jury a little bit about how reading the text from a scientific perspective, because I think, you know, a lot of folks think, well, if I just glance, it's not that big of a deal. But will you explain to them from a scientific perspective how that works in terms of actually distracting you and the effects on your body?

A Sure. For most of the activity that we just talked about on that diagram, there are multiple components to the distraction that they cause. So some of it is the obvious, the physical handling of a phone or a makeup brush, for example, is taking a hand away from the steering wheel and other controls in the vehicle.

There's the visual component with reading a text message. For example, where you do

have to make a glance to the phone to read the message and that time that you spend reading the text message is time that your eyes are not on the roadway. And as many of us know, all it takes is a brief period of time where you're not attending to the roadway where something unexpected can happen.

And the third kind of big issue with these type of distracting tasks is the cognitive factor. So once you've read that text message, your brain has to kind of process the message. You might start thinking about how you're going to respond, what you're going to say back. And so when you're using your cognitive and attentional resources on that task, that's attentional resources that are no longer available for attending to the roadway and the other tasks associated with driving.

Q And, Dr. Borzendowski, does that reading a text, looking at a text, looking at your phone have a similar impact as the other items on the demonstrative that you put together?

A It does.

MR. WILLEY: Your Honor, at this time we're going to mark this as Plaintiff's exhibit and go ahead and move it into evidence for demonstrative.

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MR. DANIEL: Your Honor, as long as I can use it and talk to her about it, I don't have an objection.

THE COURT: Okay. He's just putting it into evidence. So if you're fine with that, then, of course you can use it.

MR. DANIEL: That's fine.

THE COURT: It's in evidence, and you can use it all you want to.

(Whereupon, Plaintiff's Exhibit No(s). 14 marked for identification and received in evidence.)

BY MR. WILLEY:

Q Dr. Borzendowski, we've heard a lot, and you've heard a lot today, about alleged speed of Ms. Hood. And did you consider that in any way in your analysis today?

A And it didn't factor into my opinions really in this matter.

Q Okay. And tell this jury why you believe speed is not a factor -- did not factor into your opinion in this matter.

A If we look at my three opinions as they're posted on the board there, none of them have anything to do with speed. It really wouldn't have

impacted those factors.

Q And you had the opportunity, obviously, to review the photographs on the reconstruction -- or the testimony, correct?

A Yes.

Q Okay. And you were obviously able to determine that Mr. Johnson actually struck Ms. Hood, correct?

A Based on the evidence available.

Q Pretty obvious, right?

A It appears to be, yes.

Q And so whether or not Ms. Hood was traveling 25 or 85, it wouldn't have mattered, correct?

A Given the mechanism of the collision, no.

Q The only thing that that may not have done is put her in that place at that time, correct?

A Right. It would have changed the time it would take her to traverse that section.

Q Which if she had set her snooze button that morning and got up five minutes later, the wreck wouldn't have happened either, correct?

A Potentially.

MR. WILLEY: Thank you. Please answer any questions Mr. Daniel may have.

CROSS EXAMINATION

BY MR. DANIEL:

Q Ms. Borzendowski -- did I say it right?

A You did.

Q I just want to make sure I heard you correctly with what you said just now.

Is it your testimony and your opinion that speed was not a factor in this accident?

A I said that speed was not a factor, in my opinion, related to this matter.

Q Speed was not a factor, in your opinion.

A Correct.

Q As an expert in this case?

A To my specific opinions that I just offered.

Q Right. And you have considered information about speed as part of your investigation in this case, being hired as an expert on behalf of the Plaintiff; is that right?

A I did not conduct an independent analysis of Ms. Hood's speed personally, no.

Q You just ruled it out though as a factor, in your opinion. That's what you just testified to.

A It's not related to my opinions that I'm offering today.

Q You just said speed is not a factor in your opinion. That's what you told the jury.

A What I am intending to say is that of the three opinions I've offered, that speed is not related to those three opinions.

Q Okay. But you're commenting on speed, and you just gave an opinion about speed not being a factor; do you agree?

A Again, I testified that speed was not a factor in my opinions that I'm offering today.

MR. DANIEL: Madame -- Mrs. Bostick, can we pull this up?

MR. WILLEY: Your Honor, can we approach?

THE COURT: Sure.

MR. WILLEY: I think that you've already ruled on this, but --

(Off-the-record discussion held.)

BY MR. DANIEL:

Q Bear with me. I'm not as tech savvy as some of the other folks here.

(Pause.)

BY MR. DANIEL:

Q You read Woody Poplin's deposition. Isn't that correct, ma'am?

A I did.

Q That was provided to you?
THE COURT: Okay. Come back up here.
MR. DANIEL: I got to ask the questions, Your Honor.
THE COURT: Come back up here.
(Off-the-record discussion held.)
BY MR. DANIEL:
Q Was information provided to you about the crash data taken from -- I'll use the slang term, "a computer chip" in the Plaintiff's vehicle?
A I don't have that specific data, no.
Q But have you seen testimony about it?
A I have.
Q From an engineer; is that right?
A Correct.
Q Someone that specializes in accident reconstruction, something you don't do?
A Correct. I am not an accident reconstructionist.
Q Do you remember what the testimony is about the documented speed of Ms. Hood's vehicle just before impact with Mr. Johnson's vehicle?
MR. WILLEY: Your Honor, I'm going to object. These are facts not in evidence. There's no documents showing her speed.

MR. DANIEL: I'm asking her if she remembers.
MR. WILLEY: He can call the witness, if he has a witness to say that. He doesn't get to just make it up.
THE COURT: Okay. Ladies and gentlemen of the jury, I'm going to send you back to your jury room. Do not discuss this case, it wouldn't be appropriate to do so at this time. We'll be right back with you. Okay?
(The jury exits the courtroom.)
THE COURT: Okay. Do either one of you list Woody Poplin as a potential witness in this case, on their pretrial brief?
MR. WILLEY: Everyone did.
THE COURT: Okay. So you did. So he potentially could be your witness. You're sitting here saying he was hired by USAA, which he may have been originally, but you now deem him as a witness as well.
Secondly, you've asked her a question of whether or not she thinks speed was considered. She said no. You can't get out Woody Poplin's testimony through her if she says she didn't consider it. You got to move on. She said she

didn't consider it.
The only other way to go ahead and use that against her is if you put Woody Poplin on the stand, or somebody does, and says, "You consider speed important, don't you?
Because at this point, you are pitting her against a witness that hasn't even testified in this case.
MR. DANIEL: Yes, Your Honor. But as an expert witness, she's considering testimony in what Ms. Melnick said, fact witness. She was also provided testimony about what this expert said he did. So she's considering hearsay in testimonies --
THE COURT: She said she didn't consider the speed. She said she didn't consider it.
MR. DANIEL: Well, she actually just testified that, in her opinion, speed is not a factor, and she knows what the documented speed was. We can call Woody Poplin, but she actually testified in her deposition that she saw what the documentation and the electronic --
THE COURT: So just ask her what the speed is. You're sitting here trying to impeach her

on something that is not even impeachable at this point.
MR. WILLEY: But Your Honor --
THE COURT: She's going to say the documented speed according to the black box was 62 or 63 miles an hour. So when she testifies to that, she's going to go ahead and then give her answer and explain that yeah, and I still didn't consider it, and this is why.
MR. WILLEY: But, Your Honor, she doesn't know that. She did not get actually, as she testified, get that data to look at the data, which he could have given her to look at. He did not do that, we're already --
THE COURT: But she read Woody Poplin's deposition.
MR. WILLEY: Yeah, but she doesn't -- she can't -- we can't get in testimony from another witness without bringing in all the testimony --
THE COURT: She can though because that's something she reviewed in coming to her opinion. She reviewed it. What I'm hearing from her is she reviewed it, but it still doesn't make a bit of difference to her.

That's what I'm hearing.

MR. WILLEY: I that what she actually said is that she only reviewed that deposition for purposes of trying to figure out the accident sequence.

And if you look at the abstract, that she actually sent Mr. Daniel last night after he won his motion at his request, the only portions that were highlighted for her to read dealt with the sequencing and lighting. We didn't deal at all. She didn't look at it. End of deposition. I was there, this was five days ago. He's showing her portions of the deposition trying to get her to regurgitate what someone else said. It's totally inappropriate. You cannot pit witnesses like that, and it's prejudicial.

Woody Poplin is -- he can call him. We can call him, and it's proper then. But it's not proper to discredit her based on something that someone else said that she didn't even consider.

THE COURT: And all she has to do is say she didn't consider it.

MR. WILLEY: She already said that. And

now he's going in to trying to get prejudicial information, after she's already said on my direct and his cross, she didn't consider it, review it, count on it. Hasn't even received the data at all. She said that. I mean, you know, it's totally, totally improper.

What he could do, you know -- it's the equivalent -- I mean, it's the equivalent of me getting my Plaintiff up there and having my Plaintiff testify about what some doctor said in their deposition about her medical condition. I mean, it's totally improper. You have to bring the witness of the subject to cross examination unless you had a deposition for trial.

THE COURT: It's an expert witness that you relied on.

MR. WILLEY: But she did not consider that information. She's already said it, and he's trying to get the evidence in through her even though she's already said, No, I didn't look at it, didn't consider it.

MR. DANIEL: Your -- I'll be very brief, Your Honor.

THE COURT: Go ahead.

MR. DANIEL: She considered Tammy Melnick's testimony. We just heard that. We just heard about this, oh, this lady was on this porch.

THE COURT: Because Tammy Melnick testified already. She's already testified.

MR. DANIEL: Well, she can consider deposition testimony or live testimony. Experts are allowed to do that. They can't have it both ways. They provided Woody Poplin's deposition to her.

THE COURT: This is the problem. You keep asking her questions, and basically you're feeding what Woody Poplin's testimony was, when she says she didn't rely on it. We need to go one step farther. She needs to say she didn't rely on it because of this reason. And once she says "because of this reason," you have got to move on.

MR. WILLEY: And, Your Honor, I would submit to the Court that in direct when we just went through that, she did. She said because whether she was going 25 or 80, she was T-boned, the sequence of the wreck, it played no role. The same role that would have

happened if the Plaintiff hit the snooze button that morning and was not there at that time. It's a res ipsa argument.

MR. DANIEL: And from a craftsman perspective, Your Honor, so that I don't raise any more issues, can I at least ask her if she knows what the documented speed was? That question.

MR. WILLEY: No. She already said no.

THE COURT: Already, she said no, she didn't.

MR. WILLEY: We're just rehashing --

MR. DANIEL: She actually testified that she did in the deposition.

MR. WILLEY: You showed it, yes. When you showed it to her.

MR. DANIEL: She knows it secondhand through their expert. She's looked at what he said.

MR. WILLEY: But you don't get to --

MR. DANIEL: You want me to read it -- I can read --

THE COURT: I don't want you to read anything. I want you to ask her an appropriate question. I think she needs to answer it. If

you, in a deposition, turned around and said, "In fact, in a deposition, didn't I hand you the document that Woody Poplin said it's 62 miles per an hour?" And you said, Well, at that point, yes. But she can then still say after that, "but it's not important because." And I expect her to do that, which she's going to do.

MR. WILLEY: And just briefly, I mean, the other issue with that is, it wasn't a discovery deposition, so he gets way more leeway. It would not have been admissible if it were a trial deposition anymore than it's admissible now. What some --

THE COURT: Mr. Willey, this witness was disclosed on July 17th. Correct me if I'm wrong. Yes? Of this year.

MR. DANIEL: Yes, that's correct.

MR. WILLEY: Yes, ma'am.

THE COURT: This wreck happened in 2014. You already made a motion to try to eliminate her testimony, exclude it. So you need to be careful.

Again, I could have just kept her out completely. So, again, I think this is fair

game. I think he can ask the question. We don't beat a dead horse.

She said it is not a factor, and I expect her now, once again, I'm sure, to say why, and tell these people why it's not a factor, and then move on. Okay?

MR. DANIEL: Can I --

MR. WILLEY: My only objection is to saying the speed because there's no reliable evidence that was the speed. It's what some other person said. She has not seen the data, there is no foundation for it, nor expert testimony. Not anyone that actually reviewed the black box has testified yet to establish it.

And so asking her what some other document says --

THE COURT: So you're not bringing Woody Poplin; is that what I'm hearing you say?

MR. WILLEY: At this moment, he's -- I mean, he's on our list, but he's not here.

THE COURT: You're not bringing him. Either yes or no. You're either bringing him or not bringing him. And if you're not bringing him, I can't imagine why you wouldn't.

MR. DANIEL: I have him under subpoena, Your Honor, and we can just -- we could just cut to the chase and ask her what she remembers that speed being, per Woody Poplin, and she can answer that the way she wants.

MR. WILLEY: No, that's improper. When we call him -- when we call him or when he calls him, he can ask him. And then Mr. Poplin is subject to redirect by --

THE COURT: Okay. I'm going to let you go ahead and ask her if she remembers what the speed is, that's fine. If she doesn't, you could say, "In the deposition, in fact, didn't I show you what the downloaded black box is."

And I'm assuming -- and she's going to turn around and say, "Yes, but again that's irrelevant to me because." That's what she can testify to. So let's just move on.

But what you're not going to do is say all these things that Woody Poplin considered, who hasn't even testified yet. Okay?

MR. DANIEL: I will keep it as brief and --

THE COURT: Well, that's great, because if you don't I'm going to cut you off. Okay?

MR. DANIEL: Yes, ma'am.

THE COURT: Let's bring the jury back now.

(The jury enters the courtroom.)

THE COURT: All right. Mr. Daniel, ask your question. Let's go.

BY MR. DANIEL:

Q You were talking about sunset. I'm going to come back to the questions we were just -- the topic we were on. But you were talking about sunset and what time it was based on some data, based on some European equation.

What country in Europe; do you know?

A I believe that SunCalc website links to the University of Netherlands.

Q Okay. So that's what people in Holland say about sunset in Bluffton or Hilton Head?

A No. It's a formula grounded in physics and astronomy.

Q But the U.S. Navy also has a similar formula, right?

A I'm certain they do.

Q And didn't -- do you remember telling me in your deposition that you more often than not rely on the U.S. Naval Observatory data when pulling times for sunset. Do you agree?

A That I typically use the Navel Observatory, yes, for a general area.
Q Okay.
MR. DANIEL: Your Honor, may I approach?
THE COURT: You.
MR. DANIEL: We'll mark this in just a second.
(Whereupon, Defendant's Exhibit No(s). 6 marked for identification.)
BY MR. DANIEL:
Q Can you tell the jury what that is?
A That is sun and moon data for the date of the collision from the U.S. Naval Observatory.
Q And what does that say about the sunset?
A That it occurred at 5:28.
Q 5:28 p.m. that day?
A Correct.
Q Was the official time per the Naval Observatory in Hilton Head.
A In Hilton Head, yes.
Q Okay. This accident happened on Hilton Head Island, right?
A It did.
Q Okay. So your -- one of your opinions is that no lay -- either 5:58 or earlier was the time

of this accident; isn't that what we just had up in this demonstrative?
A Correct.
Q 5:58. So it would be, per the Naval Observatory, if you do the math, 5:58 is 30 minutes after sunset in Hilton Head?
A Exactly 30 minutes, yes.
Q Okay.
BY MR. DANIEL:
Q Okay. Defendant's 6. This will be Defendant's 6.
Is that considered a more official source -- is that considered a more official source for sunrise and sunset times?
A I would say that that is certainly an official source. It's the U.S. Naval Observatory, but the SanCalc website as well is relying on the same physics to calculate sunset.
Q But physics in a formula that you don't -- you don't really know exactly how they do it, right?
A I'm not a physicist, so, no.
Q And would you agree -- I mean, you're not a law enforcement officer?
A No, I'm not.
Q I mean, one of those obvious lawyer

questions, but just -- I'm going to get there.
As far as making a determination of whether it's pretty dark out and someone should have their headlights on, and whether someone should be pulled over for that and given a ticket, you agree that that's the discretion of the officer on patrol, right?
A A one-person officer would make that call, yes.
Q And you weren't not out there that night -- that evening, 25 minutes after sunset, 35 minutes after sunset on the night of this accident?
A I was not.
Q Would you agree with me 5:50, 5:53, in the evening, on November 7th, that time of year in Hilton Head, it's relatively dark outside?
A Relative to daylight, yes.
Q Well, relative to daylight. You've looked at Google photos, there are no street lights -- there are no street lights at this intersection, are there?
A Not that I've seen.
Q Yeah. So -- and there's trees up here, right?
A There are.

Q So once the sun starts going down these trees can -- they're to block some of the natural light once the sun starts setting; would you say?
A They may.
Q All right. They may? That's a fact.
A I mean, it depends on where the sun is setting relative to the trees. But, yes, it would block sunlight in that area.
Q Right. There have been -- I mean, you've been in a big city, those tall buildings, they can block out the sun. It's just a fact of life. A fact of light and life; do you agree?
A That the sun can create shadows when there are objects in the way, yes.
Q Right. And trees -- trees cast shadows, don't they?
A They can.
Q And there are no street lights in that intersection.
A Not that I've seen.
Q And one of the opinions --
MR. DANIEL: Your Honor, I don't want to -- just demonstrative. I'm just going to show it to her, I'm not going to write on it. I don't --

THE COURT: Go ahead.
BY MR. DANIEL:
Q Okay. I want to make sure everybody can see this.
One of the opinions, your opinion two that is written down here Mr. Willey asked you about. Hood's vehicle would have been visible to Johnson, if looking, right?
A Correct.
Q And do you agree that that's a little bit different than what you testified to in your deposition just about a week ago -- less than a week ago?
A If you will refer me to a specific page, I'll be happy to compare.
Q Page 18, last line, 25. You see that? You gave three opinions in your deposition, too. Just a week ago.
A Yes.
Q Okay. The second opinion, which is this opinion. If you want to come down here and compare, you can.
A I can see.
Q I'm going to read it to you and I want you to tell --

THE COURT: Give her a page and line first.
BY MR. DANIEL:
Q Okay. I'm starting at Page 18, line 25. Then you go to 19.
A Okay.
Q Your testimony, as far as your second opinion, second being that any lights that she did have activated on her vehicle would have been visible to Mr. Johnson.
A Correct.
Q So we should add "lights would have been visible."
A On her vehicle, yes.
Q Yeah. It's not this simple -- at least five days ago, six days ago, it wasn't this simple. You didn't say he should have seen her vehicle, lights or no lights.
Your sworn testimony, under oath, as an expert, being paid $290 an hour was that if she had lights activated they would have been visible to Mr. Johnson.
A Yes.
Q That was opinion two.
A Yes.

Q Not this opinion. It wasn't this simple; do you agree?
A They're not identical, I agree.
Q And they're not the same.
A That her vehicle, at some point, yes, would have been visible. It's not the same as what you're reading here, no.
Q At some point -- so you agree distance matters?
A In a sense it does matter when viewing certain objects, yes.
Q And the faster you go at a given point in time, if you're going 30 miles an hour versus 60 miles an hour, in a one-second period, all things being equal, if you're going 60 you travel a farther distance, don't you?
A Yes, in one second.
Q So when you do the math backwards, if someone's going 60 miles an hour, they're a lot farther back down the road from a given point to where they end up in a second, a second later, than if they're going 30, right?
A If I understand your question correctly, yes. A vehicle traveling 60 miles an hour will travel a longer distance in one second than one

going 30.
Q So speed can be a factor in an accident; do you agree?
A Yes, I agree.
Q And do you remember, or do you know from your review in records provided to you by Plaintiff's counsel, what the computer chip data said about Mrs. Hood's speed?
MR. WILLEY: Your Honor, objection, lack of foundation, relevance, hearsay, and 403. If he has the data, he can bring it per an expert.
THE COURT: Denied. Go ahead, you can answer the question.
THE WITNESS: I've seen the specific data that you're referring to. I have seen testimony about speed.
BY MR. DANIEL:
Q Have you seen Mr. Poplin's testimony about speed?
A I have.
Q And what did he say?
A My recollection is that he downloaded the data from the vehicle and per his information that the speed was 62 to 63, I believe.
Q Speed of whose vehicle?

A Ms. Hood's.
Q The Plaintiff?
A I believe that's who you were asking about.
Q Yes. I'm just making sure we're clear. So --
A But that, as I said before, isn't a factor in my opinions.
Q Was it 62 to 63?
A That's my recollection.
Q And in your opinion -- in your opinion as a human factors expert, it's not an issue?
A That is not my testimony.
Q Okay. It could be a factor then?
A As far as the distance that you travel in the time that you covered it, and in general as far as damage to vehicles, speed can be a factor. But as far as my opinions that I'm offering today, I'm not relying on speed for that.
Q If she's a lot farther back down the road because she's driving a lot -- you know, 30 as opposed to 62, 63 miles an hour. If someone is driving 62 miles an hour, this is not a specific distance, but if they are back towards this back door back here versus right here on a dark roadway,

that can affect visibility; do you agree?
A The speed?
Q Yep.
A No. Visibility is based on the properties of the object that you're trying to view.
Q Okay. And you testified in your deposition that as things get farther away, or at a distance, even in bright conditions, even in daytime conditions, we don't have unlimited sight as things get farther away from you. You lose the ability to see details of those objects, do you agree?
A Because they appear visually smaller, yes.
Q Right. And I mean, oversimplification, but if it's like if you look at a plane in the sky, as it starts going away, even in daytime, eventually that plane's gone. You can't see it anymore, right? Basic level, do you agree?
A At some point it may reach an altitude where it would become very difficult to see, yes.
Q At some point, you can't see it. That's a fact; do you agree?
A Yes, for a number of reasons.
Q I just want to make sure we're on the same page.
So on a dark road, if a vehicle is

going 62 miles an hour covering however many feet, where there's no lights shining on it and there's no lights on, and it's a dark vehicle, you're saying that's not a factor how far back down the road it is, and that doesn't affect visibility?
A But the speed doesn't matter in that situation, because at the end of the day she's still has to come from half mile, four miles, however many miles back. It doesn't matter what speed at which she's traversing that distance. It doesn't change the visibility of that object.
Q I got you. Okay.
Well, did you hear Mrs. Kuck earlier this morning?
A I was hear for her testimony, yes.
Q Yeah. She couldn't even make out whether it was a sedan, or an SUV, or what was coming at her, and that thing hit her car.
A That's her testimony.
Q That might have -- you agree that, you know, as far as how dark it was, it seems like it was getting pretty dark by the time of this accident?
A The sun had set at that point, yes.
Q Okay. And what have you done -- you

looked at this website that has calculations from a university in Europe, the Naval Observatory records. Have you gone to the scene?
A For this case, no.
Q Okay. Have you gone out there to put yourself in -- haven't gone out there to put yourself in Antoine Johnson's perspective, have you?
A I have not.
Q And you agree that it's a heck of a lot darker out at this intersection at 5:50 in November than what we see here in Exhibit 5, right?
A It would be darker, yes.
Q And your understanding is that Antoine Johnson, he would be right around where that white stop bar is, or right here by this crosswalk looking at --
A Assuming that's Southwood Park Drive, yes.
Q Okay. And you haven't gone out there to take photos or document how dark that intersection gets and how dark it is looking down the road at 5:45 at night, 6:00 at night, 20 minutes after sunset, 30 minutes after sunset, 27 minutes after sunset. You haven't done any of that?
A I don't have that data, no.
Q And you could do that, if you were asked

to do that?
A If I were asked to do that, yes.
Q And you have people in your office that do speed calculations; is that correct?
A I have engineers that are capable of it. I don't have an accident reconstructionist, if that's what you're asking.
Q You don't have a single person that does accident reconstruction in your firm?
A I do not have a certified accident reconstructionist, no.
Q Okay. Well, Woody Poplin is a certified accident reconstructionist, right? Would you agree?
A I can't speak to his specific qualifications, but I understand that he is an expert in accident reconstruction.
Q Okay. And you did read his testimony and what he said?
A I read his testimony.
Q Right. So you've done nothing to put yourself in Antoine Johnson's perspective, but you're going to comment about what he should have been able to see?
A I did not place myself in his spot at the scene, but I have extensive experience in nighttime

driving as well as the appearance of headlamps and vehicles at night.
Q Do you agree that at nighttime, we as people have a limited ability to see?
A We do.
Q You don't have any opinion about whether Ms. Hood's headlights were on or off, do you?
A I have not conducted an independent analysis of that.
Q Would you agree that it's dangerous at a certain time once it starts getting dark to operate your vehicle without your headlights on?
A It can be, yes.
Q Would you agree that that can pose a risk to you as the driver, if you're driving without your headlights on, and pose a risk to others on the roadway if you're driving without your headlights on at night?
A It can.
Q And you've already said it gets relatively dark at about 5:50, 5:53 p.m. in Hilton Head, South Carolina, the area where this accident occurred; is that right?
A At that time of year, yes.
Q All right. And you went to Clemson to get

your Ph.D.
A I did.
Q And one of the professors that you studied under, and I think you said one of the reasons why you went there is Dr. Tyrrell.
A Dr. Rick Tyrrell, yes.
Q Dr. Rick Tyrrell. All right. Do you think he's an authority in human factors?
A He is certainly a well-published and well-researched individual, absolutely.
Q Do you respect his opinions as someone who was your professor and taught you on the subject of human factors?
A I certainly respect his opinion.
Q Okay.
MR. DANIEL: We went to Clemson --
MR. WILLEY: I haven't seen this, Judge. I didn't see it before he shows it to the jury. And I object to this, it wasn't produced in discovery.
MR. DANIEL: Impeachment, Your Honor.
MR. WILLEY: It's not -- it's not proper. He can call Dr. Tyrrell about this case if he wants.
THE COURT: You can ask her if she's

familiar with it. If she's not familiar with it, she's not familiar with it. But it's not for you to just go ahead and show them.
MR. DANIEL: Yes, ma'am.
BY MR. DANIEL:
Q Have you ever been to Clemson's website?
A I have been to Clemson's website.
Q Have you ever seen this quote on Dr. Tyrrell's page, "You can't see a damn thing in the dark."
A I have.
Q You have seen this?
A Can I explain?
Q Well, yeah.
A Okay. That was a quote from Dr. Tyrrell's graduate advisor, and it is a clever little thing that we use as sort of -- again, a clever thing that guided our research for why nighttime conspicuity was important.
Q And I mean, if I'm looking at it -- it's got headlights in it. You've seen this picture, right? You've seen this --
A I haven't seen his website recently. So I don't know if I've seen that photo.
Q But you've heard of his quote, "You can't

see a damn thing in the dark."
A Again, it's a clever saying, and, yes.
Q And that's something Dr. Tyrrell taught you?
A Yes.
Q Okay. So you didn't look at the vehicle damage to assess speed. That's not something that you do, an accident reconstructionist would do that.
A Yes.
Q There was testimony, and I believe it was the way the question was worded, not necessarily the way you answered it, but that the impact between Antoine Johnson's Honda and the Plaintiff's Equinox pushed her over into the other oncoming lanes.
Since you didn't do an accident reconstruction, you really -- you can't testify to that, can you?
A No, I did not offer any opinions about that.
Q She could have overcorrected?
A I suppose that's possible.
Q And, I mean, just common sense, if you're going 30 versus 60 and you jerk the wheel hard, it can be a lot worse at 60; do you agree?
A I'm not sure what you mean by "worse."

Q All right. Well, if you're going 10 miles an hour and you start to turn the wheel of your vehicle, in your experience, can you give it a little more of a tug versus 60? You got to be really careful about how hard you turn your wheel?
A I'm not an accident reconstructionist, I'm not going to speak to that.
Q You're not going to go there even though you drive everyday, right?
A I do.
Q You actually have a Chevy Equinox, don't you?
A I do.
Q Same vehicle as the Plaintiff; is that right?
A Different year.
Q Yeah. 2015. Do you know if the lighting on that has changed?
A I don't.
Q You haven't gone out to the scene to go out there and take a photo or something as it's getting dark with just the parking lights on, or running lights on, have you?
A As you just pointed out, I don't know what's changed from '11 to '15.

Q Okay. As far as texting and driving, or distractions, do you think -- I mean, you've got that -- this exhibit here, Plaintiff's 14, is there any information that you have that Antoine Johnson was eating something when this accident happened?
A No.
Q So that would be pure speculation there?
A As far as whether or not he was doing it, yes. As far as whether or not it's a cause of distraction while driving, no.
Q Well, we're here about Antoine Johnson. Makeup, he's probably not putting on makeup?
MR. WILLEY: We stipulate that the only one that's relevant is the one that she said was relevant, reading the text, instead of going through all eight of them. Can we agree on that? The relevant one in this case is reading the texts.
THE COURT: That's fine.
BY MR. DANIEL:
Q And that cell phone record, Exhibit 7, if you want to come down and look at it, you can. But you've seen it, right?
A I guess. Depends on what your question is.

Q I invite you to come down and look at it if you're unsure. You haven't checked with the cell phone carrier about what all this information means?
A Which information?
Q This information in this exhibit.
A I mean, some of it is fairly self-explanatory. But if you have a specific question.
Q This is -- you're suggesting a question. You haven't checked with the cell phone carrier about what this information means?
A I have not checked with the cell phone carrier, no.
Q All right. And Mr. Johnson received a text at 5:57:43; is that what that says?
A It does.
Q Does that mean he was necessarily reading that text?
A No. There's no indication of that.
Q And you know of no witness that says that he was reading -- yes, ma'am.
You know of no witness that says he was reading a text, or there's nothing showing that he sent a text at that time, right?
A Correct.

Q That could just mean that that text came in at that time and was on his phone, like email in your inbox on Outlook or something, right?
A It could.
Q Or mail in the mailbox. Once it's there, it's electronically documented. That could be what that means.
A It could.
Q You don't know one way or the other.
A No.
Q And Mr. Johnson said, you know, he had just been involved in the accident. The first thing he did, he lives with his mom, he's a young age, he called his mom, right?
A That's what he testified to, yes.
Q You were here?
A Yes.
Q He did that right after the accident?
A That's what he testified, yes.
Q If his phone's right there, that wouldn't take but as long as it takes to pick up the phone, and I've got mom on there, I'm calling mom.
A Sorry?
Q It could be within moments, right?
A Potentially.

Q You can't put a precise time on when this accident happened, can you?
A A precise time, no. But I think in my deposition, we both agreed that the phone records between, I think it was, 43 and 57, were before the collision. So that gives us an approximate range.
Q I'm not -- I don't know that we agreed to anything, but I'm not -- I certainly didn't say -- I mean, this 57 is just a text that maybe came in, right? It doesn't mean that Antoine Johnson is doing anything with his phone at 5:57:43. That doesn't show you that Antoine is doing anything with his phone. You agree?
A It does not indicate what he was doing with his phone, no.
Q We do know that he made an outbound call at what looks like 6 o'clock and eight seconds, right?
A I can't read that from here. But I trust that that's what you're reading me.
Q I want to make sure you can read it.
A I can. Thank you, I'm not that blind.
Q All right. Six o'clock and eight seconds.
A Yes.
Q Okay. So the accident could have happened

at 5:58 p.m.?
A It could have.
Q And do you have any reason to dispute that Mrs. Hood may have been traveling at 62, 63 miles an hour just before this accident?
A I don't have any evidence either way, but I have reviewed.
Q You've reviewed the testimony of an engineer?
A I've reviewed the testimony of an engineer.
Q And we've already talked about what that testimony was?
A I believe so.
MR. DANIEL: Thank you.

REDIRECT EXAMINATION

BY MR. WILLEY:
Q You can't see a darn thing in the dark -- but let's start at the end.
MR. WILLEY: And, Ms. Margaret, would you be so kind as to turn on this screen?
BY MR. WILLEY:
Q You mentioned a piece of your deposition. Y'all agreed.
What -- what page were you referring

to there?
A Page 66.
Q Okay. And during your deposition Mr. Daniel was the one asking you the questions?
A He was.
Q Okay.
THE CLERK: What do you have it hooked up to?
MR. WILLEY: Airplay.
BY MR. WILLEY:
Q And what -- what lines were you referring to?
A Lines five through ten.
Q Okay. And --
MR. DANIEL: I think it's number one. It's from Apple TV. You've got the DVD on.
BY MR. WILLEY:
Q It's not on this one, but let me see if I can get it up here. Lines 11 through -- or what did you say?
A Five through ten.
Q Five through ten. Okay. Let's call those out.
And that's Mr. Daniel asking you the question. What did he say?

A Would you like me to just read it?
Q Yeah, that would be great.
A "And the time frame, we kind of talked about it, but the guestimate to the time frame in the records in the 1743 to 1757 would be the most -- the ones closest in time to this accident based on what we know."
Q And you answered?
A "Yes."
Q So you accurately reflected your deposition when he asked you that, right?
A I believe so.
Q Y'all agreed on that, 4357, right?
A Yes.
Q And you're familiar with this book. It might be the first person in the whole trial that's seen it before.
A Yes.
Q Okay. And what is this?
A The South Carolina driver's manual.
Q All right. We've been through a few here. And is this, in your line of work, a publication that you use and rely on to gather information?
A It is.

Q Okay. And does this document give you some indication about when, in South Carolina, you know, it's dark, so to speak?
A Yes.
MR. DANIEL: Your Honor.
THE COURT: Do you have an objection? What's the basis?
MR. DANIEL: I'll wait for the question.
BY MR. WILLEY:
Q Okay. What does it say about when it's dark?
A Based on the driver's manual, it would be dark 30 minutes before sunrise and 30 minutes after sunset.
Q Okay. And what does the driver's manual say that you should do when it is dark?
A Activate your headlights.
Q Does it give other circumstances, other than that 30 minutes after sunset or 30 minutes before sunrise, when you should activate your headlights?
A It does.
Q And what does it call those things?
A Environmental factors, I believe.
Q Okay. And I added the eclipse earlier to

be fun, but these top four, are these the four that it lists out as environmental factors?
A I definitely recall the first three, yes.
Q Okay. So it specifically deals with darkness, right?
A Independent of the environmental factors, yes.
Q Okay. And in this case your opinion was that the collision was at 5:58 or earlier, correct?
A Correct.
Q And in your deposition you and Mr. Daniel agree that it was between 43 and 57, based on what we have there, correct?
A Those records were the closest to the collision, yes.
Q Right. And if we take his U.S. Naval Observatory, which, again, is for the whole town, that's the average for the whole town, correct?
A Correct.
Q When would it have been 30 minutes after sunset?
A 5:58.
Q After this wreck?
A Yes, around that time.
Q With the only possible exception being if

this wreck occurred exactly at 5:58, right?
A Right.
Q But in this case, you actually went a step further and got a more specific data point, correct?
A It's using more precise coordinates, yes.
Q And the precise coordinates put sunset at that exact intersection at what time?
A Five fifty-nine, I believe.
Q And this data point and this data point is using the same exact physics, correct?
A That's my understanding, yes.
Q Okay. This one is more general for the whole town. This one's more specific, correct?
A Specific to the location of the collision, yes.
Q And according to this data point, this specific data point, when would it have been 30 minutes after sunset at that intersection where this wreck occurred?
A Five fifty-nine.
Q And that would have been the point at which headlights would have been required?
MR. DANIEL: Objection, Your Honor.
BY MR. WILLEY:
Q According to the driver's manual.

