

The State of South Carolina
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2024-000511

RECEIVED

Jan 23 2025

SC Court of Appeals

Tracy Campbell and Daniel Campbell,..... Appellants,

v.

Brian Keith Newman and Kimberly Norman,..... Respondents.

RECORD ON APPEAL

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Certificate of Counsel

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
 C.A. NO.: 2022-CP-24-00431

TRACY CAMPBELL and)
 DANIEL CAMPBELL,)

Plaintiffs,)

vs.)

BRIAN KEITH NEWMAN and)
 KIMBERLY NORMAN,)

Defendants.)

**ORDER DENYING PLAINTIFFS' MOTION
 FOR NEW TRIAL *NISI ADDITUR* OR NEW
 TRIAL ABSOLUTE**

This matter comes before the Court pursuant to Plaintiffs' Motion for a New Trial *Nisi Additur* or a New Trial Absolute. After having reviewed the Memorandums by the parties', hearing arguments from counsels and having recollected the occasion, this Court respectfully denies the Motions. There is no evidence in the record, nor is there any anecdotal evidence, showing that the jury's verdict in this case was inadequate.

Motion for New Trial *Nisi Additur*

A trial judge may grant a new trial *nisi additur* when a jury's verdict is inadequate. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d (1995). However, to grant such relief, the trial judge must state compelling reasons for invading the province of the jury. *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). "When a party moves for a new trial based on challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 520, 431 S.E.2d 557, 558 (1993). The test employed by the Court in determining whether to set aside a verdict on the grounds of either excessiveness or inadequacy is whether the verdict is so shocking as to manifestly show the jury

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was moved by considerations not found on the evidence and/or the instructions of the trial judge. *Toole v. Toole*, 260 S.C. 235, 195 S.E.2d 389 (1973). In the case at bar, the jury's verdict is not inadequate in light of issues related to proximate cause and the believability and credibility of the witnesses.

In this case, the jury sat for roughly two to three days listening to the evidence and arguments presented by the parties. The medical bills for co-plaintiff Tracy Campbell were \$57,272.52 and co-plaintiff Tracy Campbell did not lose any wages as she used sick time, disability, and there was no request for reimbursement for the sick time. While it is never possible to know for sure what the jury was thinking, it appears that, the jury did not believe that there was a valid claim for Loss of Consortium for co-plaintiff Daniel Campbell. The jury's verdict was \$50,000.00 awarded to co-plaintiff Tracy Campbell and no award to co-plaintiff Daniel Campbell for the Loss of Consortium. Plaintiffs claim that this verdict is inadequate because it did not award anything for co-plaintiff Tracy Campbell's pain and suffering, future pain and suffering, mental suffering or permanency or discounting those damages. This Court finds that the verdict is not grossly inadequate based on the testimony and evidence presented at trial. Furthermore, the verdict was not grossly inadequate or excessive so as to shock the conscience of this Court. Additionally, there is no indication that the verdict reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.

Proximate cause and the believability and credibility of witnesses were questions of fact for the jury to decide in this case. The jury was called on to decide the believability and credibility of each witness that testified. It is reasonable to believe that the jury considered the total special damages claimed by the plaintiffs, the believability and credibility of plaintiffs' testimony, the credibility of co-plaintiff Tracy Campbell's expert testimony, the credibility of the co-defendant

#2
11/3/24

Brian Keith Newman, the pre-existing medical conditions and gap in co-plaintiff Tracy Campbell's medical treatment, to arrive at its verdict of \$50,000.00. The defense argued from the beginning of the trial that a substantial portion of the plaintiff's treatment costs were not related to this accident. Evidently, the jury agreed with this argument and proximate cause.

Regarding a punitive charge, the Court ruled, and continues to maintain, that insufficient evidence was presented by the plaintiffs that the defendant's actions at the time of this accident were "willful, wanton, or reckless". As such, the Court denied the plaintiff's request for a punitive charge and continues to maintain that not charging the jury on the punitive claim was proper.

In addition, the Court ruled, and continues to maintain, that other allegations of failing to allow other matters into evidence cited in the plaintiff's Memorandum for a New Trial were proper and clearly within the sole discretion of the trial judge.

Further, regarding the plaintiff's claim that the jury's verdict was insufficient regarding the plaintiff's Loss of Consortium claim appears to have been supported by the facts presented.

Taking all of the foregoing facts and circumstances into consideration, this Court finds that the jury's verdict was not inadequate or insufficient. Therefore, plaintiffs' Motion for a New Trial *Nisi Additur* is denied.