A Based on the driver's manual.
THE COURT: Okay. Based on the driver's manual. Go ahead.
BY MR. WILLEY:
Q And presumably, folks that have automatic headlights, they come on at a specific time; correct?
A It's based on the lighting in the environment.
Q And generally they click on when it's time or whatever.
A When it's dark.
Q And since you've been -- I didn't bring this up because I don't really -- didn't think it was relevant. But we went into this Poplin fellow's deposition. You reviewed his deposition, correct?
A I did.
Q What did -- what did he say about Ms. Hood's headlights?
A There is --
MR. DANIEL: Objection, Your Honor.
THE COURT: Basis?
MR. DANIEL: Lack of foundation. She's not giving an opinion about headlights.
MR. WILLEY: I'm just asking her what she

said. He asked her what she said about a thousand things.
THE COURT: You asked her questions about lights, so go ahead.
MR. WILLEY: I, mean, I actually, for the record, agree with the objection.
BY MR. WILLEY:
Q What did he say about the headlights?
A He indicated that at some point the high beam assembly had been activated prior to impact.
Q Along with the running lights, correct?
A I believe that either he or another engineer had testified to that, yes.
Q Okay. But according to the driver's manual, assuming what we all agree on, that this wreck occurred before 5:58, she wouldn't have been required to have anything on, correct?
A Based on the driver's manual, that's correct.
Q This specific point, this intersection, this road runs east to west; correct? We've gone through this.
A It does.
Q Okay. And the sun sets where?
A West.

Q Okay. So the sun would be setting on this side, correct?
A This side.
Q Right. Would that, in your -- you know, field of expertise provide some reason why this intersection might have a little later sunset than somewhere in the middle of the trees in Hilton Head, for example?
A Yes. I believe there's a section on the U.S. Naval Observatory's website that discusses that there can be minor variations in sunset time based on where exactly the data's from because there's differences in elevation and the horizon and things like that.
Q And so in this case, you know, it's an open road and the sunset in the west, there would have been more light potentially than other places on Hilton Head?
A Depending on where it was calculated from, yes.
Q And you were here, we were all here, we've all been here all week. You heard Ms. Melnick's testimony, correct?
A I read her testimony.
Q You read. Okay. And you -- will you step

down, please?
A Oh, yes.
Q Where is it -- you know, your understanding Ms. Melnick was putting down the umbrellas. Where was she?
A In this area.
Q Okay. And roughly, where was the aftermath that she was able to see?
A My understanding is that she was looking through the trees from this area, so somewhere in this vicinity.
Q And based on your review of, you know, her testimony, she was able to identify roughly the number of vehicles involved, correct?
A That's my recollection.
Q And people were helping and all that sort of thing?
A That's what she testified to.
Q And she was able to see that through these trees?
A Yes.
Q Now, based on your expertise in human factors and conspicuity, would she have had better or worse ambient lighting looking through the trees, through the woods, than an individual would have had

stopped at the stop sign on the open highway?
A She may have had some shadowing, for example, from the trees in that area. So that may have changed things from her perspective versus being in the open area at the intersection.
Q But she was able to see the vehicles out there on the highway.
A Yes, she did in her deposition.
Q As far as we know, she didn't have headlights on.
A No, to my understanding.
Q Okay.
Just so we're clear on that.
Now, your second opinion, there was some talk about that, so let's just deal with that. You did not have the benefit of a live testimony like this morning prior to your deposition, correct?
A I'm sorry?
Q The testimony that you heard this morning as you sat in the courtroom, obviously you had not heard that prior to your deposition, correct?
A Right.
Q Okay. And we talked about some of the factors, but obviously this morning you heard Mr. Lee say that the Xenon headlights he had on,

correct?
MR. DANIEL: Objection. Mr. Lee didn't testify to that.
BY MR. WILLEY:
Q Oh, excuse me. In his deposition.
A Yes, I was going to say, in his deposition.
Q Okay. What I was saying is this morning you heard Mr. Johnson say that he could not -- he also did not see Mr. Lee, correct?
A He indicated he did not see any vehicles.
Q So what did that -- what does that tell you in your expert opinion about the importance of headlights to Mr. Johnson's ability to see cars coming?
A It would indicate that he either was not looking in that direction, or failed to perceive information in that direction because headlights in general are a fairly conspicuous visual queue. And I think that many people have experience with the Xenon or the blue lights in particular. They have the appearance of being quite bright.
Q And he didn't even -- he didn't see those?
A He testified that he did not.
Q Does that support your third finding as to

distractiveness and inattentiveness?
A It did.
Q And based upon that, were you able to find to a reasonable degree of professional certainty, most probably that Mr. Johnson being distracted at the time contributed to the inability to see Ms. Hood?
MR. DANIEL: Objection, mischaracterization.
MR. WILLEY: She can say yes or no.
THE COURT: Okay. Go ahead and answer it.
THE WITNESS: That would be the most probable explanation.
MR. WILLEY: Thank you, Doctor.
RE-CROSS EXAMINATION
BY MR. DANIEL:
Q And, Doctor, your opinion actually is if -- if -- I mean, we can underline it. I don't want to mark their demonstrative up -- but if Johnson was distracted, so you're assuming -- that's an assumption, right?
A Based on the evidence available, that is what is suggested.
Q That's an assumption, though, that you have to make?

A To some extent.
Q And you don't know -- you didn't hear Dustin Lee testify, you don't know what he said about how far back down the road he was, whether it was -- and he's really giving a guesstimation, it was ten car lengths, 12 car lengths, how far back down the road he was, do you?
A I was not here for his testimony, no.
Q And you don't know whether at the time, really what Antoine Johnson saw was -- there is nothing right in front of me, there may be a vehicle way back there, 100, 200 yards back with lights on, but I can get through to this median and pass, and get to the median before that vehicle back there with lights gets here.
You don't -- you don't know what his process was actually at the time, do you?
A I'm sorry?
Q You can't go -- you can't go back and see what he saw; is that right?
A None of us can.
Q Right. And obviously Dustin Lee did not hit Mr. Johnson's vehicle; do you agree?
A That is correct.
Q We know that. That's a fact. That's not

an assumption, that's a fact?
A That is a fact.
Q And so he was far enough back to safely either stop or stop in time to avoid making contact with Mr. Johnson, who was in the middle of this roadway; do you agree?
A Can you repeat that?
Q Yeah. Dustin Lee was far enough back on William Hilton Parkway, 278, that -- do you see the shade right there?
A I do.
Q Yeah. That's in the photo, aerial shot here. He was far enough back to stop in time to avoid hitting Mr. Johnson; do you agree?
A I do agree. He could also see him.
Q Yeah. And he's being asked to recall exact specifics three years later. He knows he didn't see any headlights, he didn't see anything right in front of him. He's definitely testified to that; do you agree?
A Who?
Q Antoine Johnson.
A Sorry. I thought we were still talking about Mr. Lee. Can you repeat that?
Q Yeah.

Antoine Johnson, if he says he didn't see any headlights or anything right there that would have made it unsafe for him to pull out, you don't have really any reason to disagree with that?
A He testified he didn't see any vehicles. But I have no reason to disagree with his testimony about that.
Q There could have been a vehicle though with lights on well back of him, Dustin Lee, and if it's far enough back, as a driver, you agree, if you see headlights that are way down the road, a couple hundred yards away, you can get through two lanes of travel, right? If you -- do you agree?
A I'm sorry?
Q You're a driver. You drive?
A I do. I'm sorry, I'm not understanding your question. I'm asking you to repeat it.
Q Have you ever made a left turn? Have you ever made a left turn like this, when you saw headlights down the road from you, but they were off in the distance?
A Yes.
Q Okay. And what we have established is you don't know whether Antoine Johnson was reading a text, right?

A We can't say for certain, no.
Q There's at least one source that you actually used more often that says sunset is at 5:58, 30 minutes after sunset in Hilton Head, right?
A I'm --
Q U.S. Naval Observatory says that it's 30 minutes after sunset at 5:58 p.m. on the day of this accident, right?
A Yes, that was unclear in your first question.
Q You're right, poorly worded question.
But the sun has been going down, and it's down. It's been 30 minutes after sunset, per the Naval Observatory, at 5:58 p.m. on the day of this accident?
A Per the Naval Observatory, for the general Hilton Head area, yes.
Q And 27 minutes after sunset it's pretty dark with conditions like this; do you agree?
A It is getting dark.
Q Yeah. You haven't gone out there and recreated it and shown how dark that actually is?
A I have not recreated it, no.
Q You don't have any photos of any vehicles with their headlights on or off at a time like that,

20 minutes, 25 minutes, 30 minutes after sunset?
A For this case, no. For studies I've conducted in the past, yes.
Q So you could show studies to the jury with pictures like that that they could see, to see how dark it is; but you're not doing it here today?
A I have photos showing how conspicuous headlights are under those circumstances.
Q You didn't bring any of those type photos with you?
A I don't have them with me, no.
Q Okay. You could have brought them.
A I suppose.
Q Right. And you could have talked to the witnesses about what they observed?
A I could have, I suppose, yes.
Q You didn't do that?
A No. I relied on their sworn testimony.
Q Right. Have you considered the deposition testimony of Cary Tanrath?
A I didn't see deposition testimony of Cary Tanrath.
Q You don't even know who he is?
A I know who he is. I did not see his deposition.

Q What do you know about Cary Tanrath?
A He was a witness to the collision. He gave a statement after the collision.
Q Do you know specifically what he says about headlights?
A My recollection is that he said he did not see headlights on Ms. Hood's vehicle.
Q Do you know where he was?
A I don't recall specifically.
Q And you agree that you're not a police officer?
MR. WILLEY: Your Honor, we're going way outside the scope. We've got down this road, she's not a police officer, she's not a doctor. We agree to all of that. She is a doctorate in human factors.
THE COURT: Let's just move on with it, okay?
MR. DANIEL: Yes, ma'am.
THE COURT: Thank you.
BY MR. DANIEL:
Q You were shown the driver's ed or some kind of South Carolina driving guide. You agree that that's not the actual law on what is required as far as headlights in South Carolina?

A No, it is not the law.
Q Have you read the law at this point before today?
A I have not.
Q You have not?
A No.
MR. WILLEY: Your Honor.
THE COURT: Okay. We are starting to get into territory. She can't testify to law, you know that.
MR. WILLEY: I will show her the law.
THE COURT: Let's move on. Let's go.
MR. DANIEL: Yes, Your Honor.
BY MR. DANIEL:
Q And do you agree that environmental conditions, though, dictate when you should or should not have your headlights on?
A In part, yes.
Q And you should have your headlights on when it starts getting hard for you to see other drivers on the roadway or other drivers to see you; do you agree?
A I don't recall how specific it's in there.
Q Does that make sense?
A It makes common sense, yes.

MR. DANIEL: Thank you.

REDIRECT EXAMINATION

BY MR. WILLEY:
Q Briefly, Your Honor.
Dr. Borzendowski, is this the page from the driver's manual you were relying on in your testimony that he just questioned you about?
MR. DANIEL: Your Honor, I didn't question her about that driver's manual.
MR. WILLEY: You did.
THE COURT: ASk the question.
MR. WILLEY: Thank you, Your Honor.
BY MR. WILLEY:
Q It is a fair and accurate representation of the page from the driver's manual?
A Yes.
Q Is it in fact an exact copy of the page from the driver's manual?
A It appears to be.
MR. WILLEY: Your Honor, at this time we would move to admit the evidence of this page from the driver's manual.
MR. DANIEL: Objection.
THE COURT: You can object. No, it's not

going in evidence. Let's move on.
BY MR. WILLEY:
Q Experts in your field rely on that?
A They do.
Q And just briefly, once again, you read Mr. Lee's testimony, correct?
A I did.
Q Mr. Lee testified that he could see Ms. Hood, correct?
A Yes.
Q And he also testified that he was close enough to see Mr. Johnson, correct?
A He testified that he could see Mr. Johnson's vehicle, yes.
Q And Mr. Lee would have been farther away from Mr. Johnson than Ms. Hood would have been from Mr. Johnson, correct?
A Based on Mr. Lee's testimony, yes.
Q He was an eye witness?
A Yes.
Q Without a stake in the matter, as far as you know; correct?
A As far as I know.
Q And did you use that testimony, that data point, to aid you in your opinion that Ms. Hood

should have been visible to Ms. Johnson?
A In part, yes.
Q Thank you.
THE COURT: Anything further?
MR. DANIEL: No, Your Honor.
THE COURT: Any objection to this witness being excused?
MR. WILLEY: Not from the Plaintiff.
THE COURT: You're excused. Thank you.
MR. SMITH: Can we take a short break?
THE COURT: Ladies and gentlemen, we will go ahead and take a short break at this time. Do not discuss this case. It would be inappropriate to do so. We will be right back with you.
(Whereupon, a brief recess was taken.)
(Jury exits the courtroom at 4:48 p.m.)
MR. WILLEY: Your Honor, and just for -- just so my conscience is clear, I do realize that it was the driver's manual, but when he brought it up, I felt like it was necessary not to think that I was hiding anything from them. So --
THE COURT: All right.
What's next, a video?

MR. SMITH: Treating doctor.
THE COURT: How long is that video?
MR. SMITH: Forty minutes.
THE COURT: Okay. Let's get it queued up. We're going to take about ten minutes. What is after that?
MR. SMITH: I have probably -- I have lined up.
THE COURT: How many?
MR. SMITH: I know two are outside, possibly three.
THE COURT: And how short? You said two briefly. My question is: Can we get all that done by 5 o'clock today, or do you want to bring some back later?
MR. WILLEY: Maybe, briefly in the morning will be fine.
THE COURT: Just asking.
MR. SMITH: I think we can get it done. I mean, whenever you want to call it, we can call it. But these two witnesses I expect will be ten, 15 minutes each.
THE COURT: Each, okay.
MR. WILLEY: And we have witnesses lined up for first thing in the morning, as early as

9:00. So at your --
THE COURT: That's fine. I don't want to start till 10:00, so that's fine.
MR. SMITH: But, Your Honor, one last thing. I object, I made the representation, they've got Woody Poplin under subpoena. I've asked for a copy of the subpoena.
MS. SUTTIE: I have it here.
MR. SMITH: I just want to see it.
THE COURT: Okay. We're just going to be at ease for about ten minutes. Be here a couple of minutes before 4:00. Make sure it's queued up and you've already tried the deposition and it's ready to go.
(Whereupon, a brief recess was taken.)
THE COURT: Okay. Tell the jury to come on out.
(Jury enters the courtroom at 4:10 p.m.)
THE COURT: Go ahead and queue it up. Who is this a deposition of?
MR. SMITH: Dr. David Jaskwhich, a doctor in this case.
THE COURT: What we are going to do, like you saw prior with Ms. Melnick, there is a video deposition of the treating doctor in this

case. Again, that is for you to use like the doctor is testifying right here.
As I said before, this deposition is taken in a lawyer's or doctor's office, and it is like any testimony, it is for y'all to judge. And if you need to stand up and stretch, let me know and we will pause it for a minute.
On the back row, you will not block anyone but I know that it becomes rough. This one is roughly 40 minutes, and I can tell you that it will also take us to the end of the day. Okay?
(Video deposition being played.)
MR. SMITH: Judge, we have two very short witnesses that drove up. I promise the first one is maybe less than five minutes. And then we could squeeze them in before the end of the day.
THE COURT: Are y'all okay?
JURORS: No.
THE COURT: That is what I wanted to hear. Y'all have spoke. We will break for the end of the day. Again, do not discuss the case. We will return at 10 in the morning is that's acceptable to everybody?
JURORS: Yes.

THE COURT: Stay dry. Don't do independent research or discuss this case and have a good evening. Get some rest and have a good evening. See you tomorrow at 10:00 a.m.

MR. WILLEY: We have a few things for housekeeping. In the first video we marked and entered into evidence the flash drive of the call, called Exhibit 1. So, for housekeeping purposes we will move that and the video in as Exhibit 2 for purposes of this trial. Ms. Melnick's video.

MR. DANIEL: Is that an exhibit?

THE COURT: It is in evidence, so it would be an exhibit, yes.

(Whereupon, Plaintiff's Exhibit No(s). 2 marked for identification and received in evidence.)

MR. DANIEL: So, then, we could also have the jury, I guess, look at the deposition testimony if we wanted to move that into evidence.

MR. SMITH: Just the video used at trial.

MR. DANIEL: I would object to the actual video being an exhibit. Maybe the flash drive of the 911 call. I didn't hear that they were

moving the entire video testimony of a witness into evidence as an exhibit.

MR. WILLEY: Your Honor, a video deposition always comes into evidence. It is for use at trial. There is time to object and that is when it's noticed. That is fine. It is here. Wouldn't it normally be an exhibit if testimony needed to be played back Mona would bring them out and play it. If deposition testimony needs to be played. It is just like a deposition at trial. We would have to come back and play the entire testimony. I don't know if it was an exhibit. I think that it was already a part -- it was published. That would be duplicative. They have seen it once and it goes back to them again. I would say no. It needs to be marked as a Court's exhibit for sure, but it doesn't go to the jury as a jury exhibit. It is a Court's exhibit, correct? That is what we are saying.

MR. WILLEY: We need that as a Court's exhibit. We need Exhibit 1 moved in actually.

THE COURT: That would go in as an exhibit. That would be an exhibit.

(Whereupon, Court's Exhibit No(s). 2

marked for identification and received in evidence.)

MR. WILLEY: For purposes of what we did. This was referred to also as an exhibit, Plaintiff's 15, which would be in evidence. And Plaintiff's 2 referred to in the deposition, a packet of bolts and screws would be Exhibit 16 for Plaintiff so that the record is clear.

(Whereupon, Court's Exhibit No(s). 3 marked for identification and received in evidence.)

THE COURT: No one has testified that those were the bolts and that were in her --

MR. WILLEY: Yes, Mr. Jaskowhich did. They were moved in without objection into evidence.

MR. SUTTIE: I objected in the transcript. We had a motions hearing.

THE COURT: I ruled before that they could come in. I think that they can both come in. That is fine.

MR. WILLEY: I'm clarifying the numbers.

THE COURT: Okay. What else?

MR. WILLEY: That is all that I have.

(Whereupon, Plaintiff's Exhibit No(s). 15 marked for identification and received in evidence.)

(Whereupon, Plaintiff's Exhibit No(s). 16 marked for identification and received in evidence.)

MR. DANIEL: One thing about housekeeping, if you have two short witnesses, we would like to the get our witness right away. Is that how many.

THE COURT: How many do you have left?

MR. WILLEY: You should be prepared to go by -- what time are you starting, we will go at least through lunch.

THE COURT: Okay. Well, then then, tell me how many witnesses you have if you are going through lunch?

MR. WILLEY: Potentially four or five.

THE COURT: Some of them are lengthy?

MR. WILLEY: We have the Plaintiff.

MR. SMITH: She would be the most lengthy. A before and after person.

THE COURT: I would have one person before lunch, if I were you. Just -- okay. If you can.

MR. DANIEL: Sure.

THE COURT: All right. We will see you in the morning.

(Court adjourned for the day.)

(Whereupon, the trial proceedings continue in Volume 5.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of January, 2018.

/s/ Mona L. Manley

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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs.

Antoine Johnson,

Defendant.

Transcript of Record

VOLUME 5

September 7, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

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PROCEEDINGS

THE COURT: Good morning, ladies and gentlemen. Obviously, the news has been very exciting. I don't know if exciting is the right word for it. But you all are from Ridgeland and from the area and we have experienced the last couple of hurricanes that had come through. Let me tell you what I am hoping to do. And again, I say "hope". I have talked to the attorneys, they are streamlining their case. We are going to try very hard to finish this case today. And that means that we are going to push and I mean push. And I'm going to tell you that right now. Okay?

For some reason we are unable to finish, we just can't wrap it up I'll have to make a different decision at the end of the day. I just want you to sit back and relax and there will be evidence put in front of you. This is what we are going to attempt to do today. Okay?

So, I don't want anyone concerned. If anyone has any problems at home. All of the schools are still in in Beaufort County, which is where I come from so no one should have problems with kids being home. And, again, the weather is still fine so we are good.

My understanding is if it were to hit this area it won't be here until Monday. That is what I'm being

told by SLED and my Sheriff. So, everyone sit back and relax and we will get it done as best as we can and we will go forward from there.

Okay. Again, good morning, ladies and gentlemen. And if the plaintiffs want to call their next witness for this morning.

MR. SMITH: Yes, ma'am, the plaintiffs call Nelda Fowler.

Thereupon,

NELDA FOWLER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Good morning.

A Good morning.

Q All right. Tell us your name please.

A Nelda Fowler.

Q Ms. Fowler, are you married?

A Yes, I am.

Q How long have you been married?

A 47 years.

Q Congratulations.

A Thank you.

Q Do you have kids?

TESTIMONY OF NELDA FOWLER

A Yes.

Q How many kids you got?

A Four.

Q All right. Where do you live?

A I live in Goose Creek, South Carolina.

Q Okay, all right. You know Therese Hood, Terry?

A Yes, I know.

Q Okay. ANd where do you know her from?

A I know her from church.

Q All right. Ms. Fowler, we had planned a whole presentation here today. But I'm just going to get right to it with you, okay?

A Okay.

Q What I would like for you to do is tell the jury the story of why Therese is no longer a Eucharistic Minister.

A Okay. Well, Therese was a Eucharistic Minister, that means that -- that means we help the priest give the blood of Christ and the body of Christ to the congregation. It is a very important role. We have to be commissioned for that. If there's something that Father does not -- does think that should be stopped, he does tell us. So, Therese was giving communion, the wine or the blood of Christ, apparently I was not there but apparently she, her leg was giving out on her.

MR. DANIEL: Objection, Your Honor, hearsay.
THE COURT: Okay. kind of redirect her, if you could. You can't say things that someone else has told you, that you have heard. You just have to say things that you know.
BY MR. SMITH:
Q Yes, ma'am. What is your understanding of why Therese -- what happened?
A My understanding is that she spilled the blood of Christ.
Q Okay. Was that the talk of the church?
A That was the talk of the church.
Q Everybody knew about it?
A Everybody knew about it.
Q And was Therese basically fired from that job by father?
A Right.
MR. SMITH: Thank you.

CROSS EXAMINATION

BY MR. DANIEL:
Q Ms. Fowler, how long have you known Therese?
A Probably about five years.
Q Did she serve as Eucharistic Minister after you know about when this accident happened?
A Maybe about three years.

Q When did the incident happen with the --
A It happened about a year -- just prior to her -- it happened after her accident.
Q Do you know about her medical conditions or any issues that she had before this accident?
A She was -- she is -- she was a real outgoing person and willing to cooperate with everything. She volunteer most of everything that we have in church.
Q Yes, ma'am. But do you know if she had any medical issues before this accident?
A No.
Q You are not aware of any?
A No.
Q Do you ever spend time with her at her house?
A Yes, after the accident, I went to her house and visited with her for a while.
Q Do you know what neighborhood she lives in?
A Excuse me.
Q What is the name of the neighborhood where she lives?
A That she lives in?
Q Yes, ma'am.
A Um -- I am having a senior moment.
Q Do you live near her?
A It is right across from the church. Right across

there is a subdivision back there.
Q Does she still go to church?
A Yes, she goes to church. Sometimes she does not go, but most of the time she is there.
MR. DANIEL: Okay, thank you.
MR. SMITH: No questions, Your Honor.
THE COURT: All right. You may step down. Thank you.
MR. SMITH: Yes, the plaintiff calls Helen Hernandez.

Thereupon,

HELEN HERNANDEZ

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:
Q Good morning.
A Good morning.
Q Please tell us your name.
A Helen Hernandez.
Q Ms. Hernandez, do you know Terry?
A I do.
Q Where do you know Terry from?
A Church.
Q Okay. Do you know Terry outside of church?

A Not really. No.
Q Okay.
A Everything that I have done with her has been at the church.
Q And at church, were you a member of the Ladies Guild?
A Yes.
Q Are you still?
A Non active right now.
Q And was Therese?
A Yes.
Q Okay. What does the Ladies Guild do?
A We do everything, bake sales, dinners, lunches. You name it, the Ladies Guild is involved.
Q Okay. And when the Ladies Guild is looking for people to do certain things, do y'all go through and assign the task or do you ask for volunteers?
A We volunteer.
Q Before the wreck that we are here about, three years ago, how often did your -- did Terry -- how often did she volunteer?
A Almost always. We about lived there. We were there a lot.
Q Did Terry serve as the secretary at some point as well?

A Yes, she was, she was the secretary.
Q OKay.
A But she was also -- if I can answer?
Q Sure.
A She was also involved in our Pro Life and our youth group. We were -- our teenagers were going to Poland and she helped us arrange things for fund raisers. And any time that we needed anything, she was there. I mean --
Q It sounded like Therese was someone that y'all could count on?
A Yes.
Q And tell me about the church service. Tell me about afterwards. Did y'all rush out to go get brunch, or what did y'all do?
A Most people can't wait to get out of church. They couldn't get us away from church. We would visit, talk about church, talk about the upcoming events that we had. You know, just kind of check on everyone. If anyone at the church needed anything we would talk about how we could serve.
Q Okay. And did Therese seem to enjoy this fellowship?
A Yes.
Q And was she ever in a rush to leave?
A No.

Q I will just get right to it with you as well. Okay?
A Uh-huh.
Q Nowadays, do you still see Therese at church; does she still attend the service?
A Not as much as before.
Q Okay.
A Whenever the accident happened, you know, of course we didn't see her and then when we did see her it was sporadic. Her husband would bring her in. She was never the same afterwards.
Q Do you still hang around after church like you used to and enjoy the fellowship?
A Yes.
Q Tell me about Therese.
A I don't see her as much anymore. Usually she's leaving. She doesn't spend a whole lot of time there.
Q Do you try to engage her?
A Yes.
Q What happens?
A Well, we talk but she's -- I don't want to use the word "depressed," but she's not -- her whole being changed. I think that the thing that I noticed the most was her facial expressions. It was kind of like, I'm here, I want to be part of it, but not being able to follow through. If

that makes sense.
Q Yeah. And when you -- this facial expression that you said when you see her, it's sort of like, I'm here?
A Yes, it's not like before. Before it was a smile, you know, it was engaging and it was like -- but now it's like, I want to talk to you but maybe not -- I don't know how to put it into words. Instead of being like smiling, it's almost like she's hesitant or maybe not as comfortable. Maybe that is the word that I need.
MR. SMITH: Ma'am, that is all of the questions that I have for you.
THE WITNESS: Okay.

CROSS EXAMINATION

BY MR. DANIEL:
Q Mrs. Hernandez, do you know Antoine Johnson?
A I do not.
Q Do you know whether he goes to church?
A I have no idea.
Q You don't know his family?
A No.
Q Do you know whether Mrs. Hood suffered from depression at any point before this accident?
A Never saw her sad, never saw her upset.
Q Do you know anything about her medical treatment or any conditions?

A No.
Q It's already been testified to that she may have had MS before the accident --
MR. SMITH: Objection. Well, go ahead, you can ask her.
A No, I don't have any idea.
Q Do you know that she had MS or Parkison's before?
A No, I never saw her with anything that made me think that something was wrong.
Q Does she still go to church?
A Yes, she does. Not as often.
Q With her husband?
A When I see her, it is with her husband.
MR. SMITH: Nothing further.
THE COURT: You may step down. Thank you.

Thereupon,

THERESE HOOD

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:
Q Take three long breaths for me, in your nose, out your mouth. Let it go. Okay?
A Okay.
Q We are going to tell your story today, all right?

A Okay.
Q We need your name. Tell us your name.
A My name is Therese Hood.
Q Are you nervous?
A A little. My first time.
Q You have never been through anything like this before, have you?
A No.
Q Have you waited a long time for this day to get here?
A Yes, two years and ten months.
Q All right. Before we tell your story I want to get the jury -- let them get to know you a little bit. We have seen you sit in this chair. We have heard about you, but I want to give them a very abbreviated version. Okay? Just a little background information. The first question is irregular but I need to ask you this because the Judge later will address the jury on life expectancy. So, please tell us your age, ma'am.
A My age is 63 years old.
Q Therese, do you have any brothers or sisters?
A I have one brother. My sister passed away.
Q What did your parents do for work?
A My mother worked in the shoe mill and my father was a carpenter.

Q Where did you go to high school?
A I went to St. Dominic's Regional Catholic high School.
Q Where was that?
A That was in Lewiston, Maine.
Q What did you do after that?
A I went into the military.
Q What branch was it?
A I was in the Army.
Q How old were you when you joined the Army?
A I was 18.
Q Did you do that for 20 years?
A I did that for 20 years.
Q Were you honorably discharged?
A Yes, I was.
Q What was your rank?
A Sergeant First Class.
Q Okay. And after the Army, did you go back to school?
A Yes, I did.
Q What degrees did you get at school?
A I got my bachelors in elementary education, a bachelors in economics, and a masters in elementary education.
Q Did you go to teach kids after that?

A Yes, for ten years.
Q What ages?
A Five through eight and 12 through 14.
Q Okay. And did you retire from teaching at some point?
A Yes, ten years later.
Q All right. And tell me, what is your husband's name?
A David Hood.
Q All right. And David, he has been sitting here in the audience, hasn't he?
A Yes, he has.
Q He's gone to get Christene, your daughter now, right?
A Yes.
Q She has got two young kids?
A A two month old and a two year old.
Q All right. And we are going to hear from Christine after you. But do you have -- so we know Christene. What other children do you have?
A I have another daughter, Stephanie, and she's 35 years old.
Q I don't know if I asked you this, how long have you and David been married?
A Forty-two years.

Q Okay. Grandchildren, do you have any?
A I have five.
Q And tell me what their ages are.
A My daughter, Stephanie, has a three year old, a five year old and an 11 year old. All girls.
Q Okay. And you told us Christene has a two month old and a two year old?
A Yes.
Q OKay. ARe you a proud grandmother?
A Yes.
Q Mrs. Hood, do you have MS?
A No.
Q Now we understand that you are Catholic, and we have heard a lot about that this week, and you are a member of the Church of the Immaculate Conception?
A Yes.
Q In Goose Creek?
A Yes.
Q With the ladies that we heard from today?
A Yes.
Q How long have you been a member of that church?
A Eleven years.
Q Have you always been active?
A Yes.
Q We heard a little bit about giving communion --

serving in the Ladies Guild, any other -- well, we also heard some other activities from Ms. Hernandez, but anything else that you can think of with regards to your activities with the church and volunteering?

A Not at the moment.

Q Ladies Guild takes up a lot of time?

A Yes.

Q Okay. Mrs. Hood, what were your plans for retirement? It is okay.

A I meant to travel, spend time with my grandchildren, to help more in the church community. And I have military organizations that I participate in that I could continue too.

Q Okay. That was your vision?

A Yes.

Q I want to talk to you about the wreck.

A Okay.

Q That was poor timing, I had no idea that I was going to get an emotional response. But we have made an abbreviated version here, okay?

A Okay.

Q So, I want to show you the flip chart that we have been getting a lot of miles out of this week. Now, what I'll do so everybody can see, I'll not ask you to come down, but I'll hold it here. Can you see okay?

A Yes.

Q Ms. Hood, we started out in opening statement by drawing this diagram here. And we have got Highway 278, all right?

A Okay.

Q Heading towards the beach, heading away from the beach. And we have this car right here is you with the H?

A Right.

Q And Mr. Johnson coming off of Southwood Park Drive.

A Yes.

Q Dunkin' Donuts back here. And then we have the Kuck vehicle up here. Okay?

A Yes.

Q This was another fellow that I don't know was in your sight.

A Okay.

Q So, is this -- does this accurately describe what happened?

A Yes.

Q That you were coming up here, Mr. Johnson pulled out and hit you on the front right side about where your tire was and sent you into traffic where you had a head-on collision?

A Yes.

Q Okay. Mrs. Hood, did you have any time to react?

A No.

Q When you saw him for the first time, was it right before he hit you?

A Yes.

Q And how would you -- well, let me ask you this: Did you see him pull out?

A No.

Q Okay. And the visibility at that time, we have heard a lot of people talk about it, was it getting darker outside?

A It was.

Q Okay. Was there still some light out?

A Yes.

Q Could you see the median?

A Yes.

Q Could you see the trees and the businesses alongside the highway?

A Yes.

Q Could you see other vehicles?

A Yes.

Q Okay. And as you are driving did it seem like to you you didn't have your headlights on?

A No, I always have my headlights on. I have a newer vehicle that has automatic lights and I don't turn

them off.

Q All right. You don't remember switching it to running lights?

A No.

Q All right. Mrs. Hood, we heard from a lot of people this week, people saying no headlights but running lights. Mrs. Hood, if that's the testimony and we have heard that over and over again, are you going to disagree with that?

A No, I'm not.

Q Can you accept that?

A Yes, I can.

Q How is your eyesight?

A I just had my eyes checked in June of this year and I have 20/25 vision. I see perfectly.

Q Wear glasses, contacts?

A I wear no glasses, no contacts.

Q And moving along. Your car, is that where Mr. Johnson hit you?

A Yes.

Q You have got to speak up for us.

A Yes.

Q And you can move a little closer and use the microphone if it's uncomfortable, okay. Sorry.

A Okay.

Q Mrs. Hood, what caused you to veer into on-coming traffic after he hit you?

A My tires shifted to the left and I couldn't turn them to the right.

Q Did you do your best to avoid crossing over?

A Yes, I did my best to the point where I felt the brake went through the bottom of my car and shattered my ankle and my foot broken completely in half.

Q Ms. Hood, what did it feel like for those moments as your car is out of control and you are heading into on-coming traffic?

A I knew I was going to die so Catholics believe if you say "Our father" or some sort of prayer before you die that God absolves you of your sins, so I was doing that before I hit the Kucks.

Q Were you wearing your seat belt at the time?

A Yes, I was.

Q Did your air bags go off?

A Yes.

Q What did that sound like?

A What did it sound like?

Q What did it sound like, the air bags, for those of us who have never had it happen, including me?

A It had a strong odor and it was a strong push that pushed me back into my car seat.

Q Okay. Do you remember hitting the SUV head on?

A No.

Q And I want to just take a moment and see if we put these pictures in. Yeah. All right, so we have already seen pictures of the front of your car, right? Is that it?

A Yes.

Q Okay. And this is the Defendant's Exhibit No. 2. And this is the Kuck's car, defendant No. 3?

A Yes, I didn't see it though.

Q Well, we are not going -- we are not going to go back over those. At the scene, what is the first thing that you remember after the wreck?

A On Star called me and told me that I had been in an accident and that they were going to call the ambulance and the police.

Q Okay. And now, how were you feeling?

A I was in so much pain I don't know.

Q Okay. Did the ambulance take you away?

A Yes, they did.

Q And where did they take you to?

A Hilton Head Emergency Hospital.

Q Okay. And were you transferred to Hilton Head by ambulance over to Savannah Memorial?

A Yes, I was transferred from there because Hilton Head could not deal with the fracture in my neck.

Q Okay. Now, Ms. Hood, I know that this is a lot to remember, but I would like for you to tell us what your injuries were, and if you could just organize that by starting at the top of your head and let's go down to the bottom of your feet. Okay? Tell the jury what your injuries were.

A My injuries were I had a black eye. What felt the worst which really wasn't the worst is I fractured all of my ribs, I had a fracture in my neck, I had a fracture in my lower spine, and of course, you know, I shattered my foot in half and my ankle.

Q Was there some mention of a dissection of your left vertebral artery?

A Yes, the Savannah Memorial Trauma Center found that.

Q Okay. You went into surgery?

A Yes, I did.

Q Okay. And after Savannah Memorial, where did they take you after that?

A They transferred me to a nursing home in Moncks Corner, which is supposed to be a rehab center as well.

Q How did it feel being in a nursing home?

A There's no words to explain it.

Q There's people there rehabbing and there are people there to stay?

A They put me in the section that was a nursing home and there was one therapist that would come help me with therapy once a day.

Q Let's talk about when you finally got home. Day before Thanksgiving you went home?

A Yes.

Q Able to get around?

A No.

Q Can you tell us about Thanksgiving that year.

A Thanksgiving that year was horrible. I couldn't get up. I had a neck brace, a body brace, a leg brace. I couldn't move. My daughter from -- she had just come back from Germany. She stayed with me for three weeks. My husband attended to me, and my younger daughter. I had to move downstairs in our sunroom. My bedroom is upstairs. We have -- our sunroom is pretty much lit like this so we had to put blinders up. And I had to have a clothes rack so I could have clothes, but I couldn't dress myself. I couldn't eat by myself. I couldn't go to the bathroom by myself. I really couldn't do anything by myself.

Q Could you bathe yourself?

A No, that was the most humiliating part. Our bathroom was upstairs, and of course I couldn't go upstairs so they would wheel me to the bottom of the stairs.

Q Ms. Hood let's --

A I would have to sit on the stairs and back myself up to the top of the stairs and somebody would have to pick me up and bring me to the tub and put a chair in there and then help me step over the tub to get into the chair and then they would have to watch me. And that was so humiliating. I'm such a proud person.

I just felt so helpless and humiliated and I always tried to do something and I couldn't do anything.

Q Thank God for your family.

A Thank God.

Q They were there for you?

A Yes, they were.

Q And Dr. Jaskowhich, you thank God for him as well?

A Yes, he was a life saver.

Q Now you eventually started walking again, did you not?

A Yes, I had a boot that come up to my ankle that completely confined my foot so that they tried to fuse the bone of the ankle together. And I wore that for months. I finally was able to wear just an ankle brace in late May of 2015.

Q And when you did start walking again, I imagine it was a progressional sort of thing.

A Yes.

Q And even when you were back on your feet without a

cane or a walker --

A I had to have a cane.

Q Well, let's say after all of that. How was walking after that point?

A It was difficult. I couldn't walk very far. I was so scared that I would fall. I walked very, very slowly. I had to walk with somebody assisting me. And I finally was -- I tried and was able to go to church. I couldn't kneel down. I had to sit on the bench and prop my foot up through the whole service.

Q Could you feel the plates and screws underneath your skin?

A Yes.

Q Did you eventually have those taken out?

A I had the first one taken out in June of 2016. It was a 5-inch screw holding the top part of my ankle to where your foot and your ankle meet. So, I couldn't lift my foot up. You know, your toes forward because that screw just hurt so bad. And so maybe in 2016 I had that one screw taken out. And --

Q I think that it was this February you had the rest of them taken out, right?

A In April.

Q Okay.

A April of this year I had the others taken out,

which were --

Q Is that these?

A Yes.

Q You gave these to me, didn't you?

A Yes, I did. They let me save them.

Q What did it feel like -- so you could -- what did it feel like to wear shoes? And what did it feel like to live with this hardware for three years?

A It was very painful. I could -- I didn't have any support. Why I had the screws taken out, they were 5 inches like scissors holding my ankle together and they started protruding on either side of my ankle and it really hurt more. So, I talked to Dr. Jaskowhich and he said that he would take them out. But he said that it wouldn't make that much of a difference because my leg was so already damaged and my bones had fused together and it probably never would.

Q Okay.

A So I'm crippled.

Q Now let's -- we are getting there. This is the last part, okay?

A Okay.

Q Let's talk about how you are doing now, okay? ANd I don't mean as we sit here now, I'm talking about the present as opposed to the past that we have been talking about. How does your ankle feel?

A My ankle hurts all of the time. It either feels like there's needles jabbing into it, it throbs, it swells. Like when I was sitting at the table, I can't sit with my foot down very long so I have been propping it up on a box.

Q Is this the box that you have been using all week?

A Yes. And when it is -- when it swells my ankles overlap my shoe, which is a -- I have to buy special shoes with ankle support.

Q Okay.

A And so when it gets to that point I can barely take my shoe off, so I wear ankle support slippers.

Q Now, Ms. Hood, we heard from Dr. Jaskowhich talking about getting off of your feet, elevating your ankle, soaking in Epsom salt, soaking in ice, taking medications, antiinflammatory medications, pain medications, all of that. Is that what you do when it gets bad?

A Well, since it hurts most of the time and my family doctor has prescribed 800-milligram Motrin for the swelling and the pain, but that doesn't help with the swelling.

Q Now, Ms. Hood, this seems obvious but I have got to ask you: Are you able to wear heels anymore?

A No, I can't wear skirts anymore, I can't wear heels anymore. I have two pairs of shoes. I have my support, my support slippers, the tennis shoes that I have

been wearing and I wear one other shoe that seems like a presentable shoe so I don't always have to be in my slippers or my tennis shoes.

Q Did you used to exercise before all of this happened to you?

A Yes.

Q What did you do for exercise?

A I walked on a treadmill. I walked with my friends. I walked the dog.

Q Are you able to do those things anymore, or do like you used to?

A No. What I do now, I take the dogs out and sit with them, but I'm sure that they miss the long walks.

Q Ms. Hood, do you know what the future holds for you?

A I'm crippled for life.

Q Dr. Jaskowhich, when he started to talk about the future in the last visit, he was talking about, Well, we are rounding all of this up. It seems like he's kind of done with the things, the help and the fix at this point.

A Yes, but I still have a standing appointment with him because he, as time progresses my bones won't fuse completely together so he could do an ankle fusion if he thinks that would help.

Q Okay. Last resort, right?

A Yes.

MR. SMITH: May I approach?

THE COURT: You may.

BY MR. SMITH:

Q Ms. Hood, I hand you what's been marked as Plaintiff's Exhibit No. 17. Is that a summary of the places you went, the dates, and the costs of the medical treatment?

A It appears to be so.

Q Okay. And did you help us put that together?

A Yes.

Q And does that fairly and accurately show the cost of the medical treatment that you received after the wreck?

A Yes, I provided you the bills.

Q Okay. And was all of that treatment related to the injuries that you received in the wreck?

A Yes.

Q Okay.

MR. SMITH: Your Honor, at this time I move to introduce the document as Plaintiff's Exhibit No. 17.

MR. DANIEL: No objection, Your Honor.

THE COURT: Okay. Without objection, it is in evidence.

(Whereupon, Plaintiff's Exhibit No(s). 17 marked for identification and received in evidence.)

BY MR. SMITH:

Q I'm not going over the communion story, but I just want to ask you, was what we heard true?

A Yes.

Q Was that a loss in your life?

A Yes, I feel since it was a calling I feel torn because I feel like I'm not as close to God and I'm ashamed that I dropped blood because for a Catholic that is an extremely traumatic thing, it is so sacred and I dropped it because I tripped.

Q Ms. Hood you know -- you know that that wasn't your fault, right?

A I know but it is still hard --

Q Well you know that God forgives you, right?

A -- to accept. Yes, I'm sure.

Q Okay. But you miss being able to do that?

A Yes.

Q Now, aside from your family and your church, did you have many friends?

A Not many. I had mostly acquaintances.

Q And was that okay with you?

A That was fine with me.

Q We heard Ms. Hernandez talk about you still go to church, not quite as much, but you still go. But what she talked about was, you don't hang around after, you don't

have the fellowship. And tell the jury what it's like not to have that part of your life and why you are not -- why you are not doing that?

A I really don't want to go through the story all of the time so I don't really like to be asked about it. And I am in pain and so our service is an hour, hour and 15 minutes, and I just -- I'm just not the same person.

Q Let's switch gears for a moment, okay.

A Okay.

Q Now he's not here, but tell us about David. David has been with you for 46 years?

A Forty-two years.

Q Right. Was y'all's relationship affected by this?

A Yes.

Q Can you tell us about that please?

A It was -- it was -- it has been hard for my husband to deal with my injuries. He would get frustrated. He would sleep and he was my main caregiver so it ended up that we separated for a while. And my youngest daughter, I went to live with her for a while and she could help me. But then we -- I worked things out with my husband and he came back and now he helps me walk, as you have seen. He helps me go shopping because I can't go shopping alone. I can't stand for more than an hour, an hour and a half.

Q Is David your rock?

A Yes, he is.
Q Have you ever thought about, with how you are now, what would happen if you lost him?
A I wouldn't be alive.
Q Now, I want to talk about your grandchildren. It sounds like I think I heard an 11, 5, 3, maybe two 2 year olds and a two month old.
A One two year old and a two month old.
Q Ms. Hood, you know, in my house grandmommy's job is to spoil the grandchildren, and when my child goes over to grandmommy's house her feet don't touch the ground and she picks up very bad habits. And that is the price that you pay for going out to dinner and having a good time, right? But what is your interaction like with your grandchildren?
A The three, the three children that live in Alabama with my oldest daughter, when I go visit and when we do anything there's a lot that I can't do with them. And it seems like they get so upset and frustrated with me because I can't do things with them. And they -- I'm from French, I'm French, so they call me Meme. They say, Meme, Why don't you do this with us, don't you love us any more.
Q Well, they are young, and they will understand. Right?
A I think that sometimes they do. The two year old

is very attached to me. I can't bring them up and down the stairs and I can't carry him anywhere. And the two month old, my daughter won't even let me carry him because she's afraid that I'll fall, so she carries him to me in the chair.
Q Ms. Hood, do you find yourself at home a lot now?
A Yes, I do. I don't have doctors' appointments very often, but I go to my appointments and since WalMart is only a light away I can go to WalMart and get a few things. And that is where I do my grocery shopping as well.
Q When you are at home, are you alone a lot?
A I am alone all of the time. My oldest daughter comes to visit me, to check on me, to see how I am doing. My husband calls me every day at noon to make sure that I'm okay. But other than that, I'm completely alone.
MR. SMITH: I think that we can end there. All right. Keep your seat. Please answer any questions counsel may have.
THE WITNESS: Okay.
CROSS EXAMINATION
BY MR. DANIEL:
Q Mrs. Hood, are you okay to keep going?
A Yes, I'm fine.
MR. DANIEL: Madam Reporter, could you hand her a sealed copy of her deposition?

COURT REPORTER: Okay.
BY MR. DANIEL:
Q Mrs. Hood, we may refer to that here and there to refresh your memory and clarify things. So, I'll ask you to look at a page if you need to and you can just Let me know when you are there; is that fair?
A Okay.
Q Okay. Do you remember sitting for deposition in this case?
A Yes.
Q If you look on the front of that. That was April 27, 2016?
A Yes.
Q Do you remember showing up and being there for Antoine Johnson's deposition that your lawyer took in this case before yours on January 25th, 2016?
A Yes, I believe so.
Q If I heard you earlier, if I heard it correctly, you are now, what you say, If other people say that I did not have headlights on, I am not going to dispute that.
A I understand.
Q I'm asking you your testimony. What do -- if they say that you didn't have your headlights on, are you no longer disputing that?
A I am no longer disputing that I had running lights

on.
Q You are no longer disputing that you had --
A Running lights on.
Q Right. Are you disputing that you did not have your headlights on?
A I drive with my lights on automatic all of the time. I don't recall touching them.
Q Okay. I'll turn your attention to Page 63 of your deposition. Sixty-three, and actually the bottom of 62. Let's just start there.
A Okay.
Q See the last line, 25?
A Yes.
MR. SMITH: What is the line number?
MR. DANIEL: Twenty-five.
BY MR. DANIEL:
Q Were you aware that this gentleman, Dustin Lee, witnessed the accident?
MR. SMITH: I am sorry, did you say 63?
MR. DANIEL: Sixty-two, Line 25.
Q "Are you aware that this gentleman, Dustin Lee, witnessed this accident? Your answer: No, sir."
A Yes.
Q Is that your testimony?
A Yes.

Q You swore under oath in your deposition just like you did here today, right?
A Yes.
Q "Okay. So you listened to the recorded 911 calls for this accident? Your answer: No, sir." All right?
A Yes.
Q Following me?
A Yes.
Q "So, you wouldn't have any specifics, personal knowledge, and I'll represent to you that he made a point to say that you were driving and didn't have your headlights on at the time, so you disagree with that? And your answer was: I would disagree with that?"
A Yes.
Q And I was asking you about your headlights, so at the time you disputed -- your contention was you had your headlights on; is that right?
A That's correct.
Q You are now changing your story and saying, you know, I don't dispute any more if people say I didn't have my headlights on, maybe I just didn't have them on; is that fair?
A Yes. I go by the testimony of the experts.
Q Well, you swore under oath that you remembered this accident in your deposition?

A Yes.
Q And you told me that you didn't do anything wrong, that you were driving in a safe manner?
A Yes.
Q You swore all of that under oath, right?
A Yes.
Q And you swore under oath in your deposition that it was your position that you had your headlights on; is that right?
A Yes.
Q What you told me under oath is everybody else got it wrong, I had my headlights on, I am the one that got it right; that is what you said?
A Basically that is what I thought.
Q That is what you thought but, you know, that is what you testified to and now maybe you are not sure about it; right?
A No, I'm sure. I am sure that I thought that I had my headlights on.
Q But now you think that you may have been mistaken?
A Yes, sir.
Q What about what these witnesses have said about how dark it was at the time of the accident?
A I agree with them, it was. It wasn't that dark, but I would have had my headlights on. I could see the

trees. I could see ahead of me very well.
Q Dustin Lee testified that you were here, that it was 90 percent dark; you disagree with that?
MR. SMITH: Your Honor, I think I have to object for pitting the witness.
THE COURT: Sustained. Don't pit witnesses.
BY MR. DANIEL:
Q Okay. Do you agree that it was 90 percent dark?
A I don't believe that. I don't think so.
Q If you had to put a percentage on it, what percentage would you put?
A Maybe 80 from where my vehicle was.
Q Is 80 percent pretty dark?
A Yes, it is fairly.
Q Fairly?
A Fairly dark.
Q And you were headed to your condo, your time share condo on Hilton Head?
A Yes, I was, sir.
Q You went down maybe two, or three, maybe four times a year is what you testified to in your deposition?
A That's correct.
Q And so you are somewhat familiar with this area; is that right? Hilton Head?
A Oh, with Hilton Head itself, yes.

Q You don't drive that road everyday, or you didn't at the time?
A And my husband normally drives when we go there.
Q You were by yourself driving?
A That day, yes, sir.
Q Would you agree that it gets dark in Hilton Head in early November, the date of this accident was November 7th, it is pretty dark by around 5:50?
A I'm not sure if that's the occasion all of the time.
Q Do you remember testifying -- I understand that you just took an eye exam and you don't have any vision problems right now. What I am going to ask you so we are clear, at the time of this accident did you have any vision problems?
A No.
Q When did this accident happen?
A November 7, 2014.
Q And you are sure about that?
A Of course.
Q I understand that.
MR. DANIEL: May I approach, Your Honor?
THE COURT: Yes.
(Whereupon, Defendant's Exhibit No(s). 7 marked for identification.)

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MR. DANIEL: Your Honor, I'm handing what's been marked as Defendant's 7 for identification purposes.

THE COURT: Thank you.

BY MR. DANIEL:

Q Tell me when you -- you have looked at this now? Seven, you are looking at it?

A Yes.

Q In the bottom left-hand corner, is that your name?

A Yes, it is.

Q And that is -- this Goose Creek address, 832 North, is that Alsberry. How do you pronounce that?

A North Alsberry.

Q Is that your address?

A Yes, it is.

Q Does this appear to be a medical record for you?

A Yes.

Q Do you see the date -- I think that it's highlighted for you, date of note down near the bottom?

A Yes.

Q And it says, November 7th, 2014; do you see that?

A Yes.

Q And it says, 1109 right there; do you see that?

A Yes.

Q And down a little bit farther I have got another statement that is highlighted. It says, Patient requesting

eye exam for blurred vision. Can you see that?

A Yes, sir.

Q So, is this a record of you calling to the VA on the day of the accident, the morning of the accident, complaining of blurred vision?

A I went to the doctor's office, yes, sir.

Q You went in that morning?

A Yes, sir.

Q Is there a record of that? Because I haven't seen it.

MR. SMITH: I think I would object to Mr. Daniel testifying as to his personal knowledge.

THE COURT: Okay, if there's a question, ask her.

MR. DANIEL: Yes, ma'am.

BY MR. DANIEL:

Q Your lawyer, do you understand, produced documents to us?

A Yes, sir.

Q Are you personally aware of a record of you going in to visit to have your eyes checked on this date, November 7th, 2014?

A Yes, sir.

Q You are aware of a record existing?

A I believe so. They record appointments.

Q You see that there's an addendum. If you look on

the next page it actually looks -- you see at the top, December 12th, 2014?

MR. SMITH: Is that Page 2? Did you just flip the page?

BY MR. DANIEL:

Q I just flipped the page, so at the bottom just so you follow with me, Mrs. Hood; you see that 3112?

A I have Page 94.

Q 3112 in bold. I'll help you.

(Pause.)

Q You agree this is your medical record, Exhibit 7 that we are looking at?

A Yes, I agree.

Q It says that you hadn't had an eye exam in two years; do you see that?

A Yes, sir.

MR. DANIEL: At this time we offer Defendant's 7 into evidence.

THE COURT: Any objection?

MR. SMITH: Can I just have a moment to look at it. He's only asked her about two lines and there is several pages.

THE COURT: Sure. But let's move on with her, let's keep going with her, if you could. Keep going.

BY MR. DANIEL:

Q Do you agree that you had -- ma'am, I'm not trying to make light of your conditions. I understand that you were hurt and I want to be clear about that.

A Yes, sir.

Q But you were -- you had been diagnosed with Parkinson's disease before this accident?

A Yes, sir.

Q You had had incidents where you had fallen before this accident?

A Yes, sir.

Q And do you remember that you actually before this accident, I guess in August of 2012, had been evaluated for walking aids?

A I don't recall.

Q Ms. Hood, I'm handing you what's marked as Defendant's 8. And I only have one. I'm not trying to hover, but do you agree that that is your name in the bottom left?

A Yes.

Q We are looking at Defendant's 8 for ID purposes. Go to the second page, which is 134 -- VA134. It has got a date here, August 6, 2012; do you see that?

A Yes, sir.

Q And you see where the highlighted language [illegible]

says, Patient educated that when she receives her MRI appointment. So you were going for an MRI?

A Yes.

Q She may also come to PT as a walker --

MR. SMITH: Your Honor, I have to object to the reading of medical records. And this document is not in evidence. I don't know what is going on here. The relevance is -- I am sorry.

MR. DANIEL: Your Honor.

THE COURT: Do you need to come talk to me?

MR. DANIEL: I can.

THE COURT: Okay.

(Off-the-record discussion held.)

(Whereupon, Defendant's Exhibit No(s). 8 marked for identification.)

BY MR. DANIEL:

Q Does Defendant's 8 for ID purposes now refresh your recollection that in August of the same year as the accident, so a few months before, you went to the doctor and were advised about getting walking --

MR. SMITH: Your Honor, same objection. He is just recanting exactly what -- he is just reading the medical record without reading it.

THE COURT: Okay. Ask her a question about her treatment. Don't ask her about the medical record.

Ask her about her treatment.

BY MR. DANIEL:

Q Ma'am, in August of 2014 you were advised that you could get walking aids; is that correct?

MR. SMITH: Your Honor, objection, hearsay.

THE COURT: Just ask her the question, Were you advised.

BY MR. DANIEL:

Q Were you advised that you should have walking aids?

A Yes, because at that time I was taking duplicate medication which was causing me to be more unstable. My psychiatrist and my neurologist had given me contraindication medications. Now I no longer tremble because I only take Adderall.

Q But you had had balance issues and you had fallen in the past, right?

A Yes.

Q And what you testified to is in church that day, I'm not trying to embarrass you, but when you spilled the wine you had tripped; is that right?

A That's correct.

Q Okay. So, you were having blurred vision at least when -- maybe went to the doctor that day, the day of the accident, maybe not, but you were having blurred vision that

day; right?

A I don't recall the blurred vision. But I do recall going to the doctors and having my eyes checked because I was reading a document, several documents and magazines, and I was having difficulty seeing the words whatever, so because I felt that you know my eyes might be a little blurry. So I went to have my eyes checked that day to make sure that there was nothing serious, and they did an eye check and found that there was nothing there; I had perfect eye vision.

Q But you went in to the doctor about blurred vision the day of the accident, and that is up at the VA in Charleston, right?

A Yes.

Q And you chose -- the same day you chose to drive down in the afternoon by yourself to Hilton Head; is that right?

A Yes. And that was based on the findings of my eye exam.

Q You testified that you now no longer dispute if others say you didn't have your headlights on, you don't dispute that?

A I am sorry?

Q If others say that you didn't have your headlights on at the time of the accident like Antoine Johnson, you

don't dispute that?

MR. SMITH: Objection, asked and answered.

MR. DANIEL: Just trying to make sure.

THE COURT: Move along, get going.

BY MR. DANIEL:

Q Do you realize that this is the first time that Antoine Johnson has ever heard you say that you didn't have your headlights on?

MR. SMITH: Your Honor, I don't think --

THE COURT: Again, this is not relevant. Move on.

BY MR. DANIEL:

Q Did you see the sedan, the vehicle, pulling out before you were impacted on your right side?

A No, sir.

Q You never saw it. Do you know how fast you were going?

A I was following traffic.

Q Do you remember telling me in your deposition you were only going 35 miles an hour?

A I wasn't sure about the speed. And I had been in there for five hours.

Q Do you have your deposition there?

A Yes, sir.

Q Look in your deposition, I want you to start at Line 18.

A Yes, sir.
Q See it?
A Yes, sir. Okay.
Q I want you to start at Line 18.
A Eighteen?
Q You see it?
A Yes, sir.
Q I want you to read, that is my question, starting with my question, and read for the jury down through 32, go to -- just read the whole page and then turn the page and keep reading until Line 12.
A "How fast do you think you were going at the time when the accident happened?
About 30 miles per hour.
Why do you say 30?
Because the Equinox has in the console a place where -- has a place for the speed to be and it shows you numerically what speed you are going.
When do you remember looking at your speed before the accident?"
Oh, was it "Do you remember"?
Q That is right, do you remember.
A "Do you remember looking at your speed before the accident?
Yes.

When did you look at it?
I always look at it.
Really? Do you think that you were looking at it at the time that you were hit or when?
No, I wasn't looking at it then."
I was confused with that question as you remember before. I believe that at this deposition I was confused with many of your questions. I am reading what I wrote -- what I said.
Q Do you see that question of, "How frequently do you look at your speed?"
A Yes.
Q What did you say?
A I said, "In the case of one minute, probably 20 times."
Q Do you agree that that is a pretty simple question, "How frequently do you look at your speed?"
A I don't look at my speed every minute. I look at it maybe every three or four minutes. I'm always aware of my speed.
Q But in your deposition you testified differently; is that right?
A Yes, sir, I was very nervous at the deposition. And you confused me a lot, which I -- if you look at the deposition I have noted that.

Q Okay. In your deposition, didn't I instruct you to answer my questions and if you didn't understand a question to let me know?
A Yes, you did.
Q And you didn't tell me that you didn't understand that question; is that right?
A Yes, I did. I was afraid. It was my first deposition. I had no experience and somehow I felt intimidated by you. And I, I just really wanted to get it over with.
Q Do you think that you may have been speeding at the time of the accident?
A At the time of the accident, I remember following traffic. I believe that the speed limit was 45. From past experience of driving down that road, I don't believe that many people go 45. But based on the time of day there's -- especially that time of day, there's more traffic going to Hilton Head, so the flow of traffic.
Q So, people were speeding and you were speeding?
A I can't attest for that, for who is speeding and who is not.
Q But if you were following traffic and if they were speeding you may have been speeding?
A I don't want to say that they were speeding, I have no fact.

Q Were you aware that your lawyers hired an engineer, two engineers?
MR. SMITH: Your Honor, I don't have any idea.
THE COURT: I assume it is an objection. It is sustained. Move on.
MR. DANIEL: Yes, Your Honor.
BY MR. DANIEL:
Q If Antoine Johnson said he was at that stop sign and checked to his left before he pulled out, you didn't see him, you didn't see his vehicle; is that right?
A No, sir.
Q And you can't dispute that based on your knowledge, can you?
A Based on my knowledge, I didn't see him.
MR. DANIEL: Thank you. Well, one more, a few more things.
BY MR. DANIEL:
Q As far as your expenses, the medical expenses that you have, do you agree that you were regularly seeing doctors before this accident for different medical conditions?
A Yes, sir.
Q And I'm not trying to make light, but you were on a number of medications; is that right, before this accident?

A Yes, sir, the medications that I had been on for years.
Q What medications are those?
A They would be thyroid, cholesterol, a sleeping sedative.
Q Trazodone or --
A Trazodone, which that is a sedative.
MR. SMITH: I object to relevance, Your Honor.
MR. DANIEL: I am going to get there.
THE COURT: Overruled. You can ask it.
BY MR. DANIEL:
Q You have taken those medications after the accident too, right?
A Actually I stopped taking the Parkinson's medication because it was making me tremble, and at that time the neurologist was experimenting with a drug, Adderall, which I take for my attention deficit and they were the same, they did the same thing, which was causing me to tremble. So, as soon as I stopped taking it my trembling went away.
Q At your deposition, though, do you remember telling me that you were taking the same medications after the accident as you were before the accident?
A Yes, I only stopped taking Parkinson's medication when they asked me to participate in the study about

Adderall and just taking that, and I said I wouldn't profit from that because I already take it.
Q Okay. And do you agree, do you remember telling me that the only thing different after the accident, as of your deposition in April of 2016, two years later, was that you took Motrin for pain when your leg, pain in your leg from time to time would get unbearable, is that right?
A Yes, sir.
Q And you told me that -- I said, Well, how often do you have to take Motrin; do you remember that?
A Yes.
Q Do you remember really telling me, "Really only about once every two months"?
A No, sir.
Q You don't remember that? Okay. If you will turn to Page 98 of your deposition?
A Okay.
Q Okay. You see on line 12 there. I'll read this. I want you to tell me if what I'm reading is accurate. "Question: How often do you take Motrin?
Answer: I try not to take it too often. I probably take as needed.
Question: And that would be once a week, three times a week, once a month?
Answer: When my foot is unbearable in pain,

which I can't exactly say when it occurs. I haven't taken it very many since so --
Best guess? My question.
Maybe once.
Once a month or once a week, best guess?
It would be like once every two months."
That was your answer.
A I see that.
Q Is that what you testified to?
A That is what I testified to.
Q If you didn't have your lights on and you were speeding and it was 80 percent dark out, do you believe that you may bear some responsibility for the accident that happened?
A I have the right-of-way and he hit me.
Q You don't believe that you did anything wrong?
A No, sir.
MR. DANIEL: No further questions.
THE COURT: Anything further?
MR. SMITH: Yes, ma'am, very briefly.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Ms. Hood, the medical bill summary, now the medications that you were taking before all of this, did you get those through the VA?

A Yes.
Q Okay. Is the VA anywhere on here? Are you asking for reimbursement for any drugs supplied by the VA?
A No, sir.
Q Do you see the VA for your personal health conditions?
A Yes.
Q Before and after the wreck, right?
A Yes.
Q Is the VA, for those personal health conditions, anywhere on this summary?
A No, sir.
Q And Ms. Hood, we have heard about your eyesight. Were you able to read that deposition that Mr. Daniel was giving you?
A Very well, yes, sir.
Q All right. And when you felt like your eyes were blurry, what was the remedy?
A What was the remedy?
Q Yes.
A They gave me eye drops.
Q Because your eyes were dry?
A My eyes are constantly dry.
Q Okay.
MR. SMITH: Nothing further.

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THE COURT: Anything further, Mr. Daniel?

RE-CROSS EXAMINATION

BY MR. DANIEL:

Q Mrs. Hood, this exhibit with your medical bills on it --

A I don't have that here with me.

Q It is the one here. Would you agree that a number of the bills on there are related to treatment for dizziness?

MR. SMITH: Your Honor, I have to object. This is outside my redirect. I asked her if any bills from the VA were on there and she said no.

THE COURT: He can ask it, is it on there or not.

THE WITNESS: No.

BY MR. DANIEL:

Q Who do you see for neurological problems?

A Dr. Henlon.

Q Which group is he with?

A It is a she. And she is with the neurology department at the VA.

Q Where?

A At the VA in Charleston.

Q Okay. Did you see the folks at MUSC about dizziness? There is a bill for $64,000. Did you get treatment?

A Yes, sir. The dizziness I was experiencing was from the fracture in my neck because the fracture in my neck was causing to push the artery in my neck so that I wasn't getting the oxygen that I had after the accident.

Q But you would agree that you are not a medical doctor?

A No, sir, but they performed an angiogram.

Q But you can't give a medical opinion?

A No, sir.

Q And you actually testified in your deposition when I asked you, Did they ever figure out what was causing your dizziness, you agree that you told me, No, they have not, they have not figured it out?

A No, they hadn't.

Q And you had dizziness before this accident, from Parkinson's, you had dizziness before this accident?

A Not from Parkinson's.

Q Had you complained of dizziness to doctors before this accident?

A I don't believe so.

MR. SMITH: Your Honor, are we still within the course of redirect? I tried to just let it play out, but I think that we are a little further.

THE COURT: How much further do we have?

BY MR. DANIEL:

Q You would dispute that you were treated for dizziness before, before the accident?

A I don't recall, sir.

MR. DANIEL: Okay. No further questions.

THE COURT: Anything further?

MR. SMITH: No, ma'am.

THE COURT: You may step down, Ms. Hood.

Ms. Suttie and Mr. Willey, come on up.

(Off-the-record discussion held.)

THE COURT: Ladies and gentlemen, do not discuss this case. It wouldn't be appropriate to do so. We will be right back with you. We are trying to figure out scheduling-wise how we are going to keep going, okay.

(Brief recess.)

(The jury enters the courtroom.)

THE COURT: Ladies and gentlemen of the jury, we're going to keep moving on. Just to let you know, we are trying to get through this quickly today.

Ms. Bostick, I think, has ordered pizza -- am I correct in saying pizza -- for lunch. So we're just going to keep running until it gets here, so it's hot, ladies and gentlemen. Just to let you know, that's what we intend to do. We'll then only break for maybe

20 minutes, 30 minutes, then keep going. Okay?

All right. Go ahead and call your next witness.

MR. SMITH: Your Honor, plaintiff's final witness will be Christine Hood.

THE COURT: Okay. Come on forward, Ms. Hood.

MR. SMITH: Christine Davis, sorry.

Thereupon,

CHRISTINE DAVIS

was called as a witness, having been first duly sworn, was examined and testified as follows:

WITNESS: This is intimidating.

DIRECT EXAMINATION

BY MR. SMITH:

Q Please tell us your name.

A Christina Davis.

Q You've been married recently?

A Yes.

Q Sorry.

A Yeah.

Q Who's your mom?

A Terry Hood.

Q Christine, I'd like for you to tell us about the family reunion, when it was, what happened. Talk to the jury about that experience.

A Okay. So I'll give you a little bit of back

history. In 2010, 2011, we went on a trip to Germany, and that was prior to the accident. We traveled from Germany to France. My dad was actually working there at the time. And she -- we were up and about, we walked everywhere, we did everything we wanted to do. We got to see so many different sites, it was amazing.

So fast forward till after the accident, we've actually been here, to Georgia, twice. Most recently was Helen, Georgia. We went on a trip to WalMart because we stayed in a cabin.

Q Just to give us some perspective, when was this?

A This was two, three days ago. So it was just recent. It was this vacation.

Q Let's slow down just a little bit. So this was a family reunion, right?

A Uh-huh. (Indicating affirmatively.)

Q And what was the -- in Georgia somewhere?

A Helen, Georgia, yes, sir.

Q Okay. Y'all got a big family?

A Immediate. It's my sister, with her three children and her husband and myself with my two children and my husband. So, it's immediate family.

Q Y'all stay in a lodge together?

A Uh-huh. (Indicating affirmatively.)

Q Okay.

THE COURT: Is that a "yes," for the record?

THE WITNESS: Yes, sorry.

BY MR. SMITH:

Q Explain it to them from there.

A Okay. So we went to WalMart to get some of our supplies, some food for the trip that we were going to make food there to save money and things like that. And that was basically the excursion that she got to enjoy. She went -- we -- it was me and my sister that went to WalMart, and we actually had to cut our WalMart trip short because her leg was really starting to bother her and hurt her.

The next morning we woke up and we all decided that we were going to go to walk up to a waterfall which was only a half mile. And she wasn't able to go because she couldn't walk. It pains her to walk.

The same thing -- and then the thing happened throughout the rest of the vacation we were there, she had to limit everything that she does because she physically can't move past a certain point. She can only do maybe one excursion, and that's it for the rest of -- for a few days.

So it may sound like, you know, nothing big, but it's huge in your daily life when you can't go out on a daily basis.

The same, we went previous, maybe a month. July of last year, we went to Stone Mountain, and she

couldn't do anything pretty much. It was on a hill, and she went walking around, but we explored the entire area and she was confined to a hotel room. And that's no fun.

MR. SMITH: Thank you.

MR. DANIEL: No questions, Your Honor.

THE COURT: You may step down. Thank you.

WITNESS: Thank you.

MR. SMITH: The plaintiff rests, Your Honor.

THE COURT: Ladies and gentlemen, at this time the Plaintiffs have rested their case. There's a matter of law I need to take up with the attorneys. And I'm sorry I'm shouting, my microphone is off.

I'm going to send you back to your jury room very briefly. Do not discuss this case, it wouldn't be appropriate to do so. We'll bring you right back out.

Like I said, we're just going to keep going until that pizza gets here. Okay? Thank you.

(The jury exits the courtroom.)

THE COURT: Okay. Y'all need to see this. Any motions?

MR. DANIEL: Yes, Your Honor. At this time, the defendant moves for a directed verdict based on the testimony about liability and headlights. At best, the testimony now is that it was 80 percent dark, and she figured she might not have headlights on, and there's

also evidence of the plaintiff speeding and damage, and there is testimony from their expert about what the likely speed was. That's it, Your Honor.

THE COURT: Okay. Mr. Willey, do you want to respond?

MR. WILLEY: I don't understand his question frankly. I guess -- is it to headlights or is it to liability in general? I mean, I don't understand what his motion is.

THE COURT: Okay.

MR. DANIEL: Your Honor, our position is that reasonable minds differ on the issue of the liability in this case based upon the testimony.

MR. WILLEY: Okay. And I will just briefly address that. Obviously, in this case the plaintiff has the burden of proof. We have to prove that its more likely than not that the defendant had a duty and a breach of duty proximately caused some injury in this case. The statute laws of South Carolina obviously applies. It's been testified to at the time of the wreck the plaintiff had the right-of-way, that defendant after leaving the stop sign entering the highway struck her, which obviously is negligence. And there has been testimony from a doctor that she was proximately caused injuries as a result of the wreck.

So, at this time directing your verdict as to liability and negligence, of course, would be improper, particularly for the defendant. But we will make our motions at the appropriate time.

THE COURT: Thank you. All right, respectfully, I think given the evidence in the case there's evidence obviously that your client failed to yield the right-of-way. I think that it is a jury issue in this case. We are definitely going to charge comparative negotiations. So, with that said, I am going to respectfully deny your motion.