Motion for New Trial Absolute

A trial court may grant a new trial; however, the jury's determination of damages is entitled to substantial deference. *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993). This Court must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the Court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *Krepps v. Ausen*,

#3
7/10/24

324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). It is the duty of this Court to sustain verdicts when a logical reason for reconciling them can be found. *Daves v. Clearly*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003). A jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention. *Daves*, 355 S.C. at 234; 584 S.E.2d at 432. For the reasons stated above, this Court finds that jury's verdict was not grossly inadequate in light of issues related to proximate cause and the believability and credibility of the witnesses.

NOW, THEREFORE, the plaintiffs' Motion for a New Trial *Nisi Additur* and/or a New Trial Absolute is denied.

AND IT IS SO ORDERED.



The Honorable Donald B. Hocker
Circuit Court Judge
Eighth Judicial Circuit

Greenwood, SC
January 29, 2024

Feb



STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2019-CP-24-01262

TRACY CAMPBELL and)
DANIEL CAMPBELL,)

Plaintiffs,)

vs.)

BRIAN KEITH NEWMAN and)
KIMBERLY NORMAN,)

Defendants.)

**CONSENT ORDER PURSUANT TO
RULE 40(J), SCRPC**

Pursuant to Rule 40(j), SCRPC, the parties have agreed to strike the above-referenced action from the docket, and have further agreed that if the case is restored within one (1) year, the Statute of Limitations shall be tolled during the time the case is stricken.

NOW, THEREFORE, on the Motion of W. H. Nicholson, III, attorneys for plaintiffs, and with the consent of Michael T. Coulter, Attorney for Progressive Direct Insurance Company, it is Ordered that this action is hereby stricken from the docket with leave to restore within one (1) year of the date stricken pursuant to Rule 40(j).

IT IS SO ORDERED.

Judge

April ____, 2021
Greenwood, SC

I SO MOVE:

s/W. H. Nicholson, III
W. H. Nicholson, III (SC Bar #
Nicholson, Meredith & Anderson, LLC
P.O. Box 457
Greenwood, SC 29648
(864) 229-7241
Attorney for Plaintiffs

I CONSENT:

s/Michael T. Coulter
Michael T. Coulter (SC Bar# 15177)
Clarkson, Walsh, & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
Attorney for Progressive Direct Ins. Co.



Greenwood Common Pleas

Case Caption: Tracy Campbell , plaintiff, et al VS Brian Keith Newman , defendant,
et al
Case Number: 2019CP2401262
Type: Order/Strike Case From Active Roster

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2021-06-01 14:18:57 page 3 of 3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD)	C.A. NO.: 2019-CP-24-01262
TRACY CAMPBELL and)	
DANIEL CAMPBELL,)	
Plaintiffs,)	
vs.)	CONSENT ORDER RESTORING
	CASE TO DOCKET
	PURSUANT TO RULE 40(J)
BRIAN KEITH NEWMAN and)	
KIMBERLY NORMAN,)	
Defendants.)	
_____)	

THIS MATTER COMES before the Court upon Motion to Restore pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. By and with the consent of the parties, through their respective counsel, this matter is hereby restored to the active roster.

IT APPEARING to the Court that the matter should be restored to the docket since a Motion was timely filed seeking the restoration of the case on the docket.

NOW THEREFORE, this case is hereby restored to the active general civil docket for Greenwood County Court of Common Pleas. The case shall be assigned a new civil action number and placed at the bottom of the general civil docket as if it is a newly-filed case.

IT IS SO ORDERED.

The Honorable Eugene C. Griffith, Jr.
Chief Judge for Administrative Purposes

Dated: _____, 2022
_____, South Carolina

I so move:

s/W.H. Nicholson, III
W.H. Nicholson, III
Attorney for Plaintiffs

I consent:

s/Michael T. Coulter
Michael T. Coulter
Attorney for Defendant



Greenwood Common Pleas

Case Caption: Tracy Campbell , plaintiff, et al VS Brian Keith Newman , defendant,
et al
Case Number: 2019CP2401262
Type: Order/Restore Case To Active Docket

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2022-05-06 11:31:11 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	C.A. NO.: 2022-CP-24-00431
TRACY CAMPBELL and	)	
DANIEL CAMPBELL,	)	
	)	
Plaintiffs,	)	AMENDED CONSENT ORDER
	)	OF CONTINUANCE
vs.	)	
	)	
BRIAN KEITH NEWMAN and	)	
KIMBERLY NORMAN,	)	
	)	
Defendants.	)	

IT APPEARING that all parties consent to the continuance of the trial of this case from the terms of court beginning, Tuesday, January 17, 2023 and Monday, February 13, 2023 on the grounds that plaintiffs need a de bene esse deposition of treating physician prior to trial which is currently scheduled for February 27, 2023 and the parties are scheduled to reconvene mediation on Friday, March 10, 2023 with Steve Pruitt as mediator.

IT FURTHER APPEARING that on the basis of this representation, I establish the following schedule for the orderly completion of this action: the deposition shall be conducted on February 27, 2023, reconvene mediation on March 10, 2023 and this case shall be subject to trial after March 27, 2023.

IT IS HEREBY ORDERED that this case is protected from being called for trial for the terms of court for January 17, 2023 and February 13, 2023 and shall be subject to trial after March 27, 2023.

AND IT IS SO ORDERED.

Chief Administrative Judge

WE SO MOVE AND CONSENT:

s/W. H. Nicholson, III

W.H. Nicholson, III
Nicholson, Meredith & Anderson
Attorneys for Plaintiffs

WE SO MOVE AND CONSENT:

s/Michael T. Coulter

Michael T. Coulter (S.C. Bar No. 15177)
Clarkson, Walsh & Coulter, P.A.
*Attorneys for Progressive Direct Insurance
Company pursuant to S.C. Code Ann. §38-77-
160*



Greenwood Common Pleas

Case Caption: Tracy Campbell , plaintiff, et al VS Brian Keith Newman , defendant,
et al
Case Number: 2022CP2400431
Type: Order/Continuance

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2023-01-10 14:04:50 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2022-CP-24-00431

TRACY CAMPBELL and)
DANIEL CAMPBELL,)

Plaintiffs,)

**SECOND AMENDED CONSENT
ORDER OF CONTINUANCE**

vs.)

BRIAN KEITH NEWMAN and)
KIMBERLY NORMAN,)

Defendants.)

IT APPEARING that all parties consent to the continuance of the trial of this case from the terms of court beginning, Monday, March 27, 2023 on the grounds that plaintiffs need a de bene esse deposition of treating physician prior to trial which was scheduled for February 27, 2023, however the treating physician had to cancel and rescheduled the deposition for Monday, March 13, 2023 and the parties are scheduled to reconvene mediation on Friday, April 21, 2023 with Steve Pruitt, as mediator.

IT FURTHER APPEARING that on the basis of this representation, I establish the following schedule for the orderly completion of this action: the deposition shall be conducted and completed on March 13, 2023, reconvene mediation on April 21, 2023 and this case shall be subject to trial after May 29, 2023.

IT IS HEREBY ORDERED that this case is protected from being called for trial for the terms of court for March 27, 2023 and shall be subject to trial after May 29, 2023.

AND IT IS SO ORDERED.

Chief Administrative Judge

WE SO MOVE AND CONSENT:

s/W. H. Nicholson, III

W.H. Nicholson, III
Nicholson, Meredith & Anderson
Attorneys for Plaintiffs

WE SO MOVE AND CONSENT:

s/Michael T. Coulter

Michael T. Coulter (S.C. Bar No. 15177)
Clarkson, Walsh & Coulter, P.A.
*Attorneys for Progressive Direct Insurance
Company pursuant to S.C. Code Ann. §38-77-
160*



Greenwood Common Pleas

Case Caption: Tracy Campbell , plaintiff, et al VS Brian Keith Newman , defendant,
et al
Case Number: 2022CP2400431
Type: Order/Continuance

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2023-03-13 15:20:20 page 3 of 3

2022-431

VERDICT FORM

CAMPBELL V. NEWMAN

2019-CP-24-01262

Filed CP 8th Jud Cir Greenwood, SC
2023 JUN 1 PM5:47

Filed SS 8th Jud Cir Greenwood, SC
2023 JUN 1 PM5:28

1. As to the claim of Tracy Campbell, we the jury unanimously find:

hj For the Plaintiff and award her \$ 50,000 actual damages.

Or

As to the claim of Tracy Campbell, we the jury unanimously find:

_____ For the Defendant.

2. As to the claim of Daniel Campbell, we the jury unanimously find:

hj For the Plaintiff and award him \$ 0 actual damages.

Or

As to the claim of Daniel Campbell, we the jury unanimously find:

hj For the Defendant.