MR. DANIEL: The defendant also moves for directed verdict on punitive damages. And, just briefly, the basis for that being that there's no one that said that Antoine Johnson was actually texting, reading a text, sending a text or on his phone. The only evidence in the record is that he checked twice before he drove into the intersection and there's obviously witnesses -- Dustin Lee's testimony is that there was a vehicle coming without headlights, so we would move for directed verdict.

THE COURT: All right. Yes, sir.

MR. WILLEY: Your Honor, the law as you know in South Carolina is that violation of s statute gives rise as evidence of punitive damages can be used to

establish recklessness. In this case we have the defendants by like several statutes which we will go through when we go through the jury charge, so directed verdict as to punitive damages would be improper.

THE COURT: I agree, and we are going to have to charge punitive damages. And I think there's damages, obviously, by violation of a state statute. Failure to yield the right-of-way, failure to keep proper lookout, among other things that would allow this jury to return a punitive damages award, so I will allow it. Anything else?

MR. WILLEY: Not from the plaintiff.

MR. DANIEL: No, Your Honor.

THE COURT: How many witnesses do you have?

MR. DANIEL: One.

THE COURT: Just one.

MS. SUTTIE: I can get him.

THE COURT: How long will that be?

MR. DANIEL: Short.

THE COURT: Short, okay. Margaret, how long till the pizza is here?

THE CLERK: It says it is out. That was seven minutes ago, so it was may be downstairs.

THE COURT: That would be great.

MR. WILLEY: Can we finish the cases and then

perhaps --

THE COURT: That is what I'm going to try to see. I'm worried that the people won't be here when we need to take a break. So, that is fine. We have to work on the jury charge.

MR. WILLEY: I have never seen a schedule work out like this.

THE COURT: Okay. Let's bring the jury back in, we will sit through one witness and then you can rest as well. And you need to let me know if you have any rebuttal witnesses.

MR. WILLEY: We do not, Your Honor, based on who they are calling.

THE COURT: All right. Let's bring them out.

THE BAILIFF: If you could come into the courtroom, please.

(The Jury enters the courtroom.)

THE COURT: Welcome back, ladies and gentlemen.

MR. DANIEL: Your Honor, I need a moment.

THE COURT: Okay.

(Pause.)

THE COURT: Ready to go, Mr. Daniel?

MR. DANIEL: Just a second.

THE COURT: Okay.

(Pause.)

THE COURT: Okay?

Thereupon,

CARY TANRATH

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Tanrath, good afternoon.

A Good afternoon, sir.

Q Could you just please state your name, and full name for members of the jury?

A Cary Thad Tanrath.

Q And thank you for coming today. Where did you come in from?

A Savannah, Georgia, sir.

Q Did you drive up this morning?

A Yes, sir.

Q Tell us a little bit about yourself. I'm trying to be brief. Where are you from originally?

A I was a military brat, born in Clark Air Force, the Philippines. Spent 20 years, five months, 11 days in uniform, and currently have a handyman service in the Savannah, Georgia area.

Q What branch of the military?

A U.S. Army, sir.

Q How many years did you serve?
A Twenty years, five months, 11 days.
Q And are you married?
A Yes, sir.
Q How long have you been married?
A Married for 13 years come this December, sir.
Q Have any children?
A Three daughters.
Q And, sir, we're here about an accident. Did you witness an accident on November 7th, 2014?
A Yes, sir.
Q Could you -- what were you doing at the time, that day?
A I was leaving Hilton Head. At the time, I was employed by a company called Clearview Window Cleaning and Pressure Washing. Headed back from Sean Pines, I believe, sometime after 5:00, 5:30, because it was dark out.

For those of you not familiar with the Hilton Head area, 278 has three lanes that run eastbound, three lanes that run westbound. I was in the far left lane of the eastbound traffic, and traveling home, and witnessed a vehicle hitting another vehicle that was directly in front of me.

Q That stretch of road, with the company you were working with, did you have to travel that frequently at the

time?
A I traveled to Hilton Head anywhere from three to four days a week.
Q And what -- this happened when? In November?
A Yes, sir.
Q You said that it was dark out. How dark?
A Dark enough that the lights -- that I had my lights on. November, yeah, it's dark by 5:30, because we got to get out of Plantations because you can't work after dark, so --
Q You had your headlights on?
A Yes, sir.
Q Did -- the impact that you described, we've had this up for -- while the jury has been very patient, probably tired of seeing this, but could you tell me, the orient of the jury, where were you, if this -- if this is headed westbound off of Hilton Head?
A Westbound off of Hilton Head, the vehicle, I would be behind the vehicle that's got the X in front of it.
Q Okay. What kind of vehicle -- so you saw an impact just between two cars?
A Yes, sir.
Q Two vehicles?
A Yes, sir.
Q What type of vehicles?

A The vehicle in front of me was an SUV. The one that impacted, I believe, was an SUV. All I caught was the front glimpse of it.
Q Okay. Was there more than one person in that vehicle?
A That, the vehicle in front of me, there were two people. The vehicle that hit them, I do not know how many people were in that vehicle, sir.
Q What did you do once you saw this collision?
A I don't follow directly behind anybody. I follow at about -- when I went through driver's ed, the way I was taught to -- when you're driving down the highway, you have a two-count between you and the vehicle in front of you.

So -- and if you've driven the road in Hilton Head, you don't follow directly behind somebody because you can't see the taillights in front of them. So I usually stagger a little bit off to the side of them, and then back far enough that it gives myself braking time.

What I saw is I'm driving and it was one of those -- oh, no, moments. When you see the vehicle coming towards you, and it was somebody's going to get hit. And the vehicle in front of me got hit, debris started flying up over the vehicle and onto the right-of-way.

I slowed down and pulled off to the side of the road, and there was smoke and fluid all over the

highway. So I helped extract the driver, pulled his door open, and then myself and another individual opened the passenger side door. If I remember correctly, her seat belt would not come undone, so that had to get cut to extract her from the vehicle. And then some other people were helping the vehicle that impacted the vehicle in front of me.
Q So the vehicle where you -- that you stopped as soon as you saw the impact?
A I started to slow down once I knew that there was going to be an accident.
Q Okay. Did you run to render aid right away?
A Yes, sir. Once I stopped my vehicle and pulled off to the side of the road.
Q And other people were there and started to help as well?
A Yes, sir.
Q And that happened as soon as the -- right after the accident?
A Yes, sir.
Q So you were behind -- based on what we've been discussing, behind the vehicle, in this depiction, vehicle K?
A Yes, sir.
Q There were two people in there?
A Yes, sir.

Q Okay. Did that vehicle, do you remember, did it have its headlights on?

A The vehicle in front of me?

Q Yes, sir.

A I can't say if it had its headlights on. I know its taillights were on, and it's braking lights were working.

Q The other vehicle, the one that --

A That impacted?

Q -- impacted the one with label K. Can you tell us -- can you come down and tell us where it was coming from and where you first noticed it?

A This is 278 westbound. I was following behind this vehicle K. This vehicle here traveling -- and all of a sudden, you just see the oblique side of the vehicle. So it wasn't turned completely sideways, but it wasn't head on from where I was, and it starts to veer into the westbound lanes, and that's when it was "Oh sh", somebody's going to get hit. And that's when I hit -- hit my brakes, pull off to the side of the road. And by the time it was done, there was debris everywhere, two smashed cars, and like I said, fluid and steam or smoke rising up from everywhere.

That's why I was more worried about the people in the vehicle getting burnt than somebody having an injury that you shouldn't move them, so --

Q So the vehicle labeled -- that would be labeled H, you saw that vehicle --

A Here.

Q -- come across the median?

A Yes, sir.

Q And there's actually -- is there a turn lane? You described three lanes. There's actually a turn lane right here, isn't there?

A There's three lanes of traffic going each direction, and then there's an intersection where you can pull into the intersection so that you can cut across to go to one of the side streets or make a U turn.

Q Is it possible that the actual accident that you saw, the impact between the K and this H vehicle, happened farther back than what's depicted in this drawing?

A What I remember is where the wreckage was would be closer to where you would actually start to turn in to make the turn. But I didn't measure it or anything like that.

That's what I remember is it was up farther. Closer to the end of the island, I guess is how I would describe it.

Q You didn't do any measurements or anything?

A No, sir. No.

Q You could go ahead and sit down. I'm sorry, Mr. Tanrath.

A (Witness complies.)

Q Were there any vehicles between you and the one that was hit?

A No, sir.

Q You had a clear view of the vehicle in front of you?

A Yes, sir.

Q And you saw this vehicle come across the median and directly impact the vehicle in front of you head on?

A Not head -- it came in at an angle, but, yes, sir.

Q Did the front of those two vehicles --

A Yes. The front of the two vehicles did collide.

Q Was it a violent collision?

A Yes, sir.

Q You said there was smoke?

A Well, there was steam rising up, so I don't know if it was smoke from a fire or just steam from radiator -- hot radiator fluid escaping and -- but there was debris all over the road.

Q The vehicle that came across traffic, not holding you to anything, was it moving slowly? Fast?

A That, I cannot -- it was one of those -- it was a blink of an eye. Oh, sh -- pardon my expression, ma'am, oh, shit moments, when you know that something is going to happen. I mean, it wasn't -- when your senses are

heightened time seems to move slower, but it was one of those, this is going to happen, it's going to happen now. And it was smash, and then pull off the side of the road and render aid.

Q Mr. Tanrath, this has already been entered into evidence. The smaller version has been offered into evidence, but the vehicle in front of you, do you -- was it perhaps a Chevy Tahoe?

A In front of me? It was an SUV, I can't tell you what brand it was, sir.

Q Okay. Would that -- would -- if people have already testified that the vehicle labeled K was driven by William Kuck, and Mary Kuck was the passenger in this vehicle, would you have any reason to dispute that?

A No, sir.

Q And would the damage you see here be consistent with the type of impact and collision you witnessed that evening?

A Yes, sir.

Q Okay. Now, you saw the vehicle coming across traffic sort of at an angle; is that correct?

A Yes, sir.

Q Were you able to see the front of that vehicle?

A Not the entire front, no, sir.

Q Were you able to see a portion of the front of

that vehicle?
A Yes, sir.
Q Can you come down and just, Mr. Tanrath, draw what the front of the car looks like?
A (Witness complies.)
This is the vehicle in front of me.
Q All right. And not to scale, but --
MR. SMITH: Your Honor, may I address the Court very briefly?
THE COURT: You may.
MR. SMITH: If this witness is going to testify that Ms. Hood did not have her headlights on, we stipulate to that.
THE COURT: Okay. He can still testify to whatever he needs to. That's fine.
MR. SMITH: Yes, ma'am. Okay.
THE WITNESS: So as far as this, so I did not see the entire curve of the vehicle, but I did see from that area on. Because, like I mentioned, I was staggered behind the vehicle probably more like that.
So I wasn't directly behind the vehicle, but I saw an oblique side of the vehicle that hit the vehicle in front of me, and a little portion of the front.
BY MR. WILLEY:
Q Okay. And the -- so you're looking at the -- this

is the vehicle that would be labeled H. You're now the other way around, right? You put an H on there?
A (Witness complies.)
BY MR. DANIEL:
Q And then your vehicle, T for Tanrath.
A (Witness complies.)
Q Go ahead. And could you see at least a portion of the front passenger side of the H vehicle?
A Yes, sir.
Q Could you see the area where the headlights are positioned?
A Yes, sir.
Q Were those headlights on?
A I do not remember seeing headlights.
Q And do you remember giving a statement about a week or two after the accident?
MR. SMITH: Your Honor, I don't know if he's impeaching this witness with the statement, at this point, but --
THE COURT: Ask him the question, and then if he says something different then --
BY MR. DANIEL:
Q Do you remember telling someone that the headlights, the passenger side headlights on that vehicle, were not on?

MR. SMITH: Your Honor.
BY MR. DANIEL:
Q I'm just asking the question.
MR. SMITH: No, you're --
THE COURT: Okay. Just ask the question. Let's go.
BY MR. DANIEL:
Q It's a straight question. Do you remember telling somebody that the headlights on the passenger side of that vehicle were not on?
MR. SMITH: Objection, hearsay.
THE WITNESS: I do not remember seeing headlights.
BY MR. DANIEL:
Q Okay. And you actually stayed behind and talked to the police?
A Yes, sir.
Q Did you tell the police, as far as the headlights on the H vehicle, did you talk to the police officer about that?
A I did talk to a police officer, yes, sir.
Q And what do you remember saying?
MR. SMITH: Objection, Your Honor, hearsay.
THE WITNESS: The best I can -- best I can remember, sir, is there were no -- I did not witness any headlights.

THE COURT: This is what he said, correct? That's not hearsay. He can say what he said.
THE WITNESS: I don't remember there being any headlights. I don't remember what the police officers question was to me.
BY MR. DANIEL:
Q I'm not asking you for a direct quote of what you said but do you -- did you offer that information to the police?
A Yes, sir.
Q And did you feel that was an important thing to mention?
A Yes, sir.
Q And was that because it was dark outside?
A Yes, sir.
MR. DANIEL: That's all I have. Thank you.
THE COURT: Any cross?
CROSS EXAMINATION
BY MR. SMITH:
Q Mr. Tanrath, you don't know either way whether or not Ms. Hood had any running lights on at the time, do you?
A I do not. I -- I don't remember any lights being on.
Q All right. But you don't know either way whether the running lights were on. Can't say yes, can't say

don't remember either way; is that correct?

A Correct.

MR. SMITH: Thank you. No other questions.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Do you remember -- you don't remember seeing running lights illuminated, do you?

A I don't remember seeing any lights.

THE COURT: All right. Anything further?

MR. SMITH: No, ma'am.

THE COURT: All right. You may be excused, sir. Thank you.

You're going to rest, correct?

MR. DANIEL: Yes, Your Honor.

THE COURT: Ladies and gentlemen, at this time, the Defense also rests their case. And the pizza is here. I'm going to send you back.

Ladies and gentlemen, knock on the door and let me know when y'all are finished eating. All right? And at that point I'll see where we are. There's some matters that the lawyers and I need to take up while you all are eating. But we're going to hopefully get this case wrapped up for you. Okay? Thank you.

(The jury exits the courtroom.)

THE COURT: We are going to be at ease for about 15 minutes or so. We are working on the jury charge. I know we need motions at this point. I guess it's going to be motions first and then we'll take a break. And then after that, I want to talk to Mr. Clevinger real quick. Okay? All right.

So any motions?

MR. WILLEY: Yes, Your Honor.

Your Honor, we do have motions and I will --

MR. DANIEL: Your Honor, one thing before motions, as a housekeeping matter. We have blow-ups of some of the exhibits.

MR. WILLEY: You've already rested, and we don't consent.

MR. DANIEL: We would move these, the bigger exhibits we have, they have some of the same size.

MR. WILLEY: You've already wrapped.

THE COURT: You haven't agreed to it and you have already rested without moving them in.

All right. Motions?

MR. WILLEY: Yes. Your honor, we're going to start with Motion for Directed Verdict as to the issue of plaintiff's headlights usage. And this deals with two separate things. First the legal duty, and then to proximate cause.

With respect to the legal duty, all of the testimony in the case -- all of the testimony, and this is important -- is that the wreck occurred sometime prior to 5:58 p.m. Which no matter which source, no matter which source you take, whether you take the Naval Observatory or you take SunCalc, would place this wreck within that 30-minute window after sunset. And, of course, there's a case on point which says that the law cannot require anything other than what the law requires. And when the Legislature speaks on a piece of law via statute, it should be strictly construed.

We have referred throughout the week -- we have referred throughout the week to the statute that requires headlight use, and that is 56-5-4450, which is times when vehicles must be equipped with headlights. And with respect to ordinary darkness, sunrise and sunset, it specifically says, 30 minutes after sunset.

Therefore, the jury, in order to find within the law, would have to find that plaintiff did not have a legal duty at the time of this wreck to have her headlights on. There's been no testimony, zero testimony, that this wreck occurred anything other than before 5:58 p.m.

And so on that basis, our motion as to headlights should be granted. Directed verdict as to headlight

usage, plaintiff not having a legal duty.

Second --

THE COURT: Okay. Let her respond. Go ahead.

MS. SUTTIE: Your Honor, we would point to the rest of the headlight statute, which also mentions that headlights need to be on when environmental 56-5-4450 -- which also says that headlights are required to be on, when environmental factors reduce the ability to see persons and/or vehicles on street or highway at distances of 500 feet ahead. I think that there is a question as to whether the defendant was able to see Mrs. Hood's vehicle, whether the environmental conditions, you know, allowed her vehicle to be invisible and, you know, how far away she was when the defendant was looking to make the turn and that speed comes into that as well. So, I think that it is a question of fact.

MR. WILLEY: Your Honor, with respect to environmental factors, we did go through with our expert, obviously to the extent that the statute specifically deals with lightness and darkness, which it does in this case, it speaks to that, specifically it has to be strictly construed as to that piece.

In addition to that, we actually went through with our expert environmental factors, and with the [illegible]

officer, environmental factors that may be included: Fog, snow, rain, smoke, and just for fun, the eclipse, obviously.

But as to normal light and darkness, sunrise and sunset, the statute and the Legislature has specifically said, 30 minutes and 30 minutes. And the uncontroverted testimony in this case is that this happened before that 30-minute window. And, therefore, plaintiff did not have a legal duty to have her headlights on.

THE COURT: May I have a copy of the whole stature, please?

MR. WILLEY: Yes, ma'am. And Your Honor, I'm sorry --

THE COURT: That's okay.

MS. SUTTIE: Your Honor, I think it's not uncontroverted that the accident happened outside of that 30-minute window. The plaintiff's own expert, Ms. Borzendowski testified that it had occurred at 5:58 which is within the window, or could have occurred at 5:58.

THE COURT: Okay. Well, I think the catch-all in this statute where it says, "Or environmental factors severely reduce the ability to clearly discern persons and vehicles on a street or highway at a distance of

500 feet ahead as required. Again, I think that that might be a jury issue. I heard some testimony as to the distance, but I also think too that y'all were talking about there is a bit of a curve from the direction that she was coming in.

So, respectfully, I'm going to deny your motion as to that issue.

MR. WILLEY: Okay. Your Honor, the second piece of our motion as to headlights deals with proximate cause. The uncontroverted testimony in this case, including from the defendant, is that he did not see any other vehicles coming from his left, which would include Mr. Dustin Lee who testified that he was, you know, ten car lengths behind plaintiff in the inside lane, closer therefore to Mr. Johnson, had his Xenon headlights on, could see plaintiff, and could see defendant's vehicle.

And that, in fact, when this wreck occurred, as he approached it, he had to decelerate and move aside in order to avoid the aftermath of the wreck.

The testimony from the defendant in this case is that not only did he not look and see the plaintiff, but that he did not look and see Mr. Lee who had his headlights on. Therefore, without any evidence to the contrary, the headlight usage by her cannot be

proximately cause of this wreck. Because if he was unable to see the Xenon headlights of Mr. Lee, he would not have been able to see the headlights of the plaintiff. And that's clear from the testimony. There's been no evidence presented to the contrary, Your Honor.

THE COURT: Okay. Mr. Daniel.

MR. DANIEL: Your Honor, the witness is actually -- seems fairly conclusive that she did not have her headlights on. The only testimony by Antoine Johnson was that he testified before the jury that he checked twice. And the jury is allowed to draw the common sense implication that if he saw a car coming with headlights that was an immediate hazard to him he would not have pulled into the intersection. The way was clear, and that's why he proceeded.

So it's clearly an issue of fact. And the fact that this plaintiff did not have her headlights on is something the jury should -- that's what the whole case is about. They should be allowed to evaluate that and instructed that on negligence and negligence of the plaintiff for not having her headlights on.

And the other thing is about the speed, but I think this is definitely an issue of fact.

MR. WILLEY: Your Honor, with respect to that, the

defendant's own testimony cannot stand on its own. It has to be taken, you know, in the light -- you can't just simply stand up and say, in the face of everything else, that I didn't do it or it wasn't me.

The evidence has to be taken from all of the witnesses, which in this case is clear. In fact, the defendant has admitted that he did not see Mr. Lee, that he did not see the plaintiff. It is uncontroverted, Mr. Lee was close enough to the scene that he had to move over to defer himself so he wasn't caught up in it, as he put it. And Mr. Johnson admitted that he saw neither of them. So the headlight usage cannot be a proximate cause of the wreck here.

In addition, you know, to that, he hit her. He -- his testimony is that he didn't even see her prior to hitting her, and she obviously crossed in front of his vehicle because the evidence in the case, the photograph, clearly shows that he broadsided her. So, she's not required to, certainly, have headlights on the side of her car, and he still indicates that he didn't see her.

Of course, we know why he didn't see her, but that's really not an issue. The issue in this case is that the headlight usage cannot be a proximate cause of this particular wreck.

THE COURT: I'm going to deny that motion. I think it's a jury isaue.

MR. WILLEY: All right. Our second -- third. We also have a motion as to speed in this case. And we would direct the Court's attention to the Odom case, which is citation Odom V Steigerwald, which is 260 South Carolina 422, a 1973 case, Supreme Court. In that case the defendant was stopped at a stop sign, and he testified that he did not see the Plaintiffs's vehicle approaching from the left when he attempted to pull through the intersection to make a left turn.

Odom, the plaintiff, testified the defendant was approximately two car lengths away when this happened.

THE COURT: What's your motion?

MR. WILLEY: My motion is to direct a verdict as to comparative negligence with regard to speed, because it's not --

THE COURT: As to speed, right? That's what I was looking for. Okay.

MR. WILLEY: Yes, ma'am. And in the Odom case, the plaintiff testified the defendant was approximately two car lengths away when this happened. Odom's vehicle struck the front left fender of the defendant's vehicle.

So in that case you actually had the plaintiff

hitting the defendant, which in this case it's the other way around. But even in that case the Supreme Court held that the plaintiff's excessive speed was not a proximate cause of the wreck, because the defendant pulled into oncoming traffic. The trial court's denial of the Plaintiff's motion for directed verdict on liability in that case was reversed and the case was remanded and sent back down for a retrial.

In the present matter, we have a very similar factual scenario, except it's actually stronger from the plaintiff's standpoint. Plaintiff was traveling in her proper lane legally, allegedly in excess of the speed. We don't even have any definitive testimony as to that. But as she approached the intersection of 278 and Southwood Park Drive, the defendant's vehicle pulled out into the highway, colliding with plaintiff's front passenger side.

Just as a note, the defendant testified he did not see plaintiff's vehicle approaching from the left when he pulled out and caused the wreck. Odom is clear precedent in this case and instructs that the plaintiff's vehicle is not a proximate cause of the wreck.

And I think a clear distinction here that the Supreme Court drew, and correctly, obviously I think,

is that in a case where you have a defendant who says, "Yes, I saw the plaintiff coming, I pulled out and I misjudged it and the plaintiff was speeding." Obviously speed would play a role in that wreck. It would potentially be a proximate cause for comparative negligence purposes.

In this case, we have a defendant who said he didn't see her, just like in Odom. And, in fact, in Odom, where the plaintiff struck the defendant, in this case the defendant actually struck the plaintiff, so it is a stronger factual scenario in this case.

And in addition to that, you know, we have the testimony obviously from the sole expert that was called in the case that said the speed played no role in forming her opinions and that she actually drew the comparison, which is essentially -- they're attempting to make a res ipsa argument. Well, she was there, and because she was allegedly speeding to get there, that caused it. But that doesn't work. Because obviously that would apply to if she had hit her snooze button that morning and been delayed three minutes it wouldn't have happened. So they don't get that.

THE COURT: Mr. Daniel, you want to be heard in response?

MR. DANIEL: Your Honor, I think Dustin Lee

testified that it's his routine to go 49. He was traveling 49. Mrs. Rood's vehicle, he saw her.

THE COURT: Yeah, but how is the speed the proximate cause of this accident?

MR. DANIEL: Well, Judge, there's also their expert that testified and the jury heard that an engineer pulled the computer chip data and that this, the plaintiff in this case, was going 62, 63 miles per hour.

THE COURT: Again, I understand that she was going that speed, allegedly. The question is, though, how was that speed a proximate cause of this wreck?

I could see it potentially affecting the damages in this case.

MR. DANIEL: Your Honor, it could affect the damages and -- it could affect the damages and liability, because at this intersection there is a bend in the road. You heard the trooper testify to that, the officer did. And a vehicle without its lights on, traveling at a high rate of speed, the jury can draw a conclusion about this vehicle was going at a high rate of speed, the plaintiff's vehicle, based on the damage alone. But there's also testimony from an eyewitness about that.

The fact that Antoine Johnson is making a left

turn on a dark road and there's a vehicle that could be hundreds of yards or hundreds of feet down the road without its lights on approaching at 62 miles an hour, that speed -- the speed there is absolutely an issue and could be a contributing cause of the wreck.

If she's going 30 or 25, you know, in this circumstance, she would be a lot more -- a lot closer to him in the roadway and perhaps he sees her. So the speed and how fast she might be going, that's directly related to liability; it's an issue for the jury.

The human factors expert actually in basic terms just said that speed -- she admitted that the faster you're going the more ground you cover in a given set of time.

So the jury can, from that, draw their own conclusion. It's common sense. If you're going 62 miles an hour you cover a lot more ground in one second than you do if you're going 30. It plays a direct role in the visibility of the plaintiff's vehicle. And if her vehicle wasn't visible, then Antoine Johnson, a reasonable and ordinary, prudent driver in his situation would look left and assume the way is clear.

So, that's why speed is absolutely an issue in this case. And it's a contributing cause. Perhaps the

primary cause. That, coupled with no headlights.

MR. WILLEY: And, Your Honor, that's all good and well. It's the same arguments they made actually in Odom, but in this case those facts aren't present here because the defendant hit the plaintiff and she crossed in front of his path of travel prior to the impact. And he still says he didn't see her. So it's even a stronger case than Odom.

And if you look at it, I mean, they can make the argument, of course, that if this, and if this. They had the opportunity to call an expert to say that it played a role based on an accident reconstruction. They didn't do that.

I mean, they hired a -- I mean, I've got the check where the, you know, company hired an expert. They could have called the expert in here to do a reconstruction that played a role. They didn't do it.

And as to damages, that's a separate issue which we can deal with, but they would have to have expert testimony to talk about the speed and the fact that that could cause a worse mechanism of injury than if she were going 10 miles an hour slower. They did not do that in this case, and therefore, it's even weaker. It's even weaker than the Odom case.

MR. DANIEL: There are -- I can cite some cases

that don't require expert testimony. There is Livingston v Oakman, which is 251 S.C. 611. There's Lynch v TDE (phonetic) 204 SC 537. Expert testimony is not necessary for speed to be presented as an issue to the jury.

MR. WILLEY: That's not the argument. Correct. We agree.

MR. DANIEL: I'm not done yet.

THE COURT: Let him finish.

MR. SMITH: Okay.

MR. WILLEY: Really. I've been -- Your Honor, we've got an eyewitness that says that the plaintiff was speeding. It's common sense that you cover more ground in a given period of time the faster you go.

Visibility is the issue here. If the driver is making a left turn on a dark road and actually checks to their left and traffic is clear, or they don't see anything an ordinary person with the appropriate level of vision, there's been no allegation that this young man has a vision problem. If they look, the way is clear, it's safe to assume they can go. The fact that his vehicle made contact withs Mrs. Hood's on the front tire or just a foot down the front of the -- side of the vehicle is irrelevant if she's doing 63 miles an hour. Which there's testimony before the jury that she

may have been going that fast. There's a bend in the road. It is directly related.

THE COURT: Okay. You are retreading old ground. Is there anything new? You've already been through and covered that.

All right. I think it's a jury issue in this case. I'm going to let it go to the jury, and I'm going to deny that motion.

Any other motions?

MR. WILLEY: Yes, ma'am. Yes, Your Honor. We also have a motion for directed verdict on proximate cause as to the ankle injury. It's uncontroverted in this case. There's been no testimony to show that her ankle injury came from anything other than this wreck.

The doctor's testimony in this case establishes to a reasonable degree of medical certainty most probably that the ankle injury came from this wreck. There's been no testimony from any other expert that says the ankle injury could have occurred any other way. And so we would move for a directed verdict on proximate cause as to the ankle injury.

MS. SUTTIE: Your Honor, I think there's a question as to whether the ankle injury occurred in the collision with Johnson's vehicle or the collision with the Kucks and whether or not the collision with the

Kucks is Mr. Johnson's fault is at issue too.

MR. WILLEY: And, Your Honor, when you -- as you well know, when you charge the jury on negligence and the causal chain, the charge is and the law is that the first act of negligence that leads to the causal chain, which was the second wreck, the first actor is responsible for that. In this case, the plaintiff has elected to sue Mr. Johnson. Clearly, if they find him negligent, then he is also negligent and responsible for the second wreck. And all we're looking for is proximate cause as to the ankle injury resulting from this wreck, the sequence of events.

THE COURT: I think it's a jury issue. What else?

MR. WILLEY: I would move on those same grounds as to the neck and the back injury from the doctor's testimony as well.

THE COURT: Respectfully, I'm going to deny those as well. Anything else?

MS. SUTTIE: I think in your consideration of jury charges we would like to request a standard jury charge on speed as well.

MR. DANIEL: Your Honor, I don't know in the standard charge if there's anything about religion. There was a lot about religion in the testimony.

THE COURT: If you have a charge on religion, I

would be happy to look at it.

MR. WILLEY: We do have additional from what was submitted prior, just three additional.

THE COURT: Okay. Anything?

I'm going to tell you, I'm going to charge the Bench book just like I always do. Everything that you all have requested from both sides, for the most part, I have got a standard charge on it from the Bench book which I'm going to use.

Yeah. The duty of care, duty for information, and rendering aid, I'm not charging that.

MR. WILLEY: Which one's that, Your Honor?

THE COURT: Whatever you just handed me. This duty to give information and render aid. And immediate report of accidents resulting in personal injury or death. I don't think that there's any question that someone made a report.

Making false complaint to law enforcement officer, giving false information to rescue squad.

MR. WILLEY: May I be heard on those, Your Honor?

THE COURT: Actually, what I'm going to do is this: I am going to just mark -- the first one, the duty of care is in my standard charge. So that's there.

We are just going to mark as a Court's exhibit

these three. You didn't number them, so I'm going to have to them marked as a Court's exhibit and I don't need to hear anything on them. We'll just mark it, and it is preserved for the record that I'm not going to charge the three of these.

Also you all also requested a spoliation of evidence charge.

MR. WILLEY: Briefly, Your Honor. I just want to make sure that the record includes that these are all based on statutory code sections and punitive damages will be charged in this case.

Uncontroverted defendant violated these statutes, and so we're requesting them on the basis that they go to punitive damages.

THE COURT: All right. Respectfully, not charging them. Go ahead and mark those. Go ahead.

MR. WILLEY: And with respect to the spoliation of evidence on our behalf, there was testimony that the actual content of the text messages was not preserved by the defendant. In this case there was also the black box, but we didn't get into that because we didn't call the expert. So just with respect to this, it's the actual content of the text messages. At first he pretended not to know who sent it. He eventually told us, but still did not preserve what they actually

said, which is relevant and probative.

THE COURT: Did you send him a non-spoliation letter requesting that he not delete text messages?

MR. WILLEY: The case -- the case was in a posture, Your Honor, that it was within the time frame where he could have retrieved them. In fact, we were able to retrieve these actual records, but obviously that --

THE COURT: Did you request that he do it?

MR. SMITH: In the discovery request, it's anything -- and I could get you the exact request, but it is included. I mean, we don't -- we don't send a letter as soon as a wreck happens, but it's within -- it is within the time frame.

THE COURT: Yes.

MR. DANIEL: Your Honor, they're not -- they're cell phone records from the carrier. The records that you're talking about are Antoine Johnson's records.

MR. WILLEY: Right. They wouldn't even give us those, we had to subpoena them from the carrier.

THE COURT: I don't think a spoliation charge is appropriate in this case. I'm not going to charge it anyway. But thank you for putting it on the record.

Is there anything else that I had a question on?

You had a motion for a duty to mitigate for

damages. And I don't know where that's coming from. Why did you ask for that?

MR. DANIEL: We will withdraw that, Your Honor.

THE COURT: Okay.

MR. DANIEL: We actually requested spoliation charge as well and --

THE COURT: For what?

MR. DANIEL: We could present to Your Honor, if you would like to review Woody Poplin's testimony and then Ken Richards' testimony, the two engineers that were hired by plaintiff's counsel and then not called.

They inspected -- Woody Poplin inspected his vehicle well into the lawsuit, several months after suit was filed. Probably, I think, six months. I can get the specific date for you.

THE COURT: That was on behalf of the insurance company?

MR. DANIEL: That was on behalf -- that was on behalf of and at the instruction of a lawyer that was representing Mrs. Hood. I believe it is -- I can't speak to --

MR. SMITH: Tell her who hired Woody.

MR. DANIEL: Chris Nichols, who was representing Ms. Hood hired --

MR. SMITH: Who paid him?

MR. DANIEL: Can I finish?

MR. SMITH: Tell her who paid him. That's what she wants to know.

THE COURT: Guys. This is embarrassing at this point. Really, it's embarrassing.

We're going to go ahead and we're going to take about a 15-minute break. Y'all grab a bite to eat. We'll come back and we will finish up our discussion on the charges. And I have noted for the record what you all have requested. I'll make those lists exhibits. And I'm going to charge what I'm going to charge.

So with that said, y'all go grab a bite to eat and we'll come back and I will tell you what I'm going to charge and we'll go forward with the closing. Okay? Thank you.

MR. WILLEY: Will we also, at that time, Your Honor, have a chance to review the verdict form?

THE COURT: Yes, I'll have a copy.

MR. WILLEY: Thank you.

MR. DANIEL: Thanks, Your Honor.

(Whereupon, the Court stood in recess.)

(Proceedings continue in Volume 6.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 16th day of January, 2018.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs. **Transcript of Record**

Antoine Johnson,

Defendant.

VOLUME 6

September 7, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

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AND

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REPRESENTING DEFENDANT:

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PROCEEDINGS

THE COURT: We are still working on the charge. I will ask you to do closing arguments and then we will take a small break and then I'll charge. But to let you know, I'll charge as to the finder of facts, the judge of the law. The direct evidence and circumstantial evidence. Obviously, the burden of proof in this case, as to negligence is by preponderance of the evidence.

Going to the charge, expert witness charge, deposition testimony charge. I am going to charge negligence, comparative negligence. I am going to charge the duty to yield a right-of-way when you are entering a roadway. I am going to charge that every driver of a vehicle approaching a stop sign, stop at the stop sign and then it goes on to say basically see if the other cars are coming before you enter the roadway.

The duty of proper lookout. The duty to keep a car under control. It is improper to use a wireless apparatus statute. And the headlight statute, 56-5-4450.

I'm going to charge the other is speed, 56-5-1520. I'm going to charge negligence, per se.

As far as the actual damages, medical bills, pain and suffering, mental anguish and permanent injuries as define them as the past present and future, obviously. Damages, in this case, typically, only get one award. And burden of proof again as to actual damages. And explain that it is obviously by preponderance of the evidence. I will talk about that you can't recover from perspective damages, although it's not required to be proven by mathematical certainty.

I'll charge the life expectancy. In this case, at 63 years old her life expectancy is 21.68 years.

And then I am going to charge punitive damages, obviously. Those must be proven by clear and convincing. And then at the end I will charge typical, don't owe your support or sympathy to anyone. The verdict must be unanimous.