FORELADY

Shannon Tammes

6-1-23

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	CIVIL ACTION NO: 2019-CP-24-_____
	)	
Tracy Campbell and	)	
Daniel Campbell,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	SUMMONS
	)	
Brian Keith Newman and	)	JURY TRIAL DEMANDED
Kimberly Norman,	)	
	)	
Defendants.	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action and to serve a copy of your Answer to the said Complaint on the subscriber at his offices, 109 West Court Avenue, P. O. Box 457, Greenwood, South Carolina, within thirty (30) days after the service hereof, exclusive of the date of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

NICHOLSON MEREDITH & ANDERSON, LLC

s/W.H. Nicholson, III
W.H. Nicholson, III
Attorney for Plaintiff
109 W. Court Avenue
P. O. Box 457
Greenwood, SC 29648
(864) 229-7241 Phone
(864) 229-2739 Fax

November 13, 2019
Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	CIVIL ACTION NO: 2019-CP-24-_____
	)	
Tracy Campbell and	)	
Daniel Campbell,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	COMPLAINT
	)	
Brian Keith Newman and	)	JURY TRIAL DEMANDED
Kimberly Norman,	)	
	)	
Defendants.	)	

Plaintiffs, complaining of Defendant herein, would allege and show to the Court that:

1. Plaintiffs are citizens and residents of the County of Greenwood, State of South Carolina.
2. Upon information and belief, Defendants are citizens and residents of the County of Greenwood, State of South Carolina.
3. Venue is proper in Greenwood, South Carolina, as the act or omission giving rise to negligence occurred in Greenwood County, as provided in S.C. Code § 15-7-30.
4. At all times herein mentioned, Plaintiff Tracy Campbell was the passenger in a 2017 Chevrolet SUV, VIN 2GNALBEK9H1500215, owned by Plaintiff Daniel Campbell.
5. At all times herein mentioned, Defendant Brian Newman was the driver of a 2000 Buick sedan, VIN 1G4HR54K5YU182795, owned by Defendant Kimberly Norman

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

6. That on or about the 14th day of June, 2018, at approximately 6:15 PM, Plaintiff Tracy Campbell was a passenger in the above referenced Chevrolet SUV traveling southeast

on US Highway 225, being driven by her husband, Plaintiff Daniel Campbell. At the same time and place, Defendant Brian Newman was also traveling southeast on US Highway 225, and was driving too fast for conditions. The Plaintiff's vehicle was slowing to make a left turn, using a proper turn signal when suddenly and without warning, Defendant Brian Newman struck Plaintiffs' vehicle in the rear.

7. That Defendant Brian Newman is guilty of one or more of the following acts of negligence, gross negligence, and recklessness which proximately caused the accident and injuries to Plaintiff:
 - a. In operating his vehicle in an unsafe manner;
 - b. In driving too fast for conditions;
 - c. In failing to maintain a proper lookout;
 - d. In failing to maintain the proper attentiveness while driving;
 - e. In failing to keep his vehicle under proper control;
 - f. In failing to apply brakes;
 - g. In failing to stop his vehicle before he collided with Plaintiff's vehicle;
 - h. In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there existing, said acts being in violation of the statute laws of the State of South Carolina.
8. That Defendant did violate Code Section 56-5-1520 of South Carolina Statute Annotated, said violation being negligence per se.
9. That as a direct and proximate result of Defendant Brian Newman's negligence, gross negligence, and recklessness as aforesaid, Plaintiff suffered great physical harm and injury from being hit in such a forceful manner, which caused Plaintiff to undergo much physical pain and suffering, has caused and will in the future cause Plaintiff to

have to spend money for medical services, has impaired Plaintiff's enjoyment of life, and has caused Plaintiff permanent impairment.

10. That the Plaintiff is informed and believes that because of the negligence, gross negligence, and recklessness of Defendant Brian Newman as hereinabove enumerated, the Plaintiff is entitled to an award of actual and punitive damages in an appropriate amount. The Plaintiff is entitled to damages for pain and suffering.