The verdict form is the typical, comparative negligence. It is in the Bench book. Other than that, I am not charging spoliation or the three that you have passed up today. We have marked those as Court's exhibits hopefully. Anything else that you can think of?

(Whereupon, Court's Exhibit No(s). 1 marked for identification and received in evidence.)

(Whereupon, Court's Exhibit No(s). 4 marked for

identification and received in evidence.)

(Whereupon, Court's Exhibit No(s). 5 marked for identification and received in evidence.)

MR. SMITH: Your Honor, I believe that it's been submitted but I don't think that it was mentioned. You can't find someone negligent for not doing more than the law requires. If they find that it didn't require headlights, they cannot find her negligent for not having headlights when the law did not require them.

THE COURT: The problem though, with that statute, is what we talked about with directed verdict is because it also says, other environmental factors reducing someone's ability to see, which there would have been in this situation, required that she had headlights on. It didn't have to be strictly the time period but also as to the other environmental factors. And I loved the eclipse.

MR. WILLEY: The key there is if, I think that what he's attempting to say is because of darkness and environmental factors it wasn't required. They could not find negligence.

They have to find that one of those apply. There's a jury charge on point about not finding negligence for something other than the law.

MR. SMITH: If they find that.

THE COURT: Give me --

MR. DANIEL: Your Honor --

THE COURT: Hold on a second.

(Pause.)

THE COURT: I agree with them, to the extent that I think that they can find that her speed was a factor and she was driving too fast for conditions. But can somebody give me a proposed copy of the charge that you are asking for?

MR. WILLEY: It was enclosed in our charge.

THE COURT: I don't think this whole charge is appropriate. I think that portions of -- that a person cannot breach a duty when they are in compliance with the law, and the Court cannot require a person to do more than what the law requires.

That would be the only portion I would feel comfortable with.

MR. SMITH: Sure.

MR. WILLEY: And that's what we're looking for.

THE COURT: Okay. I'll put that in.

What else?

MR. WILLEY: Okay. One other question on the actual -- I'm not sure exactly what charge you're using, but our act -- from the Bench book, I just want to make sure these are in there. It's out-of-pocket expenses, medical expenses, psychological trauma, mental anguish.

THE COURT: Hold on a second. Hold on a second.

So I think that's something that you can argue. I think by the end we will cover it fine. I think you can go down the list of what I expected from you in front of the jury and include all this. I think my damages charge is fine, and it is good enough on the damages that I don't say -- and I want you to know that I don't say, "including out of pocket damages," you know.

I go through -- I tried very hard, I'm going to tell you this, to try to narrow this down somewhat. Any time you are charging comparative negligence and punitive damages, it is one long charge. And I know

you all know that.

So I've tried very hard to kind of make this to the point where they can understand it, you know, and stay with me. And I think it's pretty good. I think it's a proper charge on the law. I do ask about actual damages, and I do want medical expenses and costs. I don't say out of pocket costs. That's going to be for you to argue.

MR. WILLEY: Do you do mental anguish, anxiety, depression, pain, suffering, disfigurement?

THE COURT: Hold on.

I do. Mental anguish, loss of enjoyment of life -- what is the third one?

MR. WILLEY: Pain and suffering.

THE COURT: I've already got pain and suffering.

MR. WILLEY: Depression.

THE COURT: I don't think depression specifically.

MR. WILLEY: When she talked about that.

THE COURT: Right. I think you need to be very careful though. Because when we had issues before when you said you were not claiming an exacerbation of any bipolar issues,

and I agree. Her testimony did clearly cover depression. So I think that's a comment on the facts, but I wouldn't specifically address anything particular, like depression or bipolar or anything along those lines. I think you already covered it.

MR. WILLEY: Okay. And then anxiety. She specifically testified about her anxiety during the day.

THE COURT: I think that goes to -- I don't specifically say anxiety, I think you could argue it, but I --

MR. WILLEY: Okay. And then the other two were disfigurement and property damage. She's permanently disfigured, by the doctor's testimony. I mean, so I think that one is proper, and property damage, obviously it --

THE COURT: Okay. You know what, it says "permanent injury." I'm going to say, "and disfigurement."

And I apologize, I missed the testimony about property damage. So the car was never paid for?

MR. DANIEL: I thought it was.

MR. WILLEY: So there's no evidence in the record about any accordant satisfaction. They

didn't raise it, so we're claiming it.

THE COURT: Was there any testimony about the cost of the car? Did I miss that?

MR. WILLEY: No, but you can see the property damage.

THE COURT: Doesn't matter though. They can't just -- I have no idea, I can't tell -- well, it tells you what kind of wreck this was. But I can't tell what kind of car that was.

MR. WILLEY: All right. I'll take that one out. I'm not going to argue over that one.

Two final things. Potentially an insurance charge, if you would charge an insurance, you're not being considered any --

THE COURT: The insurance word has not been used in this, like miraculously.

MR. WILLEY: Here's why. He specifically brought in the VA. People generally know that the VA treatment is not paid for by the plaintiff. And so we think it's important that the Court instruct them that they are not to consider that. They are only to consider the testimony before them. I mean, everybody knows you don't pay when you go to the VA. And he specifically brought that in. We specifically

didn't bring it in.

MR. DANIEL: It wasn't objected to, Your Honor. I didn't say "insurance." I don't think people know that in general, and I also think they want specific charge --

THE COURT: I think it's more a collateral source rule than anything. I mean, it's more of a collateral source charge that I would request, if I were you.

MR. WILLEY: Well, we're fine with it if you do --

THE COURT: I'm not going to say the word "insurance."

MR. WILLEY: As long as you say, you know, health benefits and, you know, whatever.

THE COURT: I know, but that's commenting on the facts. I can tell you, what you're asking for is collateral source charge. If you want me to charge that, I will charge that. Because I would agree with you with any VA talk.

MR. WILLEY: Okay. We'll take the collateral source charge. That's perfect.

THE COURT: Hold on a second. Okay.

MR. WILLEY: And then the final thing,

Your Honor, which --

THE COURT: Hold on a second.

MR. WILLEY: Okay. Take your time.

THE COURT: Yes, the time thing, he ruled on the Woody Poplin. You ruled on the tailgating.

MR. DANIEL: And Your Honor. Yes, the final thing which he raised this issue of who hired Mr. Poplin, I just want to bring it to the Court's attention because you ruled on tailgating, they brought that in; you ruled on Parkinson's, he brought that in today against your ruling. And I'm just putting the Court on notice that I have a check here that USAA paid Mr. Poplin's retainer, and if he raises that, I'm going to ask the Court for sanctions. Because it is not true, and if he says we hired Mr. Poplin and didn't call him, not only is that in violation of the Davis v Sparks case, which says, "a party cannot be prejudiced by it's failure to call a witness or hire a witness that it doesn't call."

But it's also just not true. And, Your Honor, it's a UIM case, so the way UIM works, I had -- I had no involvement in defending that case and hiring

Mr. Poplin.

USAA had a duty to defend Mrs. Hood, who had counterclaims from Mr. Johnson, which we haven't brought up. We stayed out of that. Counterclaims that have been paid on by USAA to protect her interest.

USAA from that physician through a lawyer hired to defend her, Chris Nichols, and that's all I said, "a lawyer hired on her behalf," Mr. Nichols hired Woody Poplin.

THE COURT: But you're not going to discuss it in closing argument is what we're going to do. You're not going to talk about it. Okay.

MR. DANIEL: Your Honor, I would just, for the record, I made an objection to that.

THE COURT: Okay. And, again, you're not going to talk about it. It's mischaracterization. It's misleading the jury. It's a trial in search of the truth, and it misleads the jury. And we can't get into that without getting into insurance issues, and you can't talk about insurance. So you can't use that as a great fact or use it against her.

So, anything else?

MR. WILLEY: Nothing from the plaintiff, Your Honor.

THE COURT: Okay.

All right. That's what the proposed verdict form is. And I got to tell you, I have not read it all the way through, so y'all need to read it carefully and I'll read it.

(Pause.)

THE COURT: All right. Who's doing the closing for the plaintiff?

MR. WILLEY: I am.

THE COURT: And who's doing it for the Defense?

MR. DANIEL: I am, Your Honor.

THE COURT: She's just making a couple of changes to a portion at the end. What else? I know the jury is ready to go.

MR. WILLEY: I just need that to use it in closing, but other than that, I'm ready.

THE COURT: Okay.

MR. DANIEL: And, Your Honor, just for the record, as far as the collateral source charge, we object to that charge.

THE COURT: Okay. Yeah, you're the one that brought the VA into it, so it's

appropriate.

Anything else?

MR. SMITH: Nothing from the plaintiff.

THE COURT: Okay. So we're just going to wait. Mr. Willey needs a copy of this then.

MR. DANIEL: One other thing, Your Honor. I haven't seen their Power Point yet.

MR. WILLEY: You can object contemporaneously. Paula has that.

MR. DANIEL: Well, I do know that it's their practice to put the per diem, some kind of per diem amount up.

MR. WILLEY: Correct. And I will do that.

MR. DANIEL: Which if he does that, I just want to make it clear that it's for the jury to decide if that's appropriate.

MR. WILLEY: And I'll make it clear.

THE COURT: He's going to say that.

And also, just so we're clear, I know once you're finished, you're removing all of that?

MR. WILLEY: Yes, all of this has to come down.

THE COURT: Okay. Before he can pass. Okay?

MR. SMITH: Oh, yes. Yes. Yes, I will.

THE COURT: Do it like that.

MR. SMITH: I will.

THE COURT: I don't want to sit and have to wait. Certainly don't want to make the jury wait. Okay?

MR. SMITH: Okay.

THE COURT: All right. We're ready to go. Gentlemen, yes? Let's bring the jury out.

(The jury enters the courtroom.)

THE COURT: Welcome back, ladies and gentlemen. I trust y'all got a bite to eat.

At this time, what we're going to is hear the closing arguments from the lawyers. After that, we're going to take a very brief break, and then I'm going to come back and charge you on the law.

My charge usually takes roughly about 20 minutes or so, just want to let y'all know and warn you. So we're going to go ahead and pay attention to the attorneys at this time, and like I said, we'll take a break before I charge you on the law, and then we're going to send the case to you, okay, for your deliberations.

Mr. Willey, whenever you're ready, sir.

CLOSING ARGUMENT BY PLAINTIFF

MR. WILLEY: Good afternoon.

Every nine minutes in South Carolina, a driver is injured in an automobile wreck. The majority of those wrecks are caused by distracted driving.

Ladies and gentlemen, in a little while, you'll go back through that door one last time and you'll have three jobs. The first job is going to be to answer the questions that the Judge gives you. Those questions will be laid out on the verdict form.

Your second job will be to make sure that everyone else on the jury follows the law as the judge instructs you on it. Because you will have to reach a unanimous verdict. And no one juror can make you serve on a jury that doesn't follow the law, because you all took an oath to follow the law.

And third, before you answer those questions, of course, you'll have a conversation, and you'll have to explain to each other why you as individuals feel the way that you do about your personal answer to those questions. Because, again, the verdict will have to be unanimous.

So for the next few minutes, I'd like to give you some ways to think about those questions and some things to think about that came in during the course of this trial.

You'll remember that we were forced to bring this

claim -- Ms. Hood was forced to bring this claim, we were all forced to be here this week for three basic reasons.

The first reason is that Mr. Johnson did not pay attention to the roadway in front of him before crossing the highway.

The second reason is that Mr. Johnson violated the safety rule requiring all drivers to look before crossing a busy highway. As a result of those actions, Ms. Hood was injured. And that's the third reason that we were forced to be here this week, because they have refused to accept full responsibility for his actions.

And so that's why we're here. We're here with you, as members of the community, as representatives of the community, on this particular day, this particular week, to determine whether or not when an individual in this community injures another individual, whether or not the injured individual should be compensated for those injuries.

1,035 days is how many days it has been since November 7th, 2014. For 1,035 days Therese Hood, my client, who you've met, has gotten up in the morning in pain, gone to bed at night in pain, and lives her days and nights in pain.

For 1,035 days, there hasn't been an apology, a check-in, hey, how you doing, a lending of a helping hand. For 1,035 days, they have said exactly what Mr. Daniel said to you in their opening statement, "the plaintiff caused this wreck."

And now, the 12 of you know what Ms. Hood has known for 1,035 days, and what I've known for a period shorter than that, that that's not the truth. This wreck occurred because when Mr. Johnson pulled away from the stop sign he didn't pay attention to the road. He didn't look to the left to see what was coming.

And as Ms. Hood traveled to spend the weekend with family in Hilton Head she was hit by Mr. Johnson on the side, broadsided, locking her wheel, as she testified, and pushing her to the left into oncoming traffic. It's as simple as that. It's as simple as that. When you cross a busy highway, you have to look.

Mr. Johnson himself was honest with you. He was honest. He said, "I didn't see her, and I didn't see Dustin Lee."

Dustin Lee, who we know has Xenon headlights, the bright, real bright headlights, kind of annoying actually when somebody's coming from the opposite

direction with them.

So you have to use your common sense. Why didn't he see them? Why didn't he see Ms. Hood even immediately before he broadsided her? Why didn't he see Dustin Lee, who testified he had to decelerate quickly and veer around so that he didn't get caught up in it; he was that close. Why didn't he see?

I would submit to you, and we don't have to prove why he didn't see, but in this case we have some evidence. He didn't see because he was on his cell phone, ladies and gentlemen. The evidence in this case is, the night before, at 9:14 he got on the phone, 5:22 -- or excuse me, at 1722, 17 minutes after midnight, he got off the phone.

The evidence in the case is that the next morning at 4:44, as soon as he woke up, he sent a message. And the last call the night before ends just after midnight. A three-hour call. The next morning, four and a half hours later, at 4:44 a.m., he sends his first text message of the day to the number ending in 1200, who for 1,035 days they haven't told us who that was.

Finally under oath, Mr. Johnson admitted that was his girlfriend. Reasonable thing to send your girlfriend the first text message of the day. Bryan

5:00 and 7:00 a.m., he goes to work. While at work, he uses his cell phone 93 times. That's what these records show. Ninety-three incoming or outgoing text messages or phone calls. Fifty-seven of those -- 57 of those to or from his girlfriend. They're having a conversation throughout the day, back and forth. Normal thing to do. We've all done it.

4:00 p.m., he gets off work. Between 4:00 and 4:50 p.m., 50 minutes, he uses his phone another 29 times. Another 29 times he uses his phone between 4:00 and 4:50 p.m. He testified that he gets off work, cuts his cousin's hair, and then he takes Scooby to meet somebody at Dunkin' Donuts, just dropping off Scooby at the Dunkin' Donuts to meet somebody after he gets his hair cut.

5:43 p.m., the defendant, Mr. Johnson, sends a text message. Now, we're all the way over here. We have gone through this board, 26 messages that day. Gone through this board, while at work, another 53 messages to the girlfriend. Total of 93 messages between these two boards, over 50 of which were to the girlfriend.

And we've gone through this board. Another 29 either messages, four calls, I believe on there, maybe five. And these will be back in the jury room with

you, and you can analyze them and look at them and read them. See how many of these messages are from 1200. This is the calling or texting number, this is the calling or texted number. Okay. Just so you know how to look at it. His number is the 4155. You'll notice it appears in every single entry, because these are his phone records. So obviously he's either texting or being texted, calling or being called. And we've gone through that board.

Now, at 5:43, we're into the hundreds now. Sends another text message. 16 seconds later, sends another text message, 5:43:12, 5:43:28.

And then at 5:57, the girlfriend that he's been having a conversation with all day, back and forth, back and forth, back and forth, back and forth, back and forth, back and forth, back and forth, almost a hundred times, back and forth, while at work, gets a text message from number 1200. And, bam, he broadsides with this vehicle Ms. Hood.

That's what happened in this case. And you know that. Ms. Hood has known for 1,035 days this wasn't her fault. She didn't know about the text messages. Mr. Johnson knew, they knew. We had to go to the cell phone carrier to get the records, but eventually we found out. And now you know.

At 5:58, and you'll have records back there, Plaintiff's Exhibit 1, these are the CAD 911 records that you heard testified to. If you go to the last page, which has all of the 911 calls. As y'all know, frequently, when a wreck or something happens, a bunch of people call 911, so they log each one.

And you will see quite clearly on here that the very first 911 call came in at 5:58 and 46 seconds, relative to this wreck. Very first 911 call. 5:58 and 46 seconds, and you will have this back there, Plaintiff's Exhibit 1.

And you heard the testimony in this case from Tasha Haupt, who was the records custodian for Beaufort 911. She testified to you that that first caller, based on the records and based on the actual recording of the call was Tammy Melnick. And you will have that call back there, Plaintiff's Exhibit 2. If you want to hear it, the Court will make it available to you, but you've already heard it. And you've heard Ms. Melnick testify. And Ms. Melnick has testified that prior to making -- getting somebody on that call, which Tasha said once the person picks up, that's when it logs, that's when the CAD entry logs. It's obviously not when the person dials the number, right? All of this happens before she talks to someone in

dispatch.

The first wreck, broadsided. Second wreck, where she was pushed into the Kucks. People got out, you heard from Mr. Tanrath today. He got out of his vehicle. Other people were out. People were already out. She could see them through the trees.

She left the patio. You remember, Ms. Melnick was out here by these the umbrellas. She testified she was putting down the umbrellas, having a cigarette. It was towards the end of her shift. And through these trees she could see people getting out in the wreck. She left the patio, she went inside the Dunkin' Donuts, she went into the back, behind the counter, to the phone, dialed 911, and you heard. It rang two times. There was an initial pick up to the local dispatch. She described what and where it happened. She was transferred and then she finally got through to the right person Hilton Head first responders were dispatched at 5:58:46, when that CAD call is there.

Clearly, in this case, the wreck occurred prior to 5:58:46. And all of this had to occur before 5:58:46, but after the wreck. So you can use your common sense to figure out that it made sense that that would be around a minute. Or would it be a

more minutes than a minute, which would be the other text message? Or two more minutes than that minute, which would be the other text message? It really doesn't matter. The text messages are all going to agree.

Now, in this case you've heard a lot of evidence, and you've heard the defense say a few things, and I want to make sure I get them right.

Mr. Daniel has said he looked. If you go back there and somebody says he can't be at fault because he looked, I want you to remind them of what the Judge is going to charge you. And the Judge is going to charge you that the driver of a vehicle about to enter or cross a roadway from anyplace other than another roadway shall -- shall, not may -- yield the right of way to all vehicles approaching on the roadway to be entered or crossed. That's South Carolina Code Section 5652350. The duty is to look, see, and to yield.

In this case, it's uncontroverted, not in dispute that Mr. Johnson did not yield, not in dispute that Ms. Hood had the right of way. You heard the cop testify to that, heard Ms. Hood testify to that.

You've also heard him say but "he didn't see any cars," neither Ms. Hood or Dustin Lee. We know Dustin

Lee had Xenon headlights on. Somebody says that, say, well, the only way he didn't see him, he didn't look. He didn't look. We know why he didn't look, which you don't have in a lot of cases, but we have in this case.

The Defense has said, "well, she was speeding." Talked about some other person that was going to testify to that in the opening. We never heard from that person.

Ladies and gentlemen, even if she had been speeding, the only effect speeding would have had -- if she was going a little bit faster, she might have got through there before he got that text message and broadsided her. This isn't a case where she hit him because she was going too fast to react. The only thing speed has to do with it is she just happened to be here. Well, I'll submit to you, if she was going 45 or 48 or 65, or whatever -- any speed but the speed she wasn't going -- this wouldn't have happened. Same thing would have been true if she was going 105. Same thing would be true if, when her alarm clock went off that morning, she hit snooze and slept in two minutes.

Speed played no role in this wreck at all. You didn't hear any valid testimony about it. But even if you had, it didn't cause anything. The only thing

that caused this wreck is the defendant not paying attention. And he said, "Ms. Hood didn't have functioning headlights on."

And in law, we call this the kitchen sink approach. That's, they teach you in law school, trial advocacy, they say, "if you got the facts on your side, hammer the facts. If you got the law on your side, hammer the law. And if you got neither one on your side, just throw it all out there and see what sticks."

And that's what you've seen here this week. You've seen a lot of throwing it all out there, trying to get something to stick.

Let's talk about the headlights. It doesn't matter. Doesn't matter. The law on headlights, the Judge is going to instruct you -- and I'll read you the law because the law and the facts happen to be on our side -- South Carolina Code Section 56-5-4450, times when vehicles must be equipped with lights. And the Judge will read this to you as well.

"Every vehicle upon a street or a highway within this state shall display lighted lamps and illuminating devices, excluding parking lights, from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in

use as a result of rain, sleet, snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of 500 feet ahead, as required in this article."

You heard from Dr. Borzendowski, an expert in human factors. Came in here and testified before you, and she testified that she had used a source, which used physics to determine, exactly in that intersection when sunset was on this particular day. Okay.

Sunset at that intersection on this particular day was 1729. That means 30 minutes after that, according to the law of South Carolina, half hour after sunset, 5:59, you would be required to have your headlights on. They click on automatically at that time if it gets dark enough. Okay?

We know this wreck occurred before 5:59 because we have a 911 call that came in at 5:58 and 46 seconds. So at the time of this wreck, whether she had headlights on or whether she had headlights off, or whether she didn't have headlights connected to her vehicle doesn't matter. And the Judge will instruct you on the law, when she reads to you about the duty of care, you cannot hold somebody responsible fo

duty that the law does not create. And the law in this case tells you when you need headlights. And in this case, at the time of this wreck, she didn't need them.

So they did something else. Another one of these kitchen sinks. They brought in another source, and I don't know if it went into evidence or not. Not a lot went into evidence that they -- that was talked about.

I don't see it here but -- oh, here it is. "Hilton Head, U.S. Naval Observatory, sunset at 5:28." Okay. And you remember Dr. Borzendowski's conversation about this. This would have been the average for the whole town of Hilton Head. Okay.

And if you take a look at it, I mean you can clearly see that it's Hilton Head, you know, as a whole. Sunset 1728, which means that 30 minutes after would have been at 5:58. Okay. But we've got a more exact source.

But even if -- even if you take this at face value, that means, to buy their kitchen sink approach, all of that, first wreck, second wreck, people get out, people helping, helping people out of the vehicles, leaving the patio, Ms. Melnick going inside, Ms. Melnick going in the back, Ms. Melnick going behind the counter, Ms. Melnick making the call. Two

rings on the phone, speaking, being transferred, describing where and what happened. The dispatch at 5:58:46, that means all of that would have had to have taken less than 46 seconds to happen after 5:58. Use your common sense.

Now, the final thing, which, frankly, I was a little bit shocked by, but we heard, was she wasn't injured. That's the kitchen sink, see? Wreck's her fault. Even if it's not her fault, she bears some fault because she might have been speeding, although we didn't bring in who we talked about the whole time to say that. She might have not had her headlights on, although we can't prove that. We're just going off what people said. By the way, all those people said they could see her vehicle without her headlights on. Okay. Everybody apparently except Mr. Johnson.

And -- and now, we get all the way down to "well, even if she wasn't at fault, even if he was at fault, she's not injured." Whew! That's a lot to cover.

You heard from the doctor. You heard from the doctor. You saw -- you saw the screws and plates, and they'll be back in the jury room with you, that she has in her ankle, as a result of this wreck, 5-inch screws, all these little screws holding this plate on, holding her foot and her ankle to her leg. And you

heard the doctors say to a reasonable degree of medical certainty this was caused by the wreck. Obviously, it was caused by the wreck. She wasn't driving down the roadway with her right foot hanging off.

And if she was, she was sure as heck wasn't pushing it hard enough on the accelerator to be speeding. So which way do they want it?

She was injured because of this wreck. And in this wreck, her medical bills to date for the three surgeries, the injections, the trips back and forth, physical therapy, the nursing home, which she testified to was humiliating, $222,475.47 to date. To date. That's her out of pocket medical expenses because of what they will not accept responsibility for in this case.

And the Judge is going instruct you, and you'll see there was something about the VA. She gets her primary care at the VA, you won't see that on here. Okay. They're just going to instruct you that any collateral source is not to be considered.

Consider the facts in evidence. This is what's in evidence before you. We didn't submit anything from the VA. Okay.

Now, you can also remind somebody if they say,

"well, I just believe he looked and he didn't see her," that nobody else said that. Nobody else except the defendant in this case said he could not see that night.

You heard from Ms. Melnick. Ms. Melnick, who was standing back here on the patio, who testified and made the 911 call accurately, which you heard. Three cars in a wreck. She could see them through these trees.

Ms. Melnick could see them through these trees. You heard from Mr. Lee, who you will remember was farther back in this outside lane behind Ms. Hood. He testified not only could he see Ms. Hood, he could see Mr. Johnson.

Well, if Mr. Johnson had looked, certainly, Mr. Lee was way back here, with his Xenon headlights shining this way, and he could see him, Mr. Johnson should have been able to see Ms. Hood and Mr. Lee.

You heard testimony from Ms. Kuck. Ms. Kuck, the other unfortunate party injured in this case, had to be cut out of the car. What did she tell you? She could see other cars on the roadway, whether or not they had headlights on. She could see the trees clearly on the side of the median. She could see.

Ms. Hood, at this time, 60-year-old lady,

vision, she could see. She didn't get in a wreck. She didn't run into nobody. He ran into her.

They called for you one witness, Cary Tanrath, who frankly we would have called, but thought it was kind of duplicative. Because what did he tell you?

He could see. He's behind the Kucks. He was behind the Kucks. He had a Chevrolet Tahoe in front of him. She gets shot on over here, and he can see around that Tahoe and see her vehicle, even though she didn't have her headlights on. He could see her. Their own witness. Everybody could see if they looked. Okay.

Now, the Judge instructs you on the law. She's going to tell you that the plaintiff, as to our claims, has the burden of proof in this case, and that the defendant, as to any affirmative defenses, such as some called comparative negligence that they raised, they have the burden of proof.

Preponderance of evidence simply means this: What is more likely than not. And if you think about it, you always see the set of scales, you know, in the legal system. And in a civil case, the burden of proof is a preponderance of the evidence, and that means if the scales tip ever so slightly, one grain of sand in favor of the plaintiff, the plaintiff has met

her burden as to that cause of action as to that claim.

And the Judge will tell you that simply means it is more likely true than not true? She's going to instruct you on negligence. This is a negligence case. Negligence means that a person has done something that a reasonable person would not have done, or has failed to do something that a reasonable person would have done in the same situation.

Duty, breach, causation, damages. The duty is created by the statutes, and she's going to tell you that -- about entering a roadway, about turning left, about looking where you're going. And if you find in this case that it's more likely than not that scale tips ever so slightly that Mr. Johnson was negligent, then you'll find for the plaintiff in this case. Okay.

And she's going to tell you about proximate cause, which is an element of that. And proximate cause is something that produces a chain of events, which in the end brings about the injury. Proximate cause does not mean the only cause. The defendant's act can be a proximate cause of the plaintiff's injury if it was at least one of the direct causes of the injury. Okay.

So that means if you find that Mr. Johnson pulling out and broadsiding her was negligent, and that she was injured as a result of that, then any way that happened, first impact, second impact, whatever, was proximately caused by him. Okay. His negligent act caused the chain of events, which in the end brings about the injury.

Oh, I forgot this. There's been so much, but there's this mention of this overcorrecting. Remember that? Saying maybe she overcorrected. Well, if you get hit broadside, the defendant doesn't get to tell you what to do about it. Okay? They don't get to say, well, you should have done X, you should have done Y. You just got to do the best you can in that circumstance.

And what she testified was that she tried to get her wheel back right because she didn't want anybody else to get hurt, but it was locked over. Well, if you look at the damage you can understand why that might have been. It's right there at the back of the wheel base. Okay. Common sense.

But even if she had, it doesn't matter because proximate cause is something that produces a chain of events, which in the end brings about the injury, which is what we have in this case.

Negligence as a matter of law. This one's important. So if you find that the defendant violated a statute, that's negligence as a matter of law. She's going to tell you that the failure to follow any of these statutory rules is negligence as a matter of law. So if you find it more likely than not, preponderance of the evidence, that he violated any of these, he's negligent as a matter of law. Those statutes, vehicle entering the roadway shall yield the right of way to all vehicles approaching on the roadway. Okay.

Duty to keep a proper lookout. The driver must keep a proper lookout for other vehicles, pedestrians on or along the roadway.

Unlawful use of cell phones. It is unlawful for a person to use a wireless electronic communication device to compose, send, or read a text based communication while operating a motor vehicle on the public streets and highways of this state.

Unlawful to turn or move upon roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal. No evidence in this case he gave a signal he was turning left. Zero.

Vehicle turning left. The driver of a vehi

intending to turn left within an intersection or into an alley, private road, or driveway, shall yield the right of way to any vehicle approaching from the opposite direction, which is in the intersection or so close thereto as to constitute an immediate hazard. Testimony is Mr. Johnson was attempting to take a left across the intersection. Therefore, according to the statute, he had a duty to yield the right of way. If anybody approaching so close as to create or constitute an immediate hazard. If you find more likely than not he violated that, that's negligence as a matter of law.

Stop signs. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line. But if none, before entering the crosswalk on the near side of the intersection, which, in this case, we do have a clearly marked stop line, which you can see here in the diagram, so he had to stop there. And after having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard. During such time, when the driver is using a cross or within the intersection or junction of roadways.

Those are some of the statutory rules that she is going to instruct you on. If you find he violated one of those, we have negligence as a matter of law. I will submit to you that he violated them all.

Now, with respect to damages, the damages in this case, Mr. Smith told you in opening, are substantial. You've had the opportunity to hear the testimony, which prior to hearing the testimony when you walked in, seen Ms. Hood sitting there with her legs under the table, you didn't have full knowledge of what she has been through and her damages. Now, you do.

And the actual damages in this case are required to be proved by the same standard of negligence, just more likely than not. So if you find on each element of damages that she proved more likely than not she suffered that damage, the law requires you to award her a money verdict on that element of damages.

The elements of actual damages, as the Judge will instruct you, put medical expenses, which are out of pocket expenses, trauma, mental anguish, of which she had anxiety, depression, pain and suffering, disfigurement, and loss of enjoyment of life. Those are the components that make up actual damages, that all go into actual damages.

And when you're considering actual damages,

you're going to look at past actual damages, present actual damages, and future actual damages, which we will go through.

Now, medical expenses, $222,475.47. You'll have this back there with you. This money all goes to other people to pay for Therese's care. She testified to you that she felt like her doctors, and Dr. Jaskwhich, were really heroes. They saved her foot, were able to put it back on with those plates and screws. And although it's not perfect, she feels as though they did the best job that they could under the circumstances. And this money goes to pay them for what they did for her.

But in a case like this, and you'll notice, frankly, when Judge Mullen instructs you on the law, she spends a lot more time on the other damages than on medical expenses. And that's because in South Carolina and in our civil justice system, we value the other damages as much or more than the medical expenses, because we value, in this community and in this state, a person's life. A person's quality of life.

And so when you go through these damages, you're going to go through each element, and you're going to talk about it. And so I want to just give you a way

to think about a couple of these. And the first is pain and suffering. And pain that lasts for a short time, a few weeks, maybe a month, is pretty low on the scale of pain. The twisted ankle, the banged elbow. It takes just a little bit to make up for that level of pain. And so that might be the kind of case where someone went to a chiropractor, and so I'm asking you for 20- or $30,000 for that level of pain.

But what if it lasts for two or three years, and it's high on the pain scale? What if the level of pain is, as Ms. Hood testified to you, everyday when she wakes up in the morning, she feels it? And what if that pain is everyday with every step she takes she feels it? And what if that pain is the type of pain that robs someone of the enjoyment of the rest of their life? What is that pain worth?

She doesn't have, ladies and gentlemen, the one thing that a lot of people have, and that we have sometimes when we get hurt, and that's a hope that we'll get better. Therese doesn't have that. And you heard her surgeon, Dr. Jaskwhich, who she goes to follow-up, say she will never get better. She will get worse. She will get worse.

So the woman whose daughter testified last week was able to at least travel to Georgia and make [illegible]

trip to the WalMart, short trip, but couldn't do anything else on the family reunion, that woman, only three years out, is going to get worse.

So you have to think about what it takes to compensate her for the rest of her life for that kind of pain. Health and physical impairment, disfigurement is much the same thing. What impairment does somebody have? Not the physical sensation of the pain every time she takes a step, the flinch, but the impairment, the things that it keeps her from doing is a separate element.

And you know in this case, the impairment that she has, because you've heard it not only from her, but from the folks at the church, and from her daughter. The biggest impairment, one of the biggest impairments to her personally, was being able to administer the communion. That's an impairment to her quality of life. It may not be to mine, it may not be to yours, you may have other things. But to her, that's a huge impairment. And she told you it humiliates her, and she feels like she's let God down by not being able to fulfill that which he has called her to do in administering that communion. What is that impairment worth? What is that impairment worth?

So I tell you all that to just say that if,

during deliberations, someone says, "well, I don't think we should award money for that element of actual damages," you remind them that you took an oath to follow the law. And if she has proven that it's more likely than not that she has pain and suffering past, present, and future, that she has disfigurement past, present, and future, that she has loss of enjoyment of life past, present, and future, that she has mental anguish past, present, and future, then as a jury you are compelled by law to award money damages for that injury. And nobody can make you break the law. Your verdict has to be unanimous.

And so there are a lot of ways to think about calculating -- calculating loss. There are a lot of ways to think about it. You can think about it in terms of assigning a number. You don't have to prove it to a mathematical certainty.

Well, what about her past and present, take the medical bills, the 222,475.47, which are obviously proven. They're in evidence. And you take the 1,035 days since the wreck, and you say that every step of every day of being alone at home, the husband leaving her, coming back from being isolated, her worrying when she wakes up in the middle of the night, going to the restroom, she might fall down, so she has to wake

someone else up. The humiliation, having to have her children bathe her, a proud woman.

The humiliation not being able to use a bathroom on her own for several months. Is that worth $10 an hour for pain and suffering? $10 an hour for mental anguish? $10 an hour of loss and enjoyment of life? If it is, if you find it's only worth $10 an hour, then her past and present actual damages, not including the medical bills, come to $2 million, 235,600, if you award her $10 an hour for her past and present pain and suffering, $10 an hour for her past and present mental anguish, and on down.

And when you get back there, if somebody says, "I think that's too much," talk about it. Why? If you get back there and somebody says "that's too little," talk about it. Why do they feel that way? You have to come to a unanimous agreement.

So I picked a round number to show you what it looks like at $10 an hour. If you take $10 an hour plus the medical bills, you get past and present damages of $2 million, 458,075.47. That's the max. And I used the calculator.

Now, when you're looking at future damages, it's -- what does it say for the rest of her life? And the Judge will instruct you that in South Carolina, for

better or worse, we have allowed our Legislature to determine how long we are expected to live. And they do that using an actuarial table.

And the actuarial table we call life expectancy base. And in South Carolina, what that tells us for a 63-year-old woman, which is why it was important that we get her to admit her age even though Mr. Smith knew his mother would probably crack his knuckles if he asked a woman that, gives her 21.68 years to live. She could live more than that, she could live less than that. That's the going rate, as they say -- 21.68 years, which is 190,000 hours, a little over. A hundred and 90,000 hours of everyday she wakes up, puts her right foot down, feeling pain. A hundred and 90,000 hours of every time she takes a step, everywhere she goes, worrying about falling down, about her ankle giving out. A hundred and 90,000 hours of when she's with her grandkids not being able to pick them up or do the things she wanted and would be able to do but for this wreck. A hundred and 90,000 hours of it getting worse every day.