FOR A SECOND CAUSE OF ACTION
(Negligent Entrustment as to Defendant Kimberly Norman)

11. Plaintiffs reallege and incorporate by reference the above paragraphs as if fully set forth herein verbatim.
12. Defendant Kimberly Norman negligently entrusted her motor vehicle to Defendant Brian Newman, who has a history of traffic violations including multiple convictions and guilty pleas for Driving Under the Influence and Driving Under Suspension. Because of this history, Defendant Brian Newman had no driver's license on the date of this accident when Defendant Kimberly Norman allowed him to drive her vehicle, which created an appreciable risk of harm to others including Plaintiff, a member of the motoring public, thereby establishing a relational duty on the part of Kimberly Norman to conform to her conduct to the law for the safety of other motorists.
13. As a direct, foreseeable, and proximate result of the negligent, reckless, willful, and wanton acts and omissions of Defendant Kimberly Norman, Plaintiff suffered pain and suffering, and physical harm and injury, and continues to suffer same.
14. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of Defendant Kimberly Norman set out above, Plaintiff is entitled to recover actual and punitive damages, jointly and severally, as determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Loss of Consortium)

15. Plaintiffs reallege and incorporate by reference the above paragraphs as if fully set forth herein verbatim.
16. Plaintiffs were married on August 19, 1995, and the Plaintiffs continue to be married. That as a direct and proximate result of the Defendants' negligence and recklessness as aforesaid, Plaintiff Daniel Campbell has suffered a loss of consortium. Because of the aforesaid willful, wanton, reckless, careless, negligent and grossly negligent acts and conduct of the Defendants as hereinabove more particularly set forth, the Plaintiffs were caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of their marital relationship.

WHEREFORE, Plaintiff prays the Court grant Plaintiff a jury trial, award judgment against the Defendants, jointly and severally, for actual and punitive damages in an amount to be determined by the trier of fact, and for such other and further relief as the Court deems just and proper.

NICHOLSON MEREDITH & ANDERSON, LLC

s/W.H. Nicholson, III
W.H. Nicholson, III
Attorney for Plaintiff
109 W. Court Avenue
P. O. Box 457
Greenwood, SC 29648
(864) 229-7241 Phone
(864) 229-2739 Fax

November 13, 2019
Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	C.A. NO.: 2019-CP-24-01262
TRACY CAMPBELL and	)	
DANIEL CAMPBELL,	)	
	)	
Plaintiffs,	)	
	)	PROGRESSIVE DIRECT INSURANCE
vs.	)	COMPANY'S NOTICE OF
	)	APPEARANCE AND ANSWER OF
BRIAN KEITH NEWMAN and	)	DEFENDANTS
KIMBERLY NORMAN,	)	
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

Progressive Direct Insurance Company, as possible underinsured motorist carrier (hereinafter "Carrier") herein, hereby files a Notice of Appearance and Answer to the Complaint as follows:

1. That the Carrier, by and through its assigned counsel, Michael T. Coulter, notices its appearance pursuant to Section 38-77-160, 1976, S.C. Code of Laws, as amended, specifically reserving any and all rights, objections, and defenses it may have available under the law and the insurance policy in question, and request that copies of all pleadings, discovery, and other materials served in this action by any party be served upon the undersigned at the address given below.

2. The alleged underinsured motorist carrier respectfully demands a jury trial pursuant to Rule 38 of the South Carolina Rules of Civil Procedure. That assigned counsel is not representing the Defendant and will not undertake that representation at this time.

3. To the extent that a responsive pleading is required, the undersigned denies each and every allegation of the Complaint, asserts affirmative defenses set forth in Rule 8 of the South Carolina Rules of Civil Procedure, as to service and personal jurisdiction,

asserts the defense that the plaintiffs' claims are, or maybe, time barred by the applicable Statute of Limitations, and raises those defenses set forth in Rule 12, of the South Carolina Rules of Civil Procedure, all to the extent they are applicable.

4. That counsel for the Carrier specifically reserves the option to assume control of the defense of the case in the name of the defendants pursuant to the underinsurance or uninsured statute should the Carrier choose to exercise that option; and

5. Further, in filing this notice, Progressive Direct Insurance Company makes no representations, admissions or otherwise as to the existence, applicability or amount of any insurance coverage. Progressive Direct Insurance Company specifically pleads and asserts any applicable offsets, credits, setoffs or exclusions available under the terms of any applicable policy and South Carolina Law.

6. This appearance is made pursuant to South Carolina Code of Laws, Section 38-77-160, in making this appearance, Progressive Direct Insurance Company specifically reserves all rights, objections, setoffs, exclusions, credits, offsets, and defenses available under the terms of any applicable policy, and the applicable laws and statutes of the State of South Carolina.

7. In making this appearance, the Carrier specifically reserves and does not waive any rights pursuant to its policy of insurance, including, but not limited to, the applicability of underinsured and/or uninsured motorist coverage to this action and/or whether or not underinsured and/or uninsured motorist coverage is included as part of said policy, and further intends to reserve all rights which it may have pursuant to South Carolina Code 38-77-160.

8. That the Carrier requests that its counsel be notified in writing, and served by counsel of record for Plaintiffs and Defendants, of all court hearings, motion hearings, status conferences, trial dates and like matters and be provided copies of all discovery requests, discovery responses and notice of all depositions and like proceedings by the respective counsel for the parties herein.

9. The Carrier admits, upon information and belief, the allegations contained in paragraph 1 of the plaintiffs' Complaint.

10. The Carrier admits, upon information and belief, the allegations contained in paragraph 2 of the plaintiffs' Complaint.

11. The Carrier admits the allegations contained in paragraph 3 of the plaintiffs' Complaint.

12. The Carrier admits, upon information and belief, the allegations contained in paragraph 4 of the plaintiffs' Complaint.

13. The Carrier admits, upon information and belief, the allegations contained in paragraph 5 of the plaintiffs' Complaint.

14. The Carrier admits the defendant made contact with the plaintiffs' vehicle. The Carrier denies the remaining allegations contained in paragraph 6 of the plaintiffs' Complaint.

15. The Carrier denies the allegations contained in paragraph 7 of the plaintiffs' Complaint, including any subparts contained therein.

16. The Carrier denies the allegations contained in paragraph 8 of the plaintiffs' Complaint.

17. The Carrier denies the allegations contained in paragraph 9 of the plaintiffs' Complaint including all subparts.

18. The Carrier denies the allegations contained in paragraph 10 of the plaintiffs' Complaint.

19. The Carrier denies the allegations contained in paragraph 11 of the plaintiffs' Complaint.

20. The Carrier denies the allegations contained in paragraph 12 of the plaintiffs' Complaint.

21. The Carrier denies the allegations contained in paragraph 13 of the plaintiffs' Complaint.

22. The Carrier denies the allegations contained in paragraph 14 of the plaintiffs' Complaint.

23. The Carrier denies the allegations contained in paragraph 15 of the plaintiffs' Complaint.

24. The Carrier denies the allegations contained in paragraph 16 of the plaintiffs' Complaint.

25. The Carrier denies all allegations in the last paragraph of the plaintiff's Complaint which starts with the phrase "WHEREFORE."

26. The Carrier denies each and every allegation of the plaintiff's Complaint not specifically admitted, modified, or explained herein above.

27. The Carrier hereby denies all Requests for Admissions served on the defendants pursuant to Rule 36 of the South Carolina Rules of Civil Procedure which are inconsistent with defendants/Carrier's Answer.

FOR A SECOND DEFENSE

28. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

29. The Carrier alleges that the Complaint of the plaintiff fails to state facts sufficient to constitute a cause of action against them and, therefore, the plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

30. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

31. The Carrier alleges that even assuming that the defendants were negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on their part operated as a proximate cause of the accident and the plaintiffs' resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that the plaintiffs' negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the accident and the plaintiffs' resulting injuries and damages, if any. For that reason, the Carrier is not liable to the plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE

32. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

33. The Carrier alleges that even if the defendants were negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and if any such conduct on their part operated as a greater than 50% cause of the accident and the plaintiffs' resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, they are entitled to a determination as to the percentage which the plaintiffs' negligent, grossly negligent, reckless, willful and wanton conduct contributed to the accident and to a reduction of any amount awarded to the plaintiffs in an amount equal to that percentage of the plaintiffs' own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

34. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

35. The Carrier alleges that the plaintiffs have failed to mitigate their damages and, therefore, the plaintiffs' Complaint should be dismissed.

FOR A SIXTH DEFENSE

36. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

37. The Carrier specifically reserves any additional and/or affirmative defenses as may become available to it or revealed to it during the course of the investigation and/or discovery in this case.

FOR A SEVENTH DEFENSE

38. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

39. The defendants have not been properly served under South Carolina law and therefore, the Carrier assert all rights pursuant to Rule 12(b)(2), (4), and (5) of the South Carolina Rules of Civil Procedure, and requests that the plaintiffs' Complaint be dismissed.

FOR AN EIGHTH DEFENSE

40. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

41. The defendants have not been properly served within 120 days of the filing of the Summons and Complaint and therefore, the Carrier assert all rights pursuant to Rule 3(a) (2) of the South Carolina Rules of Civil Procedure, and requests that the plaintiffs' Complaint be dismissed.