You've heard the testimony that now her husband helps her around the house. So this is her one day in court. She doesn't get to come back, if she loses David, and ask for more. This is it.

So the choice for you is who should bear that risk? Who should bear that risk of the additional pain, if she loses him, of being isolated and having to do it alone? Should it be Ms. Hood? Or should it be them?

And if you take future, which we know is going to be worse, because the doctor has testified to it, everyone has testified to it, and you define each element of actual damages at $2 an hour -- $2 an hour, a cup of coffee. Oh, you're worried about falling down everywhere you go? Here's a cup of coffee.

Oh, you're worried about your ankle giving out and you falling down while your husband's at work and not being able to reach the phone? Here's a pack of gum.

Oh, you're worried about getting up in the middle of the night and falling in the bathroom and hitting your head? Here's a chicken -- chicken breast. Two dollars.

If that's worth $2 an hour, that's $3 million, 420,843.84. If you think that's at least worth a Happy Meal, which my son who's 11 months old, turns a year next month, I'm not quite in the Happy Meal stage yet, but I understand they're about $5. If you think that's at least worth a Happy Meal, then for future

damages you'd award $8 million, 552,109.60.

But if you get back there and somebody says, "I don't think future damages are worth anything," you ask them, "Didn't you hear the doctor testify that the cartilage between her foot and her leg and her ankle joint is wearing away because of this wreck? Because he had to take -- he had to take the plate and screws out because they were protruding through the skin. And eventually, it's going to be bone on bone?"

Bone on bone is like when you bite into a bone. You know what that feels like, when you just common everyday experience what that feeling feels like. That's what those bones are going to do. So he testified he thinks it's more likely than that, to a reasonable degree of certainty she's going to need future surgery or a fusion.

So if you get back there and somebody says, "that's not worth a Happy Meal every hour," talk about it. Talk about it.

If you take those things and add them up, past related medical bills, $10 an hour for past and present pain and suffering, mental anguish, loss of enjoyment of life, disfigurement, on down, it's $2,458,075.47 cents for past and present. If you look at the future at $2 an hour, and add those two numbers

together, you get $5 million, 878,919.31.

If you think the future damages, the pain and suffering which is going to get worse, the loss of enjoyment of life, the fear of losing David and being alone and having to live with this on her own is worth $5 an hour, then you're going to get $11 million, 10,185.07.

And you don't have to find one of these numbers. You can find less, you can find more. I use it to demonstrate a point. I use this to demonstrate that in this case, the pain, the anxiety, which you saw some of, when she sat up here on this stand and had the opportunity to testify to you, she looked at you when she could, but the rest of the time she was looking at the table, as we instructed her to do if she felt herself get too emotional. She was getting too emotional because this is her one day forever. She doesn't get to come back, no matter what happens. This is it.

And if you believe that God puts everyone somewhere for a reason, which I do, then you were all put here to decide what her being stripped of her future retirement, what she planned to do, travel, spend time with her grandkids, what that's worth.

And so at the end, you can get a verdict form. I

don't believe in playing hide the ball, I like to show you everything. So here's what it's going to look like. It's going to look just like this.

And Madam Forelady is going to be the person responsible for filling it out and actually writing it in. But you all have to agree on the answers, talk about them and agree to them.

The first question is: Was defendant, Antoine Johnson, negligent, and has such negligence proximately caused the plaintiff's injury? Obviously, the answer to that is "yes."

Was plaintiff, Therese Hood, negligent? And that such negligence proximately caused her injuries. Answer to that, "no."

However, No. 3 is: If your answers to both questions, No. 1 and No. 2 are "yes," if you answered both yes, somehow they're both negligent of proximate cause, then you would answer this question: Using the combined negligence that proximately caused plaintiff's injuries was one hundred percent, what percentage of that negligence is attributable to defendant Johnson, and what percentage is attributable to plaintiff Hood? And, of course, the percentage must add up to 100.

And in that instance, if you found that Ms.

was negligent for some reason, not hitting the snooze button, which wouldn't be a proper reason under the law, or speeding, which we know didn't play a role in the wreck because he broadsided her, you would assign a percentage.

If plaintiff Hood's percentage of the combined negligence was greater than 50 percent, you would stop, because that would mean she would get nothing. She would not recover anything for her injuries. That would be like if someone goes out, jumps off a bridge, they would be responsible. So, obviously, they can't recover. It's their negligence. Obviously, that's not the case here. She had the right-of-way, he hit her.

If plaintiff Hood's percentage of the combined negligence is greater than 50, than less, then you would go on to the next. And this is damages.

Please state the total amount of damages, if any, sustained by the plaintiff, Therese Hood. Do not reduce the plaintiff's total damages based on the percentage of negligence by any party.

What that basically means is that if you found them both negligent for a percentage you wouldn't reduce the damages by that amount. You'd still have to award her the full amount of damages. Then the

Judge goes back, based on that percentage, and reduces the number. If you reduce it, it's going to get actually reduced twice. So you just award the full damages that you find.

After you've answered these questions and it tells you that the Judge will compute the amount of damages for which the defendant or plaintiff are responsible, based on the percentage of the respective party's negligence, she will decide the proximate cause of the plaintiff's injuries. You are to determine only the total amount of damages and enter it below.

There's then a line for punitive damages. And the Judge will talk to you about punitive damages.

Punitive damages have a different standard. Punitive damages have to be proved by something called clear and convincing evidence, which is not quite beyond a reasonable doubt, but just a criminal standard. A little bit lower, but a little bit higher than civil. Has to be clear and convincing evidence.

She's going to tell you that punitive damages can be awarded if someone broke a statute, that they violated a law that is to protect the State against the public. And punitive damages are out there as a message to the community. Punitive damage award is

awarded, it tells the community that in this community, if you break the law and injure somebody, not only are we going to compensate that person, but there's going to be punishment civilly associated with it. That's why it's a little higher standard, which she'll talk to you about.

You, Madam Forelady, will then certify that this is the unanimous decision of the jury, signing here, dating there, and, of course, notifying the bailiff.

I'm going to sit down, and Mr. Daniel's going to get up here. And we've talked about every item in the kitchen sink that has been turned so far. But I have no control over what he's going to say.

No matter what he says, I want you to remember six questions. If he talks about headlights and darkness, when does he contend the sunset was? We know sunset was at 5:59 at this particular intersection. And we know that it was at 5:58 generally. If he has another time, listen to when he says it is.

When does he contend the wreck occurred? Is he willing to argue to you against the clear letter of the law that Ms. Hood was required to have her headlights on at the time of this wreck?

Listen to see if he tells you what the text from

Mr. Johnson's girlfriend said anyway.

And, finally, he's going to attack these numbers or arrange a suggestion. But remember the kitchen sink approach. Listen to see how much does he think is appropriate for them to compensate Ms. Hood for the lifelong injuries that she sustained in this wreck. Does he give you an alternative? Don't let him just attack, listen to see if he gives you a plausible explanation. I bet he won't.

It's like that old story about when the cookie goes missing from the cookie jar, and they ask the kid, "did you take the cookie?" The kid doesn't say yes, the kid doesn't say no, because he knows better than to lie. So he just keeps talking. And the more he talks, the more you'll know the truth.

Ladies and gentlemen, you know the truth of what happened in this case. And you know -- you know how badly that woman was injured. Please do her justice. Thank you.

THE COURT: Whenever you are ready, sir.

CLOSING ARGUMENT BY DEFENDANT

MR. DANIEL: Your Honor, may it please the Court.

Ladies and gentlemen, this ain't about kids and it ain't about cookie jars. Everybody -- everybody

this country has the right to a defense.

At the beginning of this closing, which was pretty lengthy, there was something about a thousand days. I just want to make it clear, if anybody in this country has been sued and accused of doing something wrong in court, whether criminal or civil, they have a right to challenge those allegations. And that's what Antoine Johnson's done. He didn't do anything wrong, and he has every right to a trial. He doesn't have to apologize for that. And, hopefully, I think you would agree that I don't have to apologize for that.

I've tried to be as brief as I can through the course of this week. I know there's a storm coming, and I know that everybody has families and their own life going on. I appreciate your patience.

I do have to cover topics. There's been starts and stops, and I apologize for that, but you can't hold that against Antoine Johnson because just like anybody, regardless of whether they're Catholic, whatever their creed may be, he has a right to a defense.

And I don't know about kids and cookie jars, we saw some numbers up there, but this is a serious case. We're not hiding from that. He just threw up numbers

like $11 million, $2 million, and let's get one other thing clear. They have the burden of proof. You don't get to damages unless you decide Antoine Johnson was more than 50 percent -- well, 50 percent or more at fault in this case. He doesn't have the burden of proof. He didn't have to prove anything this week. But he got up there on the stand, and he told you what happened. He told you what he did. And a lot of other people got up on the stand and they told you what they saw.

And if I misstate facts, you're the judge of the facts. You heard the evidence. I'm going to do my best right now to remind you of some things that we heard. If I'm inaccurate, y'all deliberate, and you decide what the evidence was. But I'm just going to go through some things and hit some highlights for you.

First of all, before we get to that, but I want to talk about the law. Your Honor, again, said in openings, she is the authority and expert on the law. She will charge you on things like speeding, things like the right-of-way, things like when you need to have your headlights on.

And Antoine Johnson's position, our position, the defendant's position in this case that speed was a

primary cause of Mrs. Hood's injuries, and that the fact that she didn't have her headlights on was also the real reason why this whole accident and sequence of two impacts happened in the first place.

You heard from Dustin Lee, and Dustin Lee said that he was driving on 278 headed towards -- he was headed in this direction. He got to Southwood Park Drive right here. That's where Antoine Johnson, and we had those diagrams with the H and K, all of those letters. J was for Johnson, H was for Hood. She was this way. And Dustin Lee, he's back here. This is not some static thing. Traffic is a fluid situation.

He's back here on William Hilton Parkway, 278, when he first sees the car behind him -- not far behind him, but behind him, and there's no headlights on. He notices that because it's dark. At some point someone asked him the question, I don't remember whether it was Ms. Suttie or whether it was Mr. Willey, but that he got to the point, "well, how dark was it?"

"It was 90 percent dark."

The plaintiff on the stand said 80 percent. We've heard from -- I mean, it's been redundant, but you need to hear what all the witnesses out there saw. I think that everybody's in collective agreement, it

was pretty well dark out.

So you've got a vehicle driven by a plaintiff, Mrs. Hood, with no lights on, coming in this direction. You got these tall trees up here. And whether it's one minute, two minutes, three minutes before sunset, driving conditions -- and you'll hear from the judge, environmental conditions is a phrase -- driving conditions are difficult because it's getting dark. It's really dark.

And what the law actually says is, you have a duty to turn your headlights on when environmental conditions significantly reduce your ability to see people in the road, other cars in the road, or vice versa. If it significantly reduces people in the road or other drivers, with their ability to see you.

There was a lot of talk about Antoine Johnson. But no one -- I didn't see Mr. Willey really walk you through the scenario. But he's on this street, at a stop sign, turning left. No one said he wasn't stopped. He stopped, checked once, there's a car goes by, he checks again. It's dark out. We know there's a vehicle coming without its headlights on. You've got to ask yourself would an ordinary driver see that vehicle? Would an ordinary driver see that vehicle?

Their expert, being paid $290 an hour, said

didn't consider speed. She admitted speed can be a factor in an accident, and why is that? Because we all know that the faster you go in a given period of time, one second, two seconds, the more ground you cover. You're going to go a lot farther when you're traveling at 60 miles an hour versus 30 in one second, two seconds --

MR. WILLEY: Your Honor, I just want to the preserve my objection for the record that that's a misstatement of the law as it applies to this case. She was broadsided hit.

THE COURT: Noted for the record. Thank you.

MR. DANIEL: We all know that speed can be a factor in an accident. And the reason why it's a major factor here is, if you've got a vehicle coming down the road -- and they don't want to show you how dark it was, we don't have any pictures of that -- but if you've got a vehicle coming down the road and that vehicle is going, say, 60 miles an hour, versus 40 or 45, two seconds before Antoine Johnson starts to pull into this roadway at 60, she's going to be a lot farther back. A lot farther back, and there's a bend way back here. You heard the

officer testify about that.

There are these trees up here, the sun's going down, and her car, she doesn't even say that her car has any lights on. She doesn't contest that. Says, "if people say I didn't have my headlights on, I didn't have them on." That's what -- that's what she said here today, and she didn't say that in her deposition. She said she had her headlights on. She's now changed her story on that.

And when Antoine Johnson was deposed, she was maintaining the position that she had her headlights on. Why is that?

You heard the expert, the human factors expert, testify about an engineer that pulled a computer chip from Mrs. Hood's vehicle, and that computer chip said that she was either going 62 or 63 miles an hour. You heard the officer say that the posted speed limit on that road is 45 miles an hour.

So if that computer chip is right, we haven't heard anybody dispute that it's wrong --

MR. WILLEY: Your Honor, I object. The computer chip is not in evidence. He's the only one that talked about it.

THE COURT: Move on.

MR. WILLEY: I move to strike that

sentence about it.

THE COURT: Okay. There was a discussion about it in trial. You can continue.

MR. DANIEL: If her speed was 62 miles an hour, if it was 60 miles an hours, she was going 14, 15 -- 17 miles an hour over the posted speed limit. The officer told you that the speed limit on that road is 45. And there's going to be an instruction about speed.

Speed affects your ability to maintain control of your vehicle. Speed affects your ability to stop, to avoid someone who can't see you because it's dark and you don't have your headlights on. Speed causes -- and there was a demonstrative exhibit that shows you, it's not in evidence, there's a smaller version that are in evidence.

Are you able to see it? Speed causes things like this.

No one said Antoine Johnson was speeding. He was just trying to get through that median, and you've seen the pictures of the side of her vehicle. You've seen the pictures of the side of her vehicle, and you've heard what the officer said, that impact was minor. The injuries that Mrs. Hood sustained were due to her speed, due to her not having her lights on, and

due to her not being able to stop in time, and due to her actions, not having her lights on, speeding. Antoine, when checked, like any reasonable driver with normal sight couldn't see her.

Now, their expert said a lot of things, but she wanted you to make assumptions. She wanted you to make assumptions about the visibility at that intersection. I asked her -- she actually has a Chevy Equinox, the same type of car as the plaintiff. I said, have you even been out there when it's 20 minutes before -- or 20 minutes after, excuse me -- sunset that day. What we do know is actual sunset was at 5:20 -- or 5:28 or 5:29. Thirty minutes after sunset, I don't dispute what they say was either 5:59 or 5:58. It doesn't matter, it's about how dark it was.

They're the ones -- plaintiff is the one with the burden of proof. The Plaintiffs, Mr. Willey, Mr. Smith, plaintiff's counsel, they're the ones who are supposed to prove the case to you.

Has anyone shown you how dark that intersection can be 20 minutes, 25 minutes after sunset?

Antoine Johnson has every right to challenge the allegations in the case. He's been honest with you. He's a young man, he texts a lot. He was on the

phone, he hadn't -- said he had downtime during that day. There's no one that's been here to challenge that. They're asking you to assume that he was on the phone at 5:57 -- their exhibit, Plaintiff's 7 -- at 5:57 and 43 seconds, when cell phone records say an inbound text came in.

Now, they're the ones that subpoenaed the records. They could get text messages. It's not Antoine Johnson's fault that they don't have whatever the substantive message is. But even -- even if they did, this record doesn't show you anything other than that a text came in at that time. Their own expert said, yeah, I don't -- that doesn't tell me that he was reading a text. That doesn't tell me that he was sending a text. That doesn't tell me that he was on the phone.

What we do know is he was up front with you. The first thing he did after the accident was call his mom, and that was at 1808. Or 1808, which is 6 o'clock, which is military time. It's 6 o'clock at night. So if he did that a minute later, then maybe it is 5:59 or 5:58 when the accident happened, which would be 30 minutes after sunset, which would mean Mrs. Hood was actually, per se, violating the headlight law. That's for you to decide.

But your common sense tells you that it was dark out there, based on what all the witnesses say. Common sense tells you that she was speeding, based on the damage, and based on what we heard about her potential speed. And all I'm asking, and all Antoine's asking is for you to use your common sense.

And, you know, I did ask Mrs. Hood some questions about her health. And don't hold that against Antoine. I'm doing my job. Because what she was like before the accident versus after, that does matter.

There's a record that she had blurred vision and she was complaining of blurred vision that day. That's something I think you should consider. She admitted that she had had falls before this accident. That's unfortunate, I'm not trying to beat up on her. But she had Parkinson's before this accident, and that's something you can consider for the purposes of what kind of condition she was in on the day she was driving. That's only fair to the defendant. We're not asking you to do more than be fair.

It's okay. It's okay to feel sorry for her. There's nothing wrong with that, but what's not okay, what's not okay is to render a judgment against the defendant here if you don't think he's the primary reason why the accident happened.

Cary Tanrath, he said he didn't see headlights on that one corner. Seemed like a credible guy, military, very precise. He told you he's got to be out of there off Hilton Head Island when he was working there by 5:30 because it gets dark. He said it was dark at the time of the accident.

But what they haven't explained and what they haven't clarified, I'm trying to be brief, hope you heard it, at least I can stress the point now, he had his headlights on, Mrs. Kuck, who was in the vehicle ahead, she said, "my husband had his headlights on."

Well, their headlights were shining directly at Mrs. Hood's vehicle, that H vehicle, as it's coming down the road directly at them. Antoine Johnson didn't have that benefit, because Antoine Johnson is turning left. Antoine Johnson has his headlights looking at that median. And once he looks and it's clear, you heard the officer say, if somebody with ordinary sight looks and sees it's clear at a stop sign, yeah, at that intersection, they can make a left. You can't put more on him than what is required under the law. It's about what a reasonable driver would do under the circumstances.

And there's just not enough proof here about this lady's visibility in the road, how conspicuous that

were -- how visible her vehicle was at the time. The credible evidence and what all of these people have said, strongly suggests it wasn't visible. It was an issue, all of these people felt it was an issue, that's why they told the police about it. That's why Dustin Lee called 911. That's why Cary Tanrath stayed behind and told the police officers about the fact that that vehicle that came across the highway didn't have its lights on.

Cary Tanrath doesn't -- didn't know Antoine Johnson. He's got nothing to gain by being here. He wasn't being paid $290 an hour to testify.

Dustin Lee, same thing. Never met Antoine Johnson, didn't see him at the -- never met him at the scene, hasn't met him or ever talked to him after the accident. Nothing to gain by being here and testifying.

You get to judge witness credibility, and Your Honor is going to instruct you about experts. And she's going to tell you that you can consider expert testimony just like eyewitness testimony. You don't have to give it any more emphasis or weight. It's about what you decide, and what you believe is true, and what most likely happened.

Now, it is -- it is a tough situation here

because it's okay to feel sorry for Mrs. Hood, but you've got to do something as a jury sometimes when you have cases with tough facts. You can't let your sympathy outweigh what's right or wrong under the law. Your Honor is going to instruct you that you cannot render a verdict based on sympathy, and that's your obligation.

You have to decide the case based on facts. Credible evidence and facts in this case show that it was actually flight of speed, whether she was going 52, 62 -- we know Dustin Lee said he was going 49, and she passed by him. So she's going over the speed limit. So speed, plus the fact that she doesn't have her lights on, that's why this young man here couldn't see her when he went to turn left.

Ladies and gentlemen, I said I would be brief. And I just submit to you the credible evidence and the right verdict in this case is one for the defendant.

Now, they showed you the verdict form, and I want you to realize that even if you decide that Antoine bears some responsibility, you cannot render damages against the defendant if his share of the responsibility is 49 percent, 48, lower than that. The credible evidence is even if he shares a little bit, if it's a small percentage like that, you can't

render a judgment against the defendant. And I submit to you that the credible evidence shows that an ordinary person at that intersection, looking left at that time of the evening wouldn't see a vehicle from that far back coming that fast without its headlights on.

Thank you. I appreciate your patience, and I hope everybody gets home safe.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

MR. WILLEY: Now, she's lying. That's what he just said.

Now she is a liar because in her deposition she told me she thought her headlights were on. Today she said she wasn't going to disagree with people if they said they were off. She told you quite clearly her headlights are always on automatic. She never switches them off automatic. She could see fine. She couldn't see her headlights, obviously, she was in the car.

The statute on headlights is important. Half an hour after sunset, and we've talked a lot about that, I'm not going to talk about it again. But you will remember, with the expert, we specifically talked about those environmental factors. With the cop we specifically talked about those environmental factors

that are covered in the statute. And those environmental factors are fog, snow, rain, smoke, maybe an eclipse. Maybe we add Irma to the bottom of that, although that would probably fall under rain. None of those things were present here.

The only question as to headlight usage is: Did this wreck occur less than 30 minutes after sunset?

I told you to listen very closely for six things, because a lot would be thrown up. When does he contend sunset was? Okay. You know, in that particular spot, 5:29, which would make 30 minutes later 5:59, which is after the 911 call.

When does he contend the wreck occurred? Won't tell you. Didn't tell you. Won't tell you because if you look at those cell phone records, whether it happened before or after he was on the phone. If it happened after, he was making a call because that was to his mom. I mean, two minutes later.

Is he willing to argue that she was required to have her headlights on? He said because of the environmental factors. The environmental factors didn't exist in this case. According to everybody who testified, none of these things occurred.

And if so, does he explain Mr. Johnson's failure to see Mr. Lee's car with the Xenon headlights on? He

didn't even mention Mr. Lee.

Remember, Mr. Lee -- Ms. Hood -- in this lane Mr. Lee is back here with his Xenon headlights on, shining on her car, by the way. He's behind her. He can see her, he can see Mr. Johnson. Mr. Johnson says he can't see him. Headlights don't matter anyway.

Everybody that's testified has testified they could see cars with or without their headlights on. Everybody. Even Mr. Tanrath.

Still didn't tell us what the text said. He didn't give us an alternate number.

Now, ladies and gentlemen, I don't usually tell a story at the end, but she's not a liar. Okay. Said she's old, she fell down before in her life. Well, everybody's fallen down. The question is: Every time you take a step on your right foot, do you feel like you're going to fall down? She does, because of this wreck.

My father died earlier this year. And I'm Roy Thomas Willey, the fourth. He was Roy Thomas Willey, the third, and we called him "Tom", and I didn't have a great relationship with him. My parents divorced when I was young, Mom remarried, and I was pretty much raised by them.

But my dad was one of those people who alwa

knew exactly the right thing to say. When you were having the worst day, you could call him, he would tell you what to think. He would tell you whatever it took to make you feel better. If he thought you were getting a little too high on your horse, he'd knock you down with just the right comment.

So yesterday, I said, it's like a rat giving birth to an elephant, it's painful to watch. You laughed. I haven't heard that in a while. My dad said that. That's where I got that.

But often before closing arguments, when I know that the case is important to my client, I would call my dad and I'd say, "Dad, here's the case, what should I tell these jurors?"

Can't do that. But I did ask him last night -- and you know how sometimes you feel like somebody is giving you a sign, that God's giving you a sign? I usually don't talk about religion in closing arguments, because I know not everybody is Christian or religious. They're good stories, good lessons to live by. And I'm not a perfect Christian, I try to read a little bit of scripture everyday, but don't always get to it, particularly in days of trial.

Last night I asked him, "What should I tell this jury?" And this morning when I went out to the

driveway, I found three nails. He was Roy Thomas Willey, the third. And I took the first nail, I threw it onto the house. Took the second nail, threw it onto the house. When I found the third nail, I said, you know, the thought occurred to me to hold onto that. So I did, and I carried it in my pocket all day.

And when I got here this morning, I always -- if you look at the sign-in sheet, I always get here early, because I like to see the courtroom with nobody in it. Because things get tense throughout the day. I like to have a minute to reflect.

And when I got here this morning, I saw this Bible up here that everybody swore on all week, all the witnesses who said they could see her and everything else, and I realized I hadn't read my scripture this morning. And so I came up here and I opened it. And it went to the book of John, Chapter 20. And about that time, Ms. Mona walked in, she's the court reporter, she was the next person here. And I read the rest of that book, and that's the book about doubting Thomas.

For those of you that have had time to read scripture, you'll remember that when they had Jesus in the tomb and he rose, it was the women who went to the

tomb and first discovered he wasn't there. And the women came back and told the disciples, "Jesus has risen."

And back then, women were considered lower in society. And so the disciples said, "I got to verify." So they went and looked, and they found his linen. Thomas didn't go. It was the disciples. They came back and they told Thomas, they said, "Thomas, the Lord has risen. The Lord has risen."

And Thomas said, "I will not believe it until I can feel the holes in his hands and I can touch his side."

And Jesus came later, and he went up to Thomas and he said, "Thomas, feel the holes in my hands caused by those nails, touch my side."

And Thomas said, "My Lord and my God. I believe."

Now, at the start of the trial this week, you heard opening statements, some of you were like those women that first discovered and believed. Some of you are like those disciples that came along later, after you saw more of the evidence. And I think when I found these nails this morning and opened that Bible, I think my daddy was reminding me that some of you would be like Thomas. And we would have to show you.

And we did show you.

So my challenge to you is that when you come back out through that door, Thomas was the first person in the Bible to say that Jesus Christ is not only Lord, but he's God. Doubting Thomas was the first one to claim that when he believed.

And I hope that you were Thomas at the beginning of this week. When you come out, you will tell this community the truth. You can tell Ms. Hood that her life, this woman's life, is worth something. Please do that.

THE COURT: All right. Ladies and gentlemen, as I told you, I'm going to give you just a brief break to go refresh yourselves. My charge takes about 20 minutes.

And I can tell you that it's hard to listen after you've been talked to for a while, so go back there, Madam Foreperson, and when y'all are ready to come back out, knock on the door. Grab a drink of water, and we'll bring y'all right back out. Okay?

Do not discuss the case yet. You haven't heard my charge. Okay?

(Jury exits the courtroom.)

THE COURT: All right. I'm just going to wait for a couple minutes for them to come

back. I just want to give them a break. Okay?

All right. Be back in five minutes.

(Brief recess.)

THE COURT: We're going to bring the jury out. You all may be seated.

(The jury enters the courtroom.)

JURY CHARGE

THE COURT: Madam Foreperson, members of the jury. You've heard the argument and the evidence in this case. I'm now going to explain to you the law that applies to this case.

The plaintiff has claimed she was injured or damaged by the actions of the defendant. In bringing this lawsuit, the plaintiff claims the defendant should compensate her for her injuries, or damages.

Now, under our constitution and code of laws, only you, the jury, can make the findings of fact in this case. I'm not permitted to tell you how I feel about the evidence which has been presented. And throughout this trial, I have attempted to be fair and impartial to both sides.

Ladies and gentlemen, to the tone of this accident in the case, you will have to evaluate the credibility or believability of the witnesses.

I've already discussed with you some of the things that you may consider as you decide whether or not to believe a witness' testimony about a particular matter. You can believe as much or as little of each witness' testimony as you think proper.

You may believe the testimony of a single witness against that of many witnesses, or just the opposite. You may believe a part of a witness' testimony and disbelieve the rest. You should not determine the truth merely by counting the number of witnesses presented by each side.

And throughout this trial, you had but one objective, and that is to seek the truth regardless of its source.

Now, in a trial, evidence may be either direct or circumstantial. Direct evidence is testimony by a witness about what the witness personally saw, heard, or did. Circumstantial evidence is indirect evidence. That is, it is proof of one or more facts in which one can find another fact.

You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both. But, again, it's for you to decide how much weight to give any evidence.

Now, the standard role in constitution, which

makes you the jury, the finders of fact, making me the judge of the law. You must accept the law as I give it to you. If I'm wrong, there's another place and time for that error to be considered, and if necessary, corrected.

But for now, you must accept the law as I give it to you. This means that you should not be concerned what you think the law should be, but only with what I charge you the law is.

Now, the plaintiff in this case has the burden of proving her claim. Now, the burden of proof in this case is by what we call a preponderance of the evidence.

A preponderance of the evidence simply means the greater weight of the evidence, which as a whole shows that the facts sought to be proven is more likely true than not true.

This can be illustrated by an imaginative set of scales. When a case begins, the scales are even. And after all the evidence has been presented, if the scales should remain even, or if they should tip even slightly in favor of the defendant, then the plaintiff will have failed to meet her burden of proof and would not be entitled to recover in the case, and your verdict would be for the defendant.

If, on the other hand, those scales tip even slightly in favor of the plaintiff, then she will have met her burden of proof and you should return a verdict for the plaintiff.

Now, ladies and gentlemen, normally a person cannot give opinion testimony. Normally when a person testifies, they must testify as to what they either saw, heard, or sensed by smell or something of that nature.

However, there is an exception when someone qualifies with education or experience as an expert in some area. These expert witnesses are permitted to give their opinions in certain areas, if the Court qualifies them as such.

Ladies and gentlemen, this does not mean you have to accept their opinion. Again, it is just evidence that you can use in any way you feel appropriate, and as compared to other evidence in the case.

Now, ladies and gentlemen, in this case testimony was presented to you by way of a video deposition. A deposition is a recording containing sworn testimony that's given by a witness outside of court in the presence of lawyers for each party who may ask questions of the witness.

This testimony is entitled to the same

consideration and is to be judged as to credibility and weighed by you in the same way as if that witness were present and gave that testimony to you right from the witness stand.

I remind you that it is for you to determine the effect, the value, the weight, and the truth of the testimony that's given in a deposition.

Now, the plaintiff, Ms. Hood, claims defendant was negligent, and that the defendant should compensate her for the injuries she suffered as a result of the defendant's negligence.

Now, in order to prove that the defendant was negligent, the plaintiff must prove by a preponderance or greater weight of the evidence four things.

First, the plaintiff must prove by preponderance or greater weight of the evidence the defendant owes the plaintiff a duty of care.

A duty of care is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care of performing any act that could foreseeably harm others. A person cannot breach a duty when they are in compliance with the law. And the court cannot require a person to do more than what the law requires.

Now, next, the plaintiff must prove by a

preponderance or greater weight of the evidence the defendant breached that duty by a negligent act or omission.

Negligence means that a person has done something that a reasonable person would not have done, or failed to do something that a reasonable person would have done in the same situation.

Third, the plaintiff must also prove by a preponderance or greater weight of the evidence that she suffered damages as a result of the defendant's breach of duty.

And, finally, the plaintiff must prove by a preponderance or greater weight of the evidence that the damages were proximately caused by defendant's breach of duty.

Proximate cause is something that produces a natural chain of events, which in the end brings about the injury. It's the direct cause of the injury. To prove defendant's negligence proximately caused the plaintiff's injuries, the plaintiff must prove causation in fact. This is proven by showing the injury would not have occurred but for the defendant's negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing the injury was foreseeable.

They do not have to prove that the particular injury that occurred was foreseeable.

However, the defendant cannot be held responsible for things which cannot be expected to happen. And proximate cause does not mean the only cause. The defendant's act can be a proximate cause of the plaintiff's injuries if it was at least one of the direct concurring causes of the injury.

Now, in this case, the defendant claims that the plaintiff's own negligence proximately caused her injury. If you find that the defendant was negligent in this case, you must then find whether the plaintiff was also negligent.

The defendant must prove by a preponderance or greater weight of the evidence that the plaintiff breached the duty of care which proximately caused her injury.

Now, the same law, which I told you you'd use in deciding whether the defendant was negligent should be used in deciding whether the plaintiff was negligent. If you find the negligence of both the plaintiff and the defendant proximately caused the plaintiff's injuries, you must then decide how much the negligence of the plaintiff contributed to the plaintiff's injuries and how much the defendant's negligence

contributed to the plaintiff's injuries.

In deciding the percentages of negligence of the plaintiff and the defendant, you may consider, among other things, the following factors: Whether each party's conduct was only inadvertent, or whether it was engaged in with an awareness of the danger involved.

The magnitude of the risk created by each party's conduct, including the number of persons endangered in the possible -- excuse me, and the possible severity of the injury. The significance of the goal that each party was trying to reach and the need to achieve the goals in that manner.

Each party's capabilities and abilities to realize and eliminate the risk involved.

Now, particular circumstances confronting each party at the time the conduct occurred, such as the existence of an emergency requiring a quick decision. The relative closeness of the causal relationship of the negligent conduct of the defendant and the harm to the plaintiff. And whether the conduct of either party involved a violation of a safety statute or regulation.

Now, I charge you that it is the law of this state that the driver of a vehicle about to ente

cross a roadway from any place other than another roadway, shall yield the right-of-way to all vehicles approaching on the roadway to be entered or crossed.

It is also the law of this state that every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line. But if there is none, before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, then at a point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting road before entering it.

After coming to a stop, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of a roadway.

Now, it is also the law of this state that the operator of the motor vehicle is required to use the same care that would be used by a person of ordinary reason and prudence, if that person were driving the same vehicle at the same time and place and under the same circumstances.

It is also the law of this state that the driver of an automobile had a duty to keep a proper lookout

for other vehicles on the road. This duty requires the driver to watch attentively so that the driver will be able to see a person or object on the highway.

It is also the law of this state that the driver of an automobile also has a duty to keep the automobile under proper control so that the driver is able to slow down, stop, or turn the automobile to avoid colliding with other vehicles, pedestrians, and objects lawfully on the road.

It is also the law of this state that it is unlawful for a person to use a wireless, electronic communication device to compose, send, or read a text -- excuse me, a text-based communication while operating a motor vehicle on the public streets and highways of this state.

It is also the law of this state that every vehicle upon the street or highway within this state shall display lighted lamps and illuminating devices, excluding parking lights, from a half hour after sunset to a half hour before sunrise. Or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of 500 feet ahead.

It is also the law of this state that a person

shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to actual and potential hazards in existence.

Speed must be so controlled to avoid colliding with a person, a vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

The driver of a vehicle shall drive consistent with the requirements of the Section above, at an appropriate reduced speed when approaching and crossing an intersection, or railway grade crossing, when approaching and going around a curve, approaching a hill crest, when traveling on a narrow bridge, narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic, or by reason of weather or highway conditions.

Now, I charge you that the failure to follow a statutory rule is negligence as a matter of law. If you find that a party failed to follow a statutory rule, you must then decide if the failure proximately caused the plaintiff's injury.

Now, ladies and gentlemen, if you decide that the plaintiff is entitled to a verdict in this case, your next step would be to decide how much money the

defendant should be required to pay. And these are what we call actual damages.

Actual damages are to compensate the plaintiff for the plaintiff's injuries, or loss, and to put the plaintiff in as near as possible the same position that she was in before the accident occurred.

In other words, actual damages would be the actual losses and expenses which the plaintiff has suffered because of the defendant's negligence.

Now, ladies and gentlemen, the following are actual damages for you to consider in this case: Medical bills, pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury and disfigurement.

Now, in personal injury actions, the general rule is that the plaintiff may recover for the necessary and reasonable expenses caused by the injury. This doesn't mean necessarily incurred, for medicine, medical services, treatment, and any other out-of-pocket expenses.

If you determine from the evidence and the law, as I've instructed you, that the plaintiff is entitled to recover damages, including medical or other healthcare costs, then the plaintiff can only recover such sums as you, the jury, determine from the

evidence, being both reasonable and necessary.

And while the amount charged and incurred may be considered by you, you're not bound by that amount. You must find only such sums as is reasonable and necessary.