FOR A NINTH DEFENSE

42. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

43. The Carrier alleges that plaintiffs saw or should have seen any danger which may have been created by defendants' negligence, if any, for some distance; that plaintiffs saw or should have seen defendants' automobile approaching; that in the exercise of due care, plaintiffs should have and could have realized the imminent danger to all concerned and could have by the proper action and control of his/her vehicle stopped or turned so as to avoid the collision which ensued; and, that plaintiff was negligent and/or willful in failing to utilize with reasonable care and competence his/her

then existing ability to avoid the collision which ensued and thereby failing to take advantage of the last clear chance to avoid the collision, for which reasons defendants are not liable to plaintiffs in any sum whatsoever.

FOR A TENTH DEFENSE

44. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

45. The Carrier would allege that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection causes of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding section of the Constitution of the State of South Carolina, Article 1, Section 3.

Plaintiffs' claim for punitive damages violates the Carrier's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the Carrier's exercise of that right.

Plaintiffs' claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons;

(a) The standard or test for determining the requisite mental state of the defendants for imposition of punitive damages is void for vagueness; and

(b) Insofar as punitive damages are not measured against actual injury to the plaintiffs and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damages that may be awarded is indeterminate at the time of the defendants' alleged conduct.

WHEREFORE, having fully answered the Complaint of the plaintiffs, the Carrier prays that the Complaint of the plaintiffs be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this Court shall deem just and proper.

By: s/Michael T. Coulter
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JURY TRIAL DEMANDED

By: s/Michael T. Coulter
Michael T. Coulter (15177)

Greenville, South Carolina
November 25, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2022-CP-24-00431

TRACY CAMPBELL and)
DANIEL CAMPBELL,)

Plaintiffs,)

vs.)

BRIAN KEITH NEWMAN and)
KIMBERLY NORMAN,)

Defendants.)

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR NEW TRIAL ABSOLUTE
AND MOTION FOR NEW TRIAL BASED ON
THE THIRTEENTH JUROR DOCTRINE**

TO: PROGRESSIVE DIRECT INSURANCE CO. AND ITS ATTORNEY, MICHAEL T. COULTER, ESQ.:

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Plaintiffs, will move before the presiding Judge of the Court of Common Pleas of Greenwood County on the tenth (10) day after service of these Motions, or at such other time and place as the Court may deem just and proper, for an order of the Court setting aside the Jury Verdict of June 1, 2023 in this matter and granting Plaintiffs' Motion for a New Trial and in the alternative, New Trial Nisi Additur. These motions will be made upon the evidence upon the record upon the following grounds:

I.

The Plaintiffs would argue that the trial court erred in failing to allow the issue of punitive damages to go to the jury. In light of the Defendant's admission the he was violating a statute (Driving Under Suspension) at the time of the collision, the Trial Judge should've submitted the issue of punitive damages to the jury. In light of such error, the Plaintiffs would request a grant of a new trial. Under S.C. precedent, negligence per se is evidence of recklessness requiring the trial court to

consider the issue of punitive damages. A causative violation of statute constitutes negligence per se and is evidence of recklessness and willfulness, requiring submission of the issue of punitive damages to the jury. Wise v. Broadway, 315 S.C. 273, 276, 433 S.E. 2d 857, 859 (1993). Plaintiffs would show that it was error for the trial judge to refuse to charge the jury on the issue punitive damages although there was a direct admission of a statutory violation, as well as abundant evidence of the defendant's twenty (20) plus year history of driving without a license which clearly presented a jury question as to punitive damages under the well settled rule that a showing of a statutory violation can be evidence of willfulness and recklessness, Austin v. Specialty Transport Services, Inc., 358, 298, 314, 594 S.E. 2d 867, 875 (Ct. App. 2004). A case should be submitted to a jury when the evidence is susceptible of more than one reasonable inference. Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence. Where a request to charge is timely made and involves a controlling legal principle, a refusal by a trial judge to charge the request constitutes reversible error. Fairchild v. South Carolina Department of Transportation. 398 S.C. 90, 727 S.E.2d 407 (2012). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful or wanton. Mishoe v. QHG of Lake City, Inc., 366 S.C. 195 621 S.E.2d 363 (2005).

Plaintiffs can further show that Defendant's violation of statute was causally linked both in fact and proximately to their injuries. Proximate cause requires proof of causation in fact and legal cause by establishing that 'but for' the defendant's negligence the harm would not have occurred. Seals by Causey v. Winburn, 314 S.C. 416 445 S.E. 2d 94 (Ct. App. 1994). The plaintiff must show that the defendant neglected a duty imposed by statute and that he would not have been injured if the duty had been performed. He just also show that his injury was caused by a hazard which the statute was designed to prohibit. Bell v. Atlantic Coast Line R. Co., 202 S.C. 160, 24 S.E. 2d 177 (1943).

Where the defendant's breach of an applicable statute or regulation has caused the injury, this breach will support a finding of recklessness and an award of punitive damages. Reed v. Clark, 277 S.C. 310, 286 S.E. 2d 384 (1982). In the case of Seals, it was argued that James Seals, a minor, was entitled to submit the issue of recklessness and willfulness occasioned by Defendants violation of state and federal labor laws to the jury in an argument for punitive damages. Seals by Causey v. Winburn, 314 S.C. 416, 417 S.E. 2d 94, 95. (1994). The Defendants hired Seals, then eight years old, to work on their farm with his parents. Id. at 418. He was injured riding with several workers on a trailer being pulled by a tractor driven by one of the Defendants when it hit a pothole. Id. The argument was successfully made on appeal that violation of state and federal labor laws constituted negligence per se which proximately caused the injury, as 'but for' the violation the Plaintiff could not have been injured. In the case before the court it has shown that the Defendant neglected a duty imposed by statute by habitually driving under suspension. As the court found in Seals, the Defendant falls under no exemption of the state law prohibiting driving under suspension. As stated in Seals, if Seals had not been working on the farm, he would not have been injured. Id. at 419. Similarly in this instance, had Defendant Newman not have been driving without a license, he wouldn't have been able to injure the Plaintiffs.

II.

Plaintiffs would further show that it was error for the trial court not to allow cross-examination of the Defendant with regard to similar habitual conduct that contradicted his testimony after he attempted to mitigate his admission of liability. This omission on the part of the trial court was particularly crucial given the Defendant's testimony that while he hadn't had a driver's license since 1998, he continued to drive when 'he needed to,' to help friends who needed groceries or medicine. It could easily be inferred through Defendant's testimony that he engaged in the habit or routine practice of driving under suspension, though he attempted to provide a rationalization of this habit.

Though counsel for the Defendant had conceded liability, during this exchange the Defendant attempted to qualify his conduct as reasonable by saying that he only drove to help others. During the course of this testimony, he added that he'd had seizures since he was seven (7) years old. He went further to say that though he had no memory of the collision he 'could have had a seizure' which resulted in the collision, though he wasn't sure. Though liability for the incident was allegedly admitted, by qualifying his actions and attempting to excuse them, the Defendant attempted to mitigate his culpability, placing the credibility of his actions and testimony directly in controversy. During direct exam by Plaintiffs' counsel, the Defendant further he testified that he ultimately 'gave up driving' because he was afraid he would have a seizure and 'kill someone.' At the end of his testimony, the Court indicated the it would allow additional cross examination, if requested, by the Plaintiffs. Following a break in the proceedings, Plaintiffs sought to reexamine Defendant with regard to his driving record, and in particular, two collisions which he caused on the evening of January 16, 2019 and early morning of January 17, 2019- only six months after he struck their vehicle. Plaintiffs indicated that they sought to impeach the Defendant's initial testimony that he had 'given up driving' as false, inasmuch as he had continued to drive under suspension without just cause resulting in a habitual offender designation. The trial judge ruled that with liability admitted he would not allow the Plaintiffs to cross examine the Defendant with regard to his ongoing conduct. Plaintiffs argued the Defendant had 'opened the door' to this cross examination by placing the reasonableness of his conduct in front of the jury, despite an admission of liability.

When this court excluded further cross examination, it effectively allowed the Defendant's mitigating testimony to go unchallenged. In a proffer, the Plaintiffs recalled the Defendant whereupon he admitted he hadn't actually 'given up' driving until 2023, after his most recent violations for driving under suspension. When questioned about an incident on January 16, 2019, where he struck another vehicle *on the same road he was traveling when he collided with the Plaintiff*, sending that

driver to the hospital. He didn't remember the collision or leaving the scene. The jury never got to hear this testimony. He also didn't remember striking a tree in a borrowed car a few hours later in the early morning of January 17, 2019 – when no grocery stores or pharmacies would have been open. In addition, Plaintiffs were unable to examine the Defendant with regard his guilty plea with regard to this subsequent incident for driving under the influence of methamphetamine in the same courtroom and in front of the same trial judge. Plaintiffs were unable to cross examine him in front of the jury, despite his earlier admissions and evidence of habit or routine practice being admissible under Rule 406 of the South Carolina Rules of Evidence. Plaintiffs would argue that this was reversible error and that they are entitled