Now, ladies and gentlemen, pain and suffering compensates a plaintiff for physical discomfort and emotional responses to sensations of pain caused by the injury itself. And there is no definite standard by which to compensate the plaintiff for pain and suffering. You, the jury, have the authority to determine the amount, if any, to be allowed for pain and suffering, using calm and reasonable judgment to ensure that the damages are just and reasonable in light of the testimony and evidence presented in this case.

Now, loss of enjoyment of life compensates a plaintiff for limitations on a plaintiff's ability to participate in and derive pleasure from the normal activities of daily life.

Now, an injured party may also recover for mental anguish brought about by bodily injuries and suffering. Where a party's negligence is directly responsible for physical injury to another, the injured party may recover both for the actual physical

injury sustained and for the concomitant mental and emotional suffering which is a natural consequence of the wrongful act.

When connected with a physical injury, the term "mental anguish" includes both the resulting mental sensation of pain and also the accompanying feelings of distress, fright, and anxiety. That is, mental anguish covers not only the pain associated with the injury, but also the mental reaction to that pain, and to the possible consequences of the injury.

Ladies and gentlemen, mental anguish is more than mere disappointment, anger, worry, resentment, or embarrassment, although it may include all of these things. And it includes mental sensation of pain resulting in such emotion as grief, severe disappointment, indignation, wounded pride, shame, despair, and humiliation.

Now, ladies and gentlemen, a plaintiff is never entitled to recover conjectural or speculative damages. But if you find the plaintiff is entitled to a verdict for actual damages, your verdict should include an amount to cover any past, present, and future damages which were proximately caused by the defendant, and have been proven by a preponderance of the evidence in this case.

Again, actual damages may not be proven to a mathematical certainty or be based on evidence of the precise amount of damages the plaintiff has suffered. Instead, the evidence must allow you to determine what amount of damages including past, present, and future, are fair, just, and reasonable.

Now, I remind you, ladies and gentlemen, that if you do award future damages, you must reduce them to present day value.

Ladies and gentlemen, if you find that the plaintiff, Ms. Hood, was permanently injured as a result of the defendant's actions, you must then decide how, if at all, that injury will affect the rest of Ms. Hood's life.

A person's life expectancy is determined by a life expectancy table, which is a part of the laws in this state. The life expectancy table is only an estimate of the probable average remaining length of the life of all persons in our state at a given age.

Now, in this case, the plaintiff is a 63-year-old female with a life expectancy of 21.68 years. This fact is to be considered by you along with any other fact and circumstances in evidence bearing on the plaintiff's life expectancy including occupation, habits, and health at the time of the injury, when

deciding what amount of damages to be awarded to the plaintiff.

Now, compensation received by an injured party from a source wholly independent of the defendant will not reduce the amount of damages owed by the defendant. In other words, under the collateral source rule, which is what we call it, if an injured plaintiff receives compensation for their injuries from a source wholly independent of the defendant, that payment wouldn't be deducted from the damages which they would otherwise collect from the defendant. The only requirement for qualification of a collateral source is that the source be wholly independent of the wrongdoer. A defendant cannot take advantage of payments or services rendered by a collateral source for the plaintiff's benefit.

Ladies and gentlemen, in this case, the plaintiff also seeks what are called punitive damages in addition to actual damages. Punitive damages are imposed as punishment. They're not intended to compensate.

Punitive damages are allowed in the interest of society as a warning and an example to deter a wrongdoer and others from committing like offenses in the future. Moreover, they serve to vindicate by

requiring the wrongdoer to pay money to the injured party.

Ladies and gentlemen, punitive damages serve at least three important purposes: Punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights.

What would justify an award of punitive damages? First, ladies and gentlemen, you must realize that the highest burden of proof known in civil law is required to prove punitive damages. And that is what we call by clear and convincing evidence.

Again, any civil action where punitive damages are claimed, the claimant has the burden of proving those damages by clear and convincing evidence. And punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence that the defendant's actions were willful, wanton, malicious, or in reckless disregard of the plaintiff's rights.

A conscious failure to exercise due care constitutes willfulness. It is the present consciousness of wrongdoing that justifies the assessment of punitive damages against a wrongdoer.

Punitive damages will be allowed even when the defendant does not realize that they are invading a plaintiff's rights, so long as the act is committed in such a manner that a person of ordinary prudence would conclude it was done in reckless disregard of the rights of another.

The plaintiff cannot recover punitive damages based on negligent conduct. I remind you again that negligence is the doing of some act which a person of ordinary prudence would not have done under similar circumstances, or failure to do what a person of ordinary prudence would have done under similar circumstances.

Again, I remind you, to recover punitive damages, the plaintiff must prove by clear and convincing evidence that the defendant's actions were willful, wanton, or reckless. And the words, "reckless, willfulness, and wantonness" are synonymous. The terms are used to describe the conscious failure to exercise and observe reasonable or due care.

Again, so you understand, recklessness is distinguished from negligence. It's different. Again, negligence is failure by omission or commission to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances.

Recklessness is a higher degree of culpability and responsibility. Recklessness signifies a conscious failure to exercise due care. Recklessness is a conscious indifference to the rights of a plaintiff or a reckless disregard of the rights of a plaintiff. Recklessness is an awareness of the wrongful conduct and a continuation to act regardless of consequences.

Ladies and gentlemen, before you can consider punitive damages, you must first find the plaintiff entitled to actual damages in this case. There must be an award of actual damages for a verdict of punitive damages to be considered and supported. This rule is premised on the fact that liability must be established before plaintiff can receive punitive damages.

Therefore, I remind you, Madam Foreperson, if you do not award actual damages in this case to the plaintiff, you cannot consider an award of punitive damages.

Now, there is no formula or standard that can be used as a measure for assessing punitive damages. However, factors relevant to your consideration of punitive damages are: The character of the defendant's acts; the nature and extent of the harm to

the plaintiff which the defendant caused or intended to cause; the defendant's degree of culpability; the punishment that should be imposed; the duration of the conduct; the defendant's awareness or concealment; the existence of similar past conduct; likelihood the award will deter the defendant or others from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's wealth or ability to pay.

The financial condition of a defendant is a factor you should consider in awarding punitive damages. However, there is no requirement that the defendant be a person of means before you are justified in awarding punitive damages. And while the wealth of the defendant is a relevant factor in assessing punitive damages, it is not necessarily controlling.

Now, the fact that a person is more susceptible to injury or death because of pre-existing conditions or weakness does not serve to excuse an otherwise negligent defendant who has caused the injury or allowed an injury to happen when there is a duty to prevent it.

A negligent defendant takes a plaintiff as he finds her, whether plaintiff be in perfect health

poor health, or somewhere in between. An injured person is entitled to recover all damages caused by the defendant's negligence. When a plaintiff's pre-existing physical condition is aggravated or activated by a subsequent act, the defendant is liable to the extent that their wrongful act proximately and naturally aggravated or activated the plaintiff's pre-existing condition.

The plaintiff can recover her pre-existing injuries only to the extent they were aggravated by the defendant's actions. Any portion of the injury which was not caused by an act or omission on the part of the defendant is not compensable. You can award damages for any aggravation of a pre-existing condition, but not for the original condition or injury itself.

If you find that a plaintiff received an injury as a result of the negligence of the defendant, so that they are entitled to recover for that injury, the fact that a plaintiff had a pre-existing injury or defect would not defeat their recovery.

It is the law of this state that when someone negligently inflicts a personal injury on another, they are responsible for all ill effects which, considering the condition of health in which the

plaintiff was in when they received the injury naturally and necessarily follows that injury.

Therefore, a defendant's liability is in no way lessened or affected by reason of the fact that the injury was not the resultant had the plaintiff been in good health or that they were aggravated and rendered more difficult to cure by reason of the fact that they were not in good health.

In other words, ladies and gentlemen, if the presence of a pre-existing illness or physical condition aggravated or prolonged the injury, and correspondingly increases the damages, such increased or added damages may be recovered.

Madam Foreperson, members of the jury, as you retire to begin your deliberations in this case, let's just spread the hope that each of you are mindful of the importance of your job here today. You're not called upon very often to serve as jurors very often and the proper performance of that duty requires that each of you reach the height of freeing your minds of all improper influences.

In fact, do not think I tried to intimate to you how I think you should decide this case. As I've already told you, under the laws of this state, you, the jury, are the sole judge of all questions of fact.

And it would be highly improper for me to influence you in your performance of that duty.

Further, ladies and gentlemen, I am vitally concerned that every verdict you reach will be the result of you going back into that jury room and confining your consideration and deliberation to the evidence and the law that you've heard here in this courtroom, weighing it fairly and impartially. I have every confidence you will.

Ladies and gentlemen, everyone is entitled to justice in this case, both the plaintiff and the defendant. You owe no support or sympathy to anyone. The Court is of the firm opinion that whatever verdict you reach will represent truth and justice for all parties concerned.

Now, Madam Foreperson, I remind you, your verdict must be unanimous. It must be the verdict of all 12 jurors. And to that end, my law clerk has prepared a verdict form. It simply has the case caption on it. It says, "Therese Hood, plaintiff versus Antoine Johnson, defendant." And it just simply says "Verdict."

The first question is, "Was the defendant, Antoine Johnson, negligent, and that such negligence proximately caused the plaintiff's injuries?"

And the answer is either yes or no.

If you answer yes, you may go on to answer Question No. 2. If your answer is no, you stop and deliberate no further. You have found for the defendant.

If it was yes, and you go on to Question No. 2, you answer, "Was the plaintiff, Therese Hood, negligent, and that such negligence proximately caused her injuries?"

And, again, the answer is either yes, if it's yes, go to Question No. 3, or if it's no, you go straight to Question No. 4.

Again, if you answer yes, it then asks you, "If your answers to both Questions 1 and Question No. 2 are yes, then answer this question."

It says, "Using the combined negligence that proximately caused the plaintiff's injuries as 100 percent, what percentage of that negligence is attributable to defendant Johnson, and what percentage is attributable to plaintiff Hood?"

Now, I remind you, percentages must add up to 100 percent. All right?

Now, please understand, if the plaintiff Hood's percentage of the combined negligence is more than 50 percent, you are to stop and deliberate no further

That means you would not find for the plaintiff in this case, and you wouldn't even consider any damages.

Ladies and gentlemen, if plaintiff Hood's percentage of the combined negligence is 50 percent or less, all the way to zero, you would go to question No. 4. Okay? And that question says, "Please state the total amount of damages sustained by plaintiff Therese Hood."

Now, do not reduce for damages based on the percentage of negligence by any party. You are to award the considered actual damages for her and award them for her. You are to award her her total amount of damages. At the very end, I will reduce the amount of damages that would be appropriate for her based on the percentages. You are to only consider the full amount of damages in this case that you feel were proximately caused by the defendant. Do you understand that?

JURORS: Yes.

THE COURT: Now, that leaves the two lines under No. 4. The first is for actual damages. As I reminded you before, those are for the medical bills and expenses. They're for pain and suffering, they're for mental anguish. They're for permanent impairment and permanent

disfigurement.

Ladies and gentlemen, those, again, are actual damages. And you would put the dollar amount for those actual damages, and I remind you that they must be proven by a preponderance of the evidence, which just means more likely than not.

You then may consider punitive damages, although you are not required to award them. I remind you again that you can only award punitive damages if you have first awarded Ms. Hood actual damages. And I remind you yet again that punitive damages have to be proven by even a higher standard. It's what we call clear and convincing evidence. Okay?

So you would not award a punitive damages amount until and unless you actually awarded actual damages to Ms. Hood, and then only if you found punitive damages are appropriate in this case, given the factors that I discussed with you earlier.

And I remind you again, they're meant to punish, they're not meant to compensate. All right?

After that, Madam Foreperson, there is a line for your name, you would sign this when you've reached a verdict, a unanimous verdict, and date this. And then you will knock on your jury room door. At that point, we can expect you back into this courtroom to take

your verdict.

Madam Foreperson and members of the jury, I am going to ask you for the very last time that you go back to your jury room and not begin discussing this case. If there's something further on the law that the lawyers want me to charge you, I'm going to bring you back out and I'm going to charge you further on the law.

Then you're on, Madam Foreperson. What I'm going to do is send this verdict form and the evidence that was entered into this case back into the jury room, and that's going to be your signal to begin your deliberations. And I remind you, you are to get everybody discussing and talking in this case, all 12 of you. All right?

JURY FOREPERSON: Your Honor, do we get any paper to write notes or anything like that?

THE COURT: Whatever you need, simply ask the bailiff and she will give it to you. Whatever you need. All right?

Again, do not begin discussing the case until you've received the verdict form. I may need to bring you back out here and charge you further. But, again, if not, you'll get the evidence and that will be your queue to start. Okay? Thank you.

(The jury exits the courtroom at 4:30 p.m.)

THE COURT: All right. Yeah, you may be seated.

Any exceptions or due diligence additions from the plaintiff?

MR. WILLEY: Briefly, Your Honor. We obviously would take exception to the previous charges that we submitted not being included, just for preservation.

THE COURT: And we made those Court's exhibits, and they will have them.

MR. WILLEY: Yes. And in addition to that, I do think it's now an appropriate time to charge the jury -- you ruled pretrial that the Defense would not be able to argue that the defendant would have to pay a verdict. And, of course, we did not get to see your charge prior to you reading it, but you did say three times in your charge that the defendant would compensate her.

And in this case, the defendant will not compensate her. And so it's actually a misreading of what will happen. Her own insurance carrier, USAA, or UIM, will be the one compensating her. The defendant has a covenant not to execute. So, in no way, shape

be responsible for any amount at any time. And so, we would ask for a curative instruction to the jury that he will not be responsible for paying the amount of actual damages in this case.

THE COURT: Respectfully, I'm going to deny that motion. It's not appropriate.

MR. WILLEY: And the final thing is, just once again, take exception to the verdict form, as we believe the Court should have directed liability against the defendant and directed comparative negligence in favor of the plaintiff.

THE COURT: Thank you.

MR. WILLEY: And denied, right?

THE COURT: Denied, yes.

Any exception or additions?

MR. DANIEL: No exceptions or additions, Your Honor.

THE COURT: Okay. Y'all, let's make sure we have the evidence. My Rule 403 people, and Mr. Clevinger come on up as well. I'd like to speak with you for just a minute.

(Whereupon, the trial was concluded.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of January, 2018.

/s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON IN THE
COURT OF COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO: 2018-CP-10-0666

THERESE HOOD,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION (USAA),

Defendant.
_____/

DEPOSITION OF:

GAIL MARIE (MISSY) HOWARD

Examination of a Witness, beginning at 1:00 P.M. and concluding at 5:30 P.M. on Thursday, March 21, 2019, taken by the Plaintiff at Nelson, Mullins; 100 N. Tampa Street, Suite 3500; Tampa, Florida, before Roberta Turner, RPR, FPR, CLR, CCR (GA), Certified Court Reporter.

EXHIBIT 2921 COURT ID RECD 3/21/19

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I N D E X

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THE WITNESS: Yes, I do.

GAIL MARIE (MISSY) HOWARD

called as a witness having been first duly sworn, was examined and deposed as follows:

DIRECT EXAMINATION

BY MR. WILLEY, IV:

Q Okay. So, Ms. Howard, your name is Gail Howard, correct?

A Yes, sir.

Q You go my Missy?

A Yes.

Q Would it be okay if I call you Missy?

A It's perfect.

Q Okay. Have you had your deposition taken before?

A No.

Q First time?

A Yes.

Q Okay. So let me go over some ground rules, okay.

This is not an endurance contest. This is not a, like you see on *Suits* or something on TV where, you know, I'm trying to beat you up or trick you into saying something. If you need a break at any time just say so, okay. We'll take breaks

whenever you need it, however long you need.

If you don't understand my question, ask me to rephrase it. Because if you do answer it, we're going to assume that you understood it, okay?

A Okay. Yes, sir.

Q And that's the other thing. Obviously, she's taking down everything that we're saying into a written record. So as we go through today, if you will just say yes or no, you can always explain your answer, but just give an audible response, all right?

A Yes.

Q If at any point we do take a break, now that the deposition has started, you're not allowed to discuss your testimony with Mr. Whelan. And if you have any questions about your testimony, you should direct those to me, okay?

A Yes.

Q All right.

MR. WILLEY, IV: Did I miss anything, Rob? Anything else? Did I miss anything?

MR. WHELAN: I don't understand your question.

MR. WILLEY, IV: Okay. All right. So anything I should be aware of since she

hasn't taken her deposition before?

MR. WHELAN: You ask her whatever questions you want to.

MR. WILLEY, IV: Okay. All right. Very good.

BY MR. WILLEY, IV:

Q You understand why we're here today, Ms. Howard?

A Yes.

Q Okay. And you understand generally what this case is about?

A Yes.

THE COURT REPORTER: Since this is a South Carolina case, any stipulations you want to put on the record?

MR. WHELAN: We just follow the South Carolina Rules of Civil Procedure.

MR. WILLEY, IV: Right. We follow South Carolina Rules of Civil Procedure.

I will put on the record that we have agreed that for the depositions this week, we're just going to mark one set of exhibits. So we'll share those when we get to them.

BY MR. WILLEY, IV:

Q What is your understanding of what this case is about?

MR. WHELAN: Object to the form.

You can answer.

Q And let me say that too, before, and you can think about it.

During the course of the deposition, he may make objections to some of the things that I ask. And, basically, it's an objection to the form. And, so what he's saying is he doesn't like the way I asked the question, or he thinks the form of my question is improper.

But you will still go ahead and answer that. He's just preserving that for the record so that when we get later into a court case, that objection shows up on the record for the judge, okay?

A Okay, yes.

Q All right. And, again, I'm not trying to trick you with anything. So if you don't understand my question, you ask me to rephrase it and I will be glad to do so. So let me ask it again.

What do you understand this lawsuit to be

about?

A I'm not sure exactly, a hundred percent sure. I didn't handle that much of the file. And certainly I didn't handle it, really, I didn't handle any of this claim. So there were some issues with coming to a resolution of the underinsured motorist claim, is just what I understand.

Q Okay. And how did you come to that understanding? How do you know what you know about this particular lawsuit?

A Just meeting with USAA attorney.

Q Okay. With Mr. Whelan?

A Yes.

Q Okay. Have you ever been provided any documents or any e-mails about this lawsuit in advance of today?

MR. WHELAN: You talking about outside of meeting with me?

MR. WILLEY, IV: Just been provided with documents.

A That I have in my possession?

Q No. Just at some point prior to today, have you been provided with any documents concerning this lawsuit?

A To look at?

Q To look at, to read, to take home.

A Yes.

Q Okay. And when were you provided with those documents?

A Yesterday and Tuesday.

Q Okay. So Tuesday and Wednesday of this week?

A Yes.

Q All right. How were you provided those documents?

A I was shown those documents.

Q Okay. In an in-person meeting?

A Yes.

Q Okay. Was that meeting with Mr. Whelan?

A Yes.

Q Okay. How long did those meetings last?

A Couple of hours; two hours each day, maybe.

Q During those meetings, did you review anything other than documents?

A No.

Q Have you had the opportunity at any point to review the claims file in the underlying case that's the subject of this lawsuit?

MR. WHELAN: You talking about the U.I.M. file?

MR. WILLEY, IV: Right.

A Have I reviewed the U.I.M. file?

Q Right.

A I only, I've looked or been in it when I initially set it up.

Q Okay. When you met with Mr. Whelan on Tuesday and Wednesday of this week, was anyone else present?

A In the room?

Q Yes.

A No, sir.

Q Okay. Was there anyone on the phone or video conference?

A No, sir.

Q Okay. Have you met with anyone, other than Mr. Whelan about this lawsuit?

A No, sir.

Q Have you ever been involved in a meeting at USAA about this lawsuit?

A Other than with Robbie?

Q Other than with Robbie, right.

A No.

Q Okay. Have you ever been in a meeting

with Robbie where anyone else was present or participating via phone or video conference?

A No.

Q How long have you been at USAA?

A Two years October of -- This past October was twenty years.

Q Okay. All right. Do you agree with the general statement that USAA should not take factual liability positions solely to protect its money?

MR. WHELAN: Object to the form.

A I don't really understand the question.

Q All right. Let me back up, let me back up.

Do you agree that the purpose of civil litigation is a search for the truth of what actually happened?

MR. WHELAN: Object to the form.

A I'm not sure that I'm qualified to answer that. I don't -- I'm not an attorney, so.

Q Okay. You spent twenty years at USAA --

A Uh-huh.

THE COURT REPORTER: Yes?

A Yes. Yes, ma'am. I'm sorry.

Q I'll try to be better about reminding you. I know in the course of conversation it's not

natural to always have to give an audible response.

-- handling civil litigation claims, right?

A Yes.

Q Okay. And --

A Well --

Q Go ahead.

A Let me rephrase. Let me go back to that.

Q Sure.

A My claims are presuit.

Q Right.

A So I handle presuit --

Q You handle --

A -- claims.

Q You handle presuit claims that are part of the civil process, right?

MR. WHELAN: Object to the form.

Make sure that he finishes his question before you answer.

I object to that question.

Q You handle insurance claims prior to a lawsuit actually being filed, correct?

A Yes, sir.

Q Okay. Have you ever handled or participated in claims after a lawsuit was filed,

in your career?

A Yes. If I can explain the reason.

Q Yeah, of course.

A That would be that there was not going to actually -- Maybe there was a statute running and that they filed just to protect that. And we were just to -- So that was just a technicality, I guess. So, really, and therefore, I was just continuing up my normal negotiations ongoing with that. That would be the only reason.

Q All right. Does USAA provide training? Did you get training about how to handle insurance, automobile insurance claims?

A When I first started working at USAA?

Q Yes.

A Yes, sir, I did.

Q Okay. And have you had subsequent training in the years that followed, or did you just get one dose, and that's it?

A No. We -- Yes. We have additional training, ongoing training.

Q Does part of that training include that in the adjustment of automobile insurance claims, you should try to find out what actually occurred?

A Yes. That's the investigation piece of

it, the claim.

Q And in the investigation piece of a claim at USAA, is the purpose supposed to be to find out the truth about what happened, or is the purpose supposed to be to come up with a theory, a factual theory that helps protect the insurance company's money?

A The purpose of the investigation is to determine the best we can what actually happened with the evidence provided or obtained in that investigation.

Q So would you agree with me that it would be against USAA's policy for an insurance adjuster or a claims' handler to attempt to create or twist the facts in order to create a version other than the truth in their investigation of underwriting?

A Just to clarify what you're asking.

Is it against USAA's practice to create our own, create facts or come up with facts on our own?

Q Right.

A Yes. We don't do that. That's not -- USAA does not do that.

Q Right. So would you agree with me then that it would be against USAA's policy for

individuals at its company to take different factual positions related to the same wreck in order to protect its money?

MR. WHELAN: Objection.

A Well, I wouldn't agree with what you're saying, is that it has -- During our investigation it doesn't have anything to do with protecting USAA's money. We have to look at the facts for each case on a case-by-case basis for what we're provided and what we're given.

And when looking at that, what we can successfully, or what we can prove based on the information provided at that time.

Q Right. And I think we're in agreement. USAA's purpose is to protect its insureds, right?

A Yes.

MR. WHELAN: Object to form.

A Yeah, yes.

Q That's what you're trained at USAA, that your job as a claims handler is to protect the insured?

A That is part of our, that is part of what we mean -- That's part of what we do as an adjuster.

Q Right. And you agree with me that if USAA took two different factual positions related to the same wreck in order to protect its money, that would be against USAA's policy, right?

A I don't agree with that, what you're saying.

Q Okay.

A 'Cause I don't believe that that, the protecting USAA's money, that's not what, that's not what's coming into play. We're looking at each accident and each circumstance as it is and handling each claim.

If you want to give me a more specific case, then I can answer that maybe a little better. But we have to handle each claim on a case-by-case basis, and the facts that we're looking at at that time.

Q All right. And sometimes multiple adjusters at USAA investigate the same wreck, right?

A That can happen, yes.

Q Okay. And in any given wreck there can only be one set of true facts; would you agree with that?

MR. WHELAN: Object to form.

A Obviously, there are only one set of true facts. If you're able to obtain those, the true facts, yes.

Q All right. I mean, in any given car wreck it only happened one way, right? Whether or not you can obtain the facts, it only happened one way?

A That is correct. If you can obtain that information.

Q Right. So it would be impossible then, would you agree with me, for there to be two sets of different facts representing the truth that arise out of the same wreck?

MR. WHELAN: Object to the form.

Q In other words -- Let me try to make it clear.

If I investigate a wreck and I say the person ran a stop sign, and the adjuster next to me investigates the wreck and says the person didn't run the stop sign, one of us is wrong, right?

A Correct. But, again, it's going to be a case-by-case basis, based on what information each person has.

Q I agree, I agree. There is no disagreement here about that.

But either I made a mistake in my

investigation in determining that the individual ran the stop sign, or adjuster-B made a mistake in their investigation in determining that the individual did not run the stop sign, right?

A Not necessarily.

Q All right. Explain.

A Maybe one of the other of the two adjusters had additional information that the other one didn't have.

Q Okay.

A That, you know, led to the one decision versus the other decision.

Q All right. If they both had identical information, would you agree that one of them would have had to have made a mistake in analyzing the information?

A Would I agree that they made a mistake. Not necessarily. But is it a possibility; certainly.

Q What are the different ways, in your mind, that the wrong adjuster, the adjuster whose investigation led to the wrong conclusion could have arrived there, if they didn't make a mistake?

MR. WHELAN: Object to the form.

A Again, I will go to say that, you know, I

handle and have handled a lot of claims, in my experience with, you know, over the twenty years of time. And with each case, everyone is different and everything you have to look at is different. So it makes it hard to make an assumption of what somebody might or might not have done incorrectly, based on given the information that they were given.

Do you have anything specific that you can --

Q No. I'm just trying to figure out from you how you would explain two adjusters having the same set of facts arriving at different factual conclusions without one making a mistake.

MR. WHELAN: Asked and answered.

A Again, there's just so many factors that go into investigating and things that you have to consider and look at.

Q How many claims do you oversee at any given time? Right now how many claims are you handling?

A My current pending right now is approximately a hundred and twenty.

Q Okay. And is that, is that average for you?

A Yes, sir.

Q Okay. Is that average for other claims' handlers of your experience at USAA?

A I would say about in that range, yes, uh-huh.

Q They all auto claims?

A The majority are auto, but I also handle homeowner liability.

Q Okay. How many of those would you say you have of the hundred twenty?

A I would be guessing. Maybe a quarter of that.

Q Okay. And is that pretty typical, you know, usually about three-quarters auto?

A Yes.

Q Do you always handle the liability and auto claims, or do you sometimes handle other coverages?

A Just because I'm not sure exactly which coverages, I'll just let you know what I do handle.

Q Perfect.

A Comp, collision.

Q Sorry. What was the first one?

A Comprehensive.

Q Okay.

A That, you know, sometimes that does come into play; B.I., P.D., U.M.

Our first-party coverage, which we refer to like PIP or med pay. We have those specific department for that.

Q Okay. And you said U.M., which here does that --

A U.I.M.

Q U.I.M.

A U.M. or U.I.M. I handle both those. I apologize.

Q Okay. Sometimes when you go to different states, they look like --

A So that's because --

Q -- three heads.

A Yes.

Q Okay. At USAA, what is the, what is the structure? Who do you report to?

A I have a direct manager.

Q Okay. Who is that person?

A Currently her name is Lisa Mitchell.

Q All right. How long has she been your manager?

A I would say approximately two years, at the most.

Q Okay.

A Maybe not that long.

Q Who was your manager before her?

A Alisa Sumner.

Q Okay. And do you know --

What's your actual title now?

A Examiner.

Q Examiner?

A Uh-huh.

Q I know I was messing that up.

How many examiners does Lisa manage?

A Currently I think she has, I think there are seven of us.

Q Okay. And is that pretty average, the examiner team is generally groups of five, seven, eight, in that range?

A Yes. I think between seven and eight. That's -- Yes, examiner teams.

Q Who does Lisa report to?

A Crystal McDaniel.

Q What's her -- What is Crystal's title?

A Director.

Q All right. And do you know how long she's been director?

A Fifteen plus years --

Q Okay.

A -- she's been director for.

Q What do we call a group of managers and examiners, like that team?

A M.S.T., Member Service Team.

Q Do you know how many Member Service Teams Crystal has responsibility for?

A I do not.

Q Okay. Is Crystal in your office?

A She is.

Q Who does Crystal report to?

A It just changed. His name --

Q Who was the last person, if you know?

A His name is Matt, Matt Smith I believe his name is.

Q Who was before Matt? You said it just changed.

A Carol Witherow, W-I-T-H-E-R-O-W.

Q What is Matt's title?

A Executive director.

Q Is he in your Office?

A No, he's not.

Q Is he in Texas? Do you know?

A No, no. He's not.

Q Okay.

A Maybe Colorado.

Q Okay. How many directors are in the Tampa office?

A Claims' directors?

Q Claims directors.

A I -- injury claims between the two buildings, I'm going to say possibly four to five, but.

Q That's an estimate. We're not going to hold you to it.

Have you ever worked on Member Service Teams under any of those directors?

A No.

Q Okay. So your director, prior to Crystal, left the company or moved on or something?

A Crystal has always been my director for many years.

Q Right.

A And I think when I first got into, promoted to injury, which was a long, long time ago, it wasn't initially her, but --

Q Okay.

A But, again, that was --

Q Pretty quickly thereafter?

A Correct.

Q Okay. Where did you start at the company? What was your first position?

A It was called a customer account professional cap, entry level.

Q Okay. Where did you go from there?

A To not handling non-injury claims.

Q What's the -- Can you give me an example of a non-injury claim.

A Okay. So a entry-level claim would be no -- one vehicle. You're not really having to make too much of a liability decision when you have two vehicles. No property damage, really, exposure.

Q Right.

A Just comp loss of a collision loss.

Q Okay.

A So when you get to the non-injury level, it's, for the most part, it would -- it could be a one vehicle as well, occasionally. But you're looking at two vehicle accidents where you're having to do an investigation, but there's no injuries related. But you're investigating and you're handling property damage along with the collision piece.

Q Okay. Then from there you went to your

current position?

A From there I went to injury, which was just minimal soft-tissue type injuries.

Q Okay.

A And then --

Q That's not all of them? I'm kidding.

A No.

MR. WHELAN: In some perhaps it is.

A Then from there, eventually, I went to -- it got to examiner, which is where I am now handling severe injuries.

Q Okay. How is at USAA, how is a severe injury claim? How does it meet that cap, or that threshold?

A What is considered a severe injury?

Q Right. What's the difference between soft tissue and severe, according to USAA?

A We look at it --

MR. WHELAN: Object to the form.

Go ahead. I'm sorry.

A We look at it as with -- Examiners handle surgery cases, death cases, severe scarring, paraquadriplegic, so something with that type of severity.

Q Does it have a, like, a medical special

dollar amount affixed to it, or is it more subjective?

A It's based on the injury itself.

Q Okay. Who decides that, decides how to classify or assign a claim?

A The -- it could be the person taking the claim who -- if somebody's calling in and saying, either I'm the one hurt and this is the, this is the severity of my injury, or I've had surgery or this is what's happened. Or, this is something happened; I know, I'm aware this has happened to someone else, so they would know it right away. Or, potentially, you know, it changes down the road.

So you may -- It could be through life of the claimant. It may get transferred once. Additional information is known, or becomes a more severe injury case at that time, later on down the road.

Q Okay. And when someone just calls in to make a claim, who -- where does that call go? I mean, I assume, for example, you don't take all those calls, right?

A No. So they, when they call in, there is, like, it kind of -- it asked you, it prompts you

to, hey, what is your, what type of -- does it involve an injury, the severity. And so sometimes it can be routed to us just like that, and we may pick the call up based on that, what's being told.

Q Automated?

A Correct. And sometimes it can be, if it's overnight or something, later hours, we have a company -- or within USAA that's kind of our reporting unit that may take it in and just assign it, based on what they're being told.

Q Okay.

A Now, it could be that they go to the automated system, the person puts in the wrong information and they -- it gets taken. And it just gets assigned correctly, based on the person that's keying it in, because they find out, oh, it's worse than we thought that we have here. So multiple different ways.

Q If a claim ends up being -- comes to you, for example, and you say this is not a severe claim, how does it get kicked back down?

A That doesn't.

Q It doesn't. Do you --

A I would just keep it.

Q Okay.

A For customer service.

Q Okay. That's good.

The lower -- What's under examiner again?

A It's Adjuster-I is under.

Q Adjuster-I.

Okay. So for Adjuster-I, if they get a claim and then they say, no, this is a, this is more severe than was reported, how do they kick it up?

A Depending on when they find it out. They can go through their manager or they can just transfer it themselves.

Q Just by changing it in the system?

A We have -- There's a way that you can, say reassign claim, reassign claim. And it prompts you to examiner.

Q All right. Are you able to see on the software all of the claims in your Management Service Team?

A I am not, no.

Q Okay. Are you only able to see claims that are officially assigned to you, or are you able to see claims in addition to that?

A Let me -- Can you clarify. Do you mean like what's, what I'm currently handling, am I the

only one that can see what I'm currently handling? Is that what you mean?

Q No, no. Are you able to see claims in addition to what you're currently handling, is what I'm asking?

A If I was to -- If I needed to go into someone else's pending?

Q Right.

A Then, yes, I can. But I would have to go in, literally, go into that. So --

Q Right.

A -- I think I might have misunderstood your previous question.

Q No. I think we're on the same page.

A Because I had said before that I couldn't see, so maybe --

Q No. And I'm not trying to trick you.

A Okay.

Q I mean, I understand -- Correct me if I'm wrong.

When you sit down, you call up your computer, you call up the software. What you initially have on there are just your claims --

A Correct.

Q -- correct?

A Yes.

Q But you are able to, through the software, go and see someone else's pending claims?

A If I change the information, yes.

Q Yes. And when you say change the information, you just mean there's a way, I assume, to change it from seeing your pending to seeing John Smith's pending?

A Correct.

Q Okay. And is that a company-wide process? In other words, you can see pending claims that are not part of your M.S.T., if you change the information?

MR. WHELAN: Object to form.

A I would assume, yes.

Q Okay. Not something you do --

MR. WHELAN: I'm sorry.

When he interrupts her, are you getting the little dash?

THE COURT REPORTER: Yes. If I don't, trust me, I will speak up.

MR. WHELAN: No --

THE COURT REPORTER: But I know what you're saying. Yes. I'm dashing off when she's cutting him off, the same way when

he's cutting her off.

MR. WHELAN: Okay. Thank you.

MR. WILLEY, IV: I'm not trying to do that. Sorry.

THE COURT REPORTER: If it's to the point I can't get it, I will let them know.

MR. WHELAN: Yeah. I mean, I just want to make -- So she's not done with her answer and then he asks a question, I just want to make sure that's noted.

Thank you.

MR. WILLEY, IV: He's just trying to make a good record. I'm bad at that, 'cause I feel like you've answered and then still want to say something.

BY MR. WILLEY, IV:

Q So if I do cut you off and you're not done, just say so, okay. I'm not trying to -- It's not a strategery to it where I'm trying to cut you right there in the middle of the sentence to get you to say something that you don't want to say.

So my understanding is that's not something you do on a daily basis, correct, go and look at other people's claims?

A No.

Q Okay. But you're able to?

A Yes.

Q Okay. Does USAA, to your understanding, have any sort of ethos or code of ethics, you know, that the company asks employees to abide by?

MR. WHELAN: Object to form.

A Yes.

Q Okay. What is that?

A Integrity, honesty. I know they're two more. I'm sorry. Those are the ones I can remember.

Q That's okay. If they come back to you at some point, just let me know.

A Okay.

Q And that's, like I said, I'm not trying to trick you. I'm certainly not going to type up the transcript and say, hey, Missy forgot two of these.

Where would you find those? You know, and what I'm asking is, like, some companies put them up on the wall, you know. Sometimes they're on a poster in the bathroom or whatever.

A They are, I believe, on one of the walls when you first come in the build -- or like on one hallway.

Q Okay.

A Loyalty I think is one of them.

Q Makes sense. Okay.

Is there, is there a different training that you go through for moving into an examiner position from an Adjuster-I position?

A There was some. It's just been a while. So there was some form, some form of training as some of it was O.J.T., kind of like on-the-job. But there was a little bit of both.

Q Okay. Do you remember what, specifically, the additional training consisted of?

A It had to do with partially homeowner liability claims, because that's something totally, totally new.

Q Right.

A And then just the handling of serious injury cases and what you're to do with those when that's recognized.

But that's the -- Mainly, I remember so much about the homeowner liability because that was something so new.

Q Right. Does the company give you any kind of manual or handbook to outline, you know, how to do investigations, how to go through the adjustment

process, how to value a claim, how to negotiate; any of those things?

A No, no.

Q So when you get the training, when you got training, you just -- How did that happen?

A It's, you know, it's been a building -- For me, it's been a building process.

Q Right.

A You know, when you start off handling minor claims, you learn that. And then as you -- they become more severe, you learn what those values are. It's a learning process.

So I don't -- I don't even remember what, maybe, the initial, what my initial -- what I did initially or what, how --

Q Okay.

A -- I learned that initially.

Q All right.

A Obviously, my manager -- That would have been involved with my manager, certainly --

Q Okay.

A -- at the time back then and moving forward even.

Q Okay. Do they give you any kind of like, you know, checklist or outline to follow, you know,

so you don't miss any steps in the process?

A Of investigation?

Q Investigation adjustment. At any time in the process, is there any checklist or processes outlines; anything like that?

A I'm not aware of that.

Q Okay.

A And I think the job is a building, building block of -- Because the investigation never changes.

Q Right.

A And never has, and not changed since probably the beginning.

Q Okay.

A And everything we just spoke on that, so. You just kind of know and know and know what you know.

Q And, I mean, how -- So how does that start initially? Like, does the manager sit with somebody for a period of time? I mean, I'm assuming USAA doesn't just like, hey, new adjuster, here is the phone and a computer; have at it.

A I mean, I don't know so much about the processes now.

Q Okay.

A Just because I don't really see them that much --

Q Right.

A -- for what we do.

I know that there was -- I don't necessarily know that it's the manager that has the -- They have, whether it's training classes. They have a way that they come in and learn our systems and the processes. And they go through that before they really hit the floor. So I don't understand, because it's very different than when I first started --

Q Okay.

A -- of how we get -- how they get there.

Q All right. Is there an electronic process or checklist that you go through in an investigation, negotiations of a claim?

A Again, not -- I'm not, no. I'm not aware of any type of checklist; no, huh-uh.

Q All right. Is there any sort of narrative process that you can refer to that provides educational and investigation or negotiations of claims?

MR. WHELAN: Object to form.

A I'm not sure exactly. I know what you're,

what you -- I guess what you're looking for what we have available to us.

Q Right. That's what I'm asking, just what's available.

A I mean, we have -- our computer -- in our computer system we have what's called K.D., knowledge delivery --

Q Okay.

A -- that if we have questions, you can -- they're relating to anything, whether it's policy, things like that, you can go to that and the information is there.

Q It's like a help guide or --

A Correct.

Q Correct.

Okay. And that's actually on your computer, not in a hard copy?

A Correct.

Q All right. Is there anything else on the computer like that that gives any guidance if you need it, or is that kind of all encompassing?

A That's all encompassing.

Q Okay. Is there ever -- Have you ever seen any kind of best practices circulation -- I will give you some examples so you know what I'm talking

about.

Some companies, if a particular team comes up with a new best practice for the way they do something, they will circulate that, you know, whether it's through a memo, or once a year they might recognize and implement new policies; things like that.

Is there anything at USAA like that, that you're aware of?

MR. WHELAN: Object to form.

A Not -- I would think that it -- The only thing that I can think of would be the same as in K.D., in the knowledge delivery.

Now, if there was some type of changes that were coming for some type of change that was company-wide, then our managers would be communicating that to us, usually. But that's just a verbal communication. And usually we have huddles.

Q How often do you all -- That was kind of my next question.

How often do you all, as a M.S.T. huddle, you know, get together?

A We meet -- We huddle with our managers usually daily.

Q Okay. What types of things, topics, do you all discuss at the huddle?

A That can vary.

Q Okay.

A If -- It could just be what I just mentioned, if there was some type of change that came down. It may just be something quick about, you know, what's, you know, what's going, what's the week look like;, you know, things are going on, like that.

And usually it's four days a week, not -- It's four a week, not five. And, yeah, just if -- it's a case-by-case basis, just --

Q Do you all regularly discuss specific claims at those huddles?

A No.

Q Okay. Do you ever discuss specific claims at those huddles?

A I guess we have. I don't know that it's common practice, but I'm not going to say we haven't; so, yes.

Q Okay.

MR. WHELAN: If you're going to change topics, I need to use the restroom.

MR. WILLEY, IV: I'm not, but we can

take a break. I assume, whenever. It's not a marathon. Let's break.

(Whereupon, a recess was had from 2:10 p.m. to 2:17 p.m.)

MR. WILLEY, IV: What was my last question?

THE COURT REPORTER: You had asked, "Okay. Do you ever discuss specific claims at those huddles?"

Her answer: I guess we have. I don't know that it's common practice, but I'm not going to say we haven't; so, yes.

BY MR. WILLEY, IV:

Q Okay. Do you ever have meetings or huddles with other M.S.T.s, other than your own?

A Have I ever?

Q Right, yes.

A Yes.

Q How often?

A I haven't had any recently, but I have in the past.

Q Okay. For what reasons? Why would that happen?

A To meet with -- We don't have examiners in the regular units any longer, because we are --

examiners are separated. So it kind of -- The Adjuster-I's, Adjuster-II's lose that piece, you know, ability to, you know, if they have questions or what have you, you know.

So I would -- we would, our examiners, maybe would go down to and just offer kind of like a mentoring, like, if you have any questions, something you don't understand; opportunity. So just that, you know.

Q How many examiners are there? Do you know?

A Oh, I don't. In our total building?

Q Yeah.

A I mean, I know in my unit, you know --

Q Right.

A -- like I said, but -- Yeah.

Q Okay. When you huddle with other M.S.T.s, do you all ever discuss specific claims?

A No, huh-uh.

Q You don't, okay.

Is there ever any kind of, like, department-wide trainings where everyone gets together and gets trained on a specific topic or subject?

A There can be.

Q Okay.

A If there's something new that comes out.

Q And when you say something new that has come out, what's an example?

A That probably, like, they're going to be changing the way we handle total losses; so, you know, we're going to be -- we'll be getting together, most likely, with groups of people so they can go over that with us. And that isn't specific to examiners or, you know, that we'll all be doing that. So they will do that.

And then we've had another total loss meeting previously, and that was all of us. I'm sure there's other times in the past it's been other things, like, changes that we've made internally that, you know, I just can't think of anything right now.

Q Are you a veteran?

A I'm not.

Q How did you come to work at USAA?

A My dad was in the Navy, but --

Q Okay.

A And my grandfather. But, so I was aware of it through that. But then a friend of mine, you know, she was going to apply there, so I applied

too and just -- I don't know.

Q Got the job?

A Yeah.

Q She get the job?

A She got a job too.

Q She still there?

A No. She's a stay-at-home mom.

Q Okay.

A So.

Q Good. That's the harder job.

A Exactly.

Q What did you do before you went to work at USAA? You were in middle school or something?

A Yes, I was. I was just a young child. I was a pharmacy tech --

Q Oh, okay.

A -- with the same girl I said that we both left the same place to come there.

Q Okay. Interesting.

And are you from Tampa?

A I'm from Land O' Lakes, which is just north of here.

Q Okay. Do you have, do you have any family in South Carolina?

A I do not.

Q What about know anybody in Charleston County, South Carolina? Do you know anybody?

A Friends?

Q Friends.

A No.

Q No, okay.

With your auto claims, what percentage of those claims are underinsured motorist claims?

A I don't -- I couldn't really even tell you. I mean I can give you a guess.

Q Yeah. Just a guess. I'm not going to hold you to it --

A No.

Q -- and say you can work them all, you know.

A Because, obviously, it's just pretty much what I get.

Q Right.

A It's what comes in and what the investigation reveals.

Q Right.

A But I -- I mean, I don't know. Forty percent maybe, maybe.

Q Okay. And is that pretty typical?

MR. WHELAN: Object to form.

A Yes.

Q Okay.

A Uh-huh.

Q All right. When a claim comes in, I'd like for you to walk me through the process of what you do. And when I say claim, I'm specifically talking about auto claims in this instance.

A So when I get a new claim. When I get the new claim, I -- first thing I look at is where the loss occurred; where the base of the policy is; who was driving the vehicles, as far as our insured's vehicle. Look at the, what kind of coverages we have available, all of them, everything we have.

Once I determine that, make contact with the insured, get all my statements from anybody that was -- that vehicle; get a police report, talk to all the parties involved, any witnesses, statements from all of that; photos of the vehicle.

Any -- Let me stop there and say that, you know, each claim, again, has to be handled on its own merits. And any investigation is different, based on what -- some need more, some need less. So this is just kind of a, you know, all the possibilities that I may need, you know, maybe have to do a scene investigation.

Q What was that word?

A Scene --

Q Scene.

A -- investigation.

Q All right.

A And sometimes it's just based on what information is given to us. Because as we learn more and get more, maybe that means I need to do a little bit more, or find out more things or get more information. Just each one, each thing is different.

Q So to back up, how do most claims come to you? And what I'm asking is, imagine -- I'm going to go on a little narrative for this question, okay.

Imagine I'm coming into USAA tomorrow and I'm going to have no access to the K.D., and I'm not going to be able to ask anybody questions. I need you to tell me everything I need to know in order to find my first claim, where it is, how I get it and what I do with it to set it up.

Does that make sense?

MR. WHELAN: Object to form.

Q Just those kind of first initial steps, where the claim is.

A I mean, it would -- If I'm answering this correctly, and I hope this is what you're asking. If it's -- By getting the claim -- Well, it could be called in, so it's going to be there. It's on the phone.

Q Right.

A So it's going -- I'm going to be keying that whole loss report.

Q So the phone rings, I have the ability on my computer to mash a button?

A Yes.

Q All right.

A And then you can enter all the information that's provided to you by whoever is calling in, calling that in --

Q Okay.

A -- and what they have.

Q And that sets up the new claim?

A Correct.

Q Okay. Then what I do? Am I responsible as the examiner for figuring out who the witnesses are and where it occurred?

A The person that calls it in, if -- depending on what they're able to give you, you know. Sometimes depending on who it is that's

calling you. Sometimes it's a person involved. Sometimes it's a spouse, parent, child, you know, that doesn't really know a whole lot. So you get as much as you can from that person, which may be the witness.

South Carolina, for instance, you have an F.R.-10, so you're going to have some information if they have that.

Q Okay.

A But that's not going to have any witnesses on there, it's just going to have the people involved and maybe the other insurance companies. So we'll go with -- We're dealing with South Carolina. We'll say that.

So we'll get what we can from that. And then everything is going to be on me or on the person that's handling the claim to get what we can, either from the person calling. I mean, I will request the police report if they don't have it.

Q Right.

A Which normally they do not, so we typically request that. So, but, again, each thing is different. You know, you're going to be seeing what information as much you can get from the

person that's calling it in. And then from there you move forward based on what you get.

Q Right.

A And then the next call would be to our insureds, if that's possible, to maybe get a little bit more information.

Q Okay.

A And we continue to investigate it that way. Maybe there's an attorney calling me. They're the ones that have the information. Maybe there is an attorney that we can call and see if we can get.

But, again, each claim is different. So you can't say that each time it's going to necessarily take you in this direction or that direction, because, you know, sometimes a first notice of loss is an attorney rep letter that comes in with, hey, this accident happened. And that's it.

Q Right.

A And now here we are, you know, trying --

Q And they won't take your calls?

A So, you know, so here we are trying to then get ahold of whoever we can. So each claim is, that you get is different.

Q Okay. Once you get the basic information, the stuff we just talked about, the police report, statements, if you need them from witnesses, any photographs, et cetera, who would make the determination about whether or not to do a scene investigation?

A Could be the current file -- the person that's handling the claim.

Q Okay.

A Maybe they review it with a manager and they, you know, after that discussion they determine that they may need a scene investigation so it could be done.

Q What's the process for that? Like, you got a wreck in South Carolina --

A Uh-huh.

Q -- I assume that they're not saying, Missy, long weekend in Charleston, have fun.

How does that, how does somebody get assigned to go do it? Who is that person?

A Oh, how do we get a scene investigation?

Q Right.

A We have outside adjusters that we can hire --

Q Okay.

A -- to go and do those for us.

Q Right.

A So that's typically what we do.

Q Okay.

A And depending on what we need.

Q And is there a list somewhere of those that you have access to?

A I believe there might be. I typically use Crawford and Company, just because I've always -- I'm not -- There may be other ones --

Q Right.

A -- we can use. That's just the --

Q All right. That's another question.

So lay down the line -- I'm going to skip around a little bit. We're going to come back to this, okay.

But when we're deciding which defense counsel to hire, assuming the case is going to go into litigation, is that a decision that you make?

A I can, I could, potentially, but not always.

Q All right.

A Depends on -- I mean, typically not. I will say that. But I'm not going to say that I haven't had a defense attorney who I haven't worked

with the defense attorneys and assigned something myself for other reasons.

Q Okay. Who typically does that assignment?

A Our litigation department. Once we know there's going to be -- the lawsuit is filed, it usually gets transferred to them and then the -- If for some reason I need to, we need to do something, then they would let us know who to contact.

Q Okay. So once you do the basic, call it liability investigation, at what point are reserves set on particular coverage?

MR. WHELAN: Object to form.

A They should be set when the claim is open -- or when the coverage, I'm sorry, is open.

Q And does the examiner or adjuster set that reserve?

A Yes.

Q Does anyone else have input on the amount of that reserve, other than the examiner or adjuster?

A Typically it is just the adjuster, the person that's handling, that's their responsibility. If for some reason you might have discussed it with your manager, maybe there was a recommend -- you know, there would have been

guidance or discussion to increase the reserve or set it higher for some reason.

Q At USAA what is a reserve?

MR. WHELAN: Object to form.

A What do we reserve it for, or are you asking what it --

Q What is it? What is it? Like if the jury doesn't understand what that term means. At your company, what does it mean?

MR. WHELAN: Object to form.

A It's what we anticipate -- what we --

Based on the information at the time thinking that the claim is valued at, at that given time, or based on the information we've received.

Q Okay. So the reserve is the claim valuation as of the moment that it is set --

MR. WHELAN: Object --

Q -- is that an accurate statement?

MR. WHELAN: Object to the form.

A Based on the information that we have.

Q Right.

A So we may not -- Obviously, we don't -- we could only know, you know, the information that we have at that time. If somebody calls in and says, oh, yes, the person went to the hospital and they

looked okay. And, so you think, okay, well, maybe it's just a treat and release. And then you find out later it's a fracture. Well, obviously, that wouldn't have been an accurate, but we wouldn't have known that. So it's based on the information we have at the time.

Q Okay. So the reserve amount is the claim valuation based on the information that the examiner or adjuster has at the time that that reserve is set?

A Correct.

Q Okay. How would somebody know what amount to set a reserve at?

A Based on your experience with settling claims and based on the accurate information you've been given, you know, it's an estimation or guesstimate of what the claim may settle for.

Q Are there any sort of guidelines or approximations available in the K.D., or otherwise, with respect to setting a reserve?

A As far as? Do you mean like --

Q Like if you have a broken leg, that might be estimated at "X"?

A No, huh-uh.

Q Okay.

A Because that would, you know, it's, you know -- No, no.

Q Okay. Just have to know.

A Based on your experience. And, obviously, the amount of coverage available as well.

Q Right. So I guess that's my next question.

You're never going to set a reserve above the available coverage, right?

A Correct.

Q And each coverage on a policy gets its own reserve, correct?

A Yes. Let me just go back to that.

Q Okay.

A On U.I.M. if you have stacking, obviously, it might show more.

Q Fair enough.

A So --

Q So if you have U.I.M., B.I. and you got two policies that's stacked --

A Then it's --

Q -- it could go up to the stackable limit?

A Correct, uh-huh.

Q But you're never going to have liability B.I. and U.I.M., B.I. combined on the same reserve;

is that right?

A That is correct.

Q Do you know why that is, why those coverages are kept separate?

A I would only assume it's because they're written separate.

Q Okay. Do you ever handle the liability and U.I.M. claims on the same wreck?

A Yes.

Q Okay. Do you always handle, if you were handling one of the claims, the other claim involving the same wreck?

So if you're handling the liability claim and there's a U.I.M. claim made, would you always be assigned that U.I.M. claim?

A No.

Q Okay.

A It depends on the circumstances.

Q Right. That's my next question.

Tell me the circumstances under which you would not be assigned both claims?

A If there was a bodily injury liability claim being made against our named insured, or like driver of our insured vehicle --

Q Right.

A And then that driver of our insured vehicle was also making a U.I.M. claim.

Q Okay.

A At that point I wouldn't handle both of those.

Q Do you know why?

A It's always -- this is the way it's always been done from my understanding. And this is the way I know it to be is that when you are investigating the claim and you are investigating that somebody's making a liability claim against our insured driver, saying they are responsible for an accident and you are looking at that, you have that person, that set of eyes looking to determine and protect our insured as we need to.

And then when our insured is then saying, hey, you know, I was injured in this and I have an underinsured motorist claim and I was not at fault, then we need somebody to investigate that with another set of eyes to determine if there was something owed to the insured as the -- for a coverage that they paid for.

Q Okay.

A So we have two sets of eyes on it, two different sets, if that --

Q All right. And the person handling the U.I.M. claim, what are they protecting?

MR. WHELAN: Object to form.

A Protecting the insured to make sure that we, that we're paying the insured what we owe them, if something is owed to them.

Q So it's not that individual's job to try to keep the U.I.M. money from the insured; is that fair?

A Correct.

Q And it wouldn't be that person's job to try to hide a fact that is known to them in order to keep the U.I.M. money from the insured, correct?

A Correct.

Q And if that person did take part in keeping facts hidden from the insured which helped the insured's claim, that person would not be doing their job, would they?

A If they had hidden facts, no.

Q Okay. Is it your understanding that it's not USAA goal to prevent their insured from collecting as much of the U.I.M. coverage as possible?

MR. WHELAN: Object to the form.

A You're asking it's not USAA goal to

prevent?

Q Right. Is it your understanding that USAA does not have the goal of preventing its insured from collecting as much of the U.I.M. coverage as possible?

MR. WHELAN: Object to form.

A I mean, our goal is to pay what we owe, investigate a claim and pay, you know, what we owe.

Q Okay. And what is owed would be determined by the true set of facts and circumstances relative to that particular wreck, correct?

MR. WHELAN: Object to the form.

A Yes.

Q Okay. And if an adjuster at USAA participated in keeping facts hidden in order to not pay an insured what they are owed, that individual would be violating USAA's policies and ethics, correct?

MR. WHELAN: Object to the form.

A Yes. If that had happened.

Q In your position, and I don't want to know the specifics of your salary or anything like that, okay. Be clear on that.

Is your -- What is your pay structure? Is

it a salary? Is it hourly? How are you compensated in your position?

A I'm hourly.

Q And is that true for all examiners, as far as you know?

A Yes.

Q Okay. Same with adjusters?

A Yes.

Q All right. And is that hourly rate based on your experience and years of service?

A I don't really know that. I mean, I know that there's, in each level, there's a, I guess a rate or range of what you can make.

Q Okay. How do you get from one level to the next?

A To be -- You have to be promoted.

Q Is there a set of written criteria that you have to meet in order to move from one level to the next?

A There are some. And then there are some recommendations. Again, it's been so long I couldn't really tell you specifics though. But I know that there are some that are required and some that are recommendations.

Q Okay. Where are those written down? Like

if you wanted to go look and see how you could get to the next level, where would you go?

A I don't really know. I know that when they post the position --

Q Okay.

A -- you know, like, you know, hey, there's an examiner posting coming. And then it would, I know it would say it then --

Q Okay.

A -- for sure. You know, in order to post you have to have been an Adjuster-I for "X" amount of years and you have to maybe at least have a degree or have something else and it -- you know.

Q Within the examiner position, are there different levels?

A No.

Q Okay. So is it your understanding that all examiners are paid the same?

A I don't know --

Q Okay.

A -- what anyone else makes.

Q Okay. How long have you been an examiner?

A Since 2012.

Q Okay. And has your pay -- And, again, I don't want to know how much or what you make or

anything like that.

Has your pay increased during that period of time?

A It has.

Q Okay. What was that increase or those increases based upon?

MR. WHELAN: Object to form.

A It can involve projects. It can, you know, furthering your education. And I just think -- That's the best of my memory.

Q Okay. What have, in those seven years, have you done to further your education? What are some examples of that?

A Taking some, like, continuing education courses, P.L.R.B. courses, but it's not continuing education 'cause it's -- That's all I -- the word I can use. Because it doesn't go toward my, necessarily go toward my licensing. But courses just have to do with, you know, insurance adjusting.

Q Where have you taken those courses?

A I take them online at home.

Q Okay. And when you say involvement in projects, what does that consist of?

A I am on a Medicare reporting team where I

handle Medicare checks or, you know, checking the portal and getting those things handled.

Q She deserves all the money for that. Medicare is a nightmare.

A Mentoring projects. There probably have been other things, but I can't remember.

Q All right. So one of the numbers that you called off is you knew how many cases you have pending?

A Uh-huh.

Q What other numbers do you keep tabs on --

MR. WHELAN: Object to form.

Q -- related to your work? I'm not -- I mean, you might know, you know, the local --

MR. WHELAN: That might be the weirdest question I've heard.

Q -- baseball team's record or something. I don't want to know that. I want to know statistics related to your work. Sorry.

A Probably the only other thing I can tell you, is I know average claim volume --

Q Okay.

A -- that I get in a week, but only myself. Because I can only see my own self, so, you know,

that's probably about it.

Q What is that?

A Usually five to seven claims a week.

Q Okay. And I guess that's about how many you close out every week to keep it coming?

A Try to.

Q Okay.

A Sometimes more, sometimes less.

Q Okay. Are there any tracking mechanisms, in terms of negotiation or settlement of claims below a reserve or within specific ranges or anything like that?

A Maybe that someone else can see. We don't see that. We can't see that.

Q Okay. Are there any kind of awards or bonus systems, bonus, you know, programs related to claims handling, specifically?

A No.

Q Okay. Are there any kind of award programs or bonus programs at all for examiners or adjusters?

A No.

Q Okay. Do you ever have any communication with anyone related to settlement amounts? In other words, the amount that you're settling a

particular claim or particular claims for within USAA? I'm not talking about outside attorneys, or the insureds. Obviously, you talk to them about it.

But any internal conversations about that that take place?

A In what sense, like --

Q Well, it's my understanding from what you said that the examiner does the investigation, gets the meds, sets the reserve, does the negotia -- handles the negotiations; is that right?

A Yes.

Q Okay. And so my question is, is there ever any communication, file note, e-mail, meeting, where somebody says, you know, you might have settled that case for a little more than you should have; or, you might have set -- you might have should have set that reserve a little higher to start with, so we know what we're dealing with on the front-end? Anything like that take place from time to time?

A There's no discussion, no, about settlement amounts or what we settled anything for after the fact.

Q Okay. What, if any, correspondence or

conversations take place on the front-end about those topics?

A With?

Q Anyone. So when you set a reserve amount, you get a demand letter --

A Uh-huh.

Q -- it says I demand the moon, the sky, the stars and the sun for good measure, what happens next?

A Demand comes in, should be sending a copy to our insured, copy of the demand letter talking about it. Potentially an access letter either has already been sent; or, if it hasn't, for whatever reason, then you would send it at that point in time.

And that would be it. Depending on, you know, where you need to go with it from there.

Q Okay.

A You evaluate it and you go from there.

Q And what does the evaluation process look like?

A Just break out the, you know, break down the demand, the medicals; put them in a file and determine the value of it, and then determine if you need to get authority.

Q Do you use a software program in order to value claims?

A I do not, no. Within USAA?

Q (Nods head.)

A Yes.

Q Okay.

A Some people could, yes.

Q Who uses the program?

A Depending on the value of the claim, any claim valued -- Well, there's criteria for it. Under twenty-five thousand. As long as they're not treat and release, they would be entered in our colossus system.

Q Okay. And so anything over twenty-five thousand does not go into colossus?

A Correct. Or U.I.M. claims.

Q No U.I.M. claims?

A No.

Q No?

A No, no.

Q Do you know why U.I.M. claims do not?

A There's some type of suit.

Q Have you ever had a meeting, or how do you know what you know about that?

MR. WHELAN: Object to form.

A Just always told.

Q Okay. Just water cooler talk?

A No. Just, we just -- through -- It wasn't a direct communication, like a document, but through manager, verbal.

Q Okay. Just at some point they said, we're not doing U.I.M. on colossus anymore?

MR. WHELAN: Object to form.

A Correct. And it's probably in our K.D. as well.

Q Okay. So those claims aside.

A Uh-huh.

Q U.I.M. claim comes in, demand is made, you set a reserve, right?

THE COURT REPORTER: Yes?

Q Yes?

A Yes.

Q Without communicating with anyone, typically?

A Typically, yes.

Q Okay.

A But each case, again, each case on its own merit, so it just depends on the specifics. But once you look at all the information.

Q Typically you set it as the examiner?

A Correct.

Q If you do need to talk to somebody, you talk to your manager?

A First.

Q First?

A Yes, uh-huh.

Q Can you give me an example of a situation where you would need to talk to your manager before doing that?

A Before setting the reserves?

Q Right.

A Maybe if there was some kind of, something in question. A questionable relatedness of the injury or -- Potentially.

Q All right. Where does it go from the manager? You said you talk to your manager. Do you always get a final decision there?

A Not necessarily.

Q Okay.

A Maybe we then might meet with the director, if needed.

Q Okay. And that's a meeting you would have with the director?

A With the manager.

Q Okay. And then the manager would meet

with the director?

MR. WHELAN: Object to form.

A The three of us.

Q The three, okay. That's what I'm trying to get.

Some companies are very chain of command oriented. Others are more collaborative. So that's all I'm trying to get at, okay?

A (Nods head.)

Q Yes?

A Yes.

MR. WHELAN: Object to form.

Q All right. We set a reserve, we have to respond, right?

A Yes.

Q How do we decide how to respond?

A To the demand?

Q Right.

A If -- Again, case by case.

Q Right.

A You know, maybe I'm doing it by myself and I can write it up and either it's within my authority, or it's not and I have to get authority, or I maybe need some additional information, so --

Q Okay.

A -- then I just -- we make the determination of how we're going to respond and then we move forward, or I make that determination. It just depends.

Q Okay. So let's -- The different authority levels, what is your authority level?

A Forty-five thousand.

Q Okay. And is that true for all examiners, as far as you know?

MR. WHELAN: Object to form.

A I don't know what anyone else's authority is.

Q Okay. Has your authority ever changed while you've been an examiner?

A Yes.

Q Okay. How often?

A Maybe twice, maybe three times. I can't remember.

Q Okay. What was it last?

A Either thirty or thirty-five.

Q Okay. And do you know what an Adjuster-I's authority is?

A I do not.

Q Okay. If you need to offer above forty-five thousand dollars on a case, how do you go

about that? What's the process?

A After I evaluate the claim, the injury, and if I feel that it's worth over forty-five thousand, then I would have to send it to my manager --

Q Okay.

A -- for her to review that. And she would have to agree with that, and put the authority in the file for me to make any offers.

Q Okay. What is the manager able to go to?

A My manager has seventy-five thousand, I believe.

Q Okay. Aggregate? So, in other words, another thirty thousand on top of your forty-five?

A Correct.

Q Okay.

A Total per exposure.

Q Exposure.

So if you and your manager agree that it's a hundred-thousand-dollar case, what would happen?

A It would have to go to the director --

Q Okay.

A -- for the authority.

Q Okay. And what is the director's authority level?

MR. WHELAN: Object to the form.

A I think a hundred.

Q Okay. And have you had claims that have resolved above a hundred thousand, you personally?

A Have I paid claims over a hundred thousand?

Q Yes.

A Yes.

Q So if everybody agrees, you, your manager, your director, that you need to offer a hundred and fifty thousand on a claim, what happens?

A It has to go to the executive director.

Q And do you know what -- That's not very good. It's now a guy, it's now --

A Matt.

Q -- Matt, right. Okay.

A Matthew.

Q Do you know what Matthew's authority level is?

A I'm not sure.

Q Okay. And that authority level would apply to reserves and offers, correct?

A So that I can understand that the reserve -- I can't reserve a file without his authority?

Q So let me ask it better.

MR. WHELAN: That's a question. For the record, that's a question she's asking.

MR. WILLEY, IV: Yeah.

Q Let me ask -- That's a question. Let me ask my question better, okay.

If you want to set a reserve above forty-five thousand, you have to get approval from your manager; is that correct?

A No. That is not correct.

Q That is not correct, okay.

So this process, the authority process only applies to the offering of money; is that accurate?

A Yes.

Q Okay. As an examiner, is it accurate to say that you were able to set a reserve at any amount within the coverage without anyone else's approval?

A Yes.

Q Okay. However, you would not be able to offer any amount above forty-five thousand without getting additional authority from your manager, correct?

A Correct.

Q Okay. That's what I was trying --

MR. WHELAN: All right.

MR. WILLEY, IV: You need a break?

MR. WHELAN: Yeah. Let's take a break.

MR. WILLEY, IV: Okay.

(Whereupon, a recess was had from 3:10 p.m. to 3:14 p.m.)

MR. WILLEY, IV: If you don't mind reading my last question.

THE COURT REPORTER: "Okay. However, you would not be able to offer any amount above forty-five thousand without getting additional authority from your manager, correct?"

Her answer is: Correct.

BY MR. WILLEY, IV:

Q So those authority requests, do they go through the computer system? How do they get transmitted? You yell down the hall, post a note?

A Yes. Through the computer system.

Q Okay. Are there preset meetings on authority requests? In other words, do you all get together every Wednesday at three to discuss all

your authority requests, or do you just take them as they come up?

A Take them as they come up.

Q Okay. I think I already asked this. But your manager and director are in close proximity to where you are at work?

A Yes.

Q Okay. The executive director, you don't know where he is, right?

A No.

Q Got that right.

Have you ever been reprimanded at work?

A No.

Q Okay. How does USAA do it? Is there like a -- and I'll give you an example so you know what I'm talking about.

Some companies have a, you know, a verbal warning, then a written warning, you know, and you get two written warnings and you're toast or whatever.

Do you know what USAA's reprimand process is?

A I think it's something like what you said, but I honestly, I don't know.

Q Never been involved with it?

A No.

Q Okay. I figured not. You seem to nice. Do you have any hard copy files that you deal with, or is everything electronic?

A It's all electronic.

Q Okay. Do you keep paper for any reason?

A Not that I keep, no.

Q Okay. Do you, from time to time, take notes on paper at your desk?

A I have. I take my voice mails down on paper and throw those away and maybe scribble something down here and there, but not actual notes.

Q When you take your voice mails down, do you then input them into the claims file, or do you just take it down, return the call and then dispose of the paper?

A Correct. I return the call. And then I will dock in the file that I have, whatever is done.

Q Okay. And is it USAA's policy that every call on a claim is supposed to be documented?

A Yes.

Q Okay. And is it documented in the claims file?

A Claims docs.

Q Claims docs.

Are the meetings that are had, for example, if you met with your manager to get additional authority, is that meeting documented in the claims docs?

A Typically it is.

Q Okay. Supposed to be?

A That I don't know. I mean, maybe it's the reason that you're meeting with them, you know, that just a quick question about something. But if you're conferencing a file, no. The manager docs the file.

Q Okay. You know when you call an insurance company and they say on the thing, this call may be recorded for, you know --

A Qualify purposes?

Q -- qualify assurance purposes. Does USAA record calls?

A They do.

Q Okay. Are those recordings stored in the claims docs?

A No, no.

Q Okay. As an examiner, do you have access to those recordings?

A They're just the, the randomly recorded calls, not anything that we didn't record. Like, if I record a statement, obviously, I have access to that.

Q Right, okay.

A But they're randomly, no, we do not.

Q Okay.

A They're not --

Q And, so USAA doesn't record every call for purposes of inclusion in the claims file; is that correct?

A Correct.

Q Okay.

A That I'm aware of.

Q That you're aware of.

When you want to record a call, for example, record a statement to put into the claims file, how do you do it?

MR. WHELAN: You talking about a statement, not a call, right? You said record a call or a statement.

MR. WILLEY, IV: Well, a call statement. I mean, a person doesn't sit there typically for --

MR. WHELAN: Okay. You talking about

a recorded statement.

BY MR. WILLEY, IV:

Q I will give you an example.

First time you talk to your insured and you say, okay, I'm going to record this call. Tell me what happened. How do you record that call? Like, is there a button on claims doc, or how does that work?

A Yes. There's a button that you push when you're ready to record the statement.

Q Okay. And then that recording gets saved into the claims file?

A Correct.

(Whereupon, Plaintiff's Exhibit Number 1 was marked for identification.)

Q All right. I need an education, okay. All right.

A I will do my best.

Q I know you will.

The first thing I'm going to mark is Plaintiff's Exhibit 1, which is going to be Hood USAA production 001 through 0023.

MR. WHELAN: Let me see that for a second.

MR. WILLEY, IV: Yeah. That's the

most recent one.

MR. WHELAN: Okay.

BY MR. WILLEY, IV:

Q What is it?

A What is this?

Q Yes. And you can flip through it, feel free to flip through it.

A Copy of the claims docs.

Q Okay. And is that printed off the computer? Is that how that's generated?

A It looks like it.

Q Okay. Looking at the first page, your name is on it, right?

A Yes.

Q Okay. Did you open this file; is that accurate? Is that what that first entry is?

A I set the claim up, yes.

Q Okay. How did you get notice of the claim?

A How did you get a notice of this claim?

Q Yes.

A I was already handling the initial claim that was set up. I was handling the liability investigation claim.

Q All right. At the time that you opened

this claim, how long had you been handling that claim?

A I would assume, because I don't really remember, since somewhere, approximately, since the date of the accident in November. I don't know the exact time frame, no.

Q At the time that you opened this claim, had you already conducted an investigation into the facts surrounding the accident at issue in this claim?

A From what I can remember, I was still investigating the accident. It was not completed.

Q Okay. So if that original accident was reported to you in November, this claim was open in May, 2015 --

A Uh-huh.

Q -- correct?

A Yes.

Q Okay. So you were six months into but not completed with your investigation of the underlying facts; is that accurate?

A From what I can remember.

Q Okay.

A Yes.

Q All right. Who -- What was the posture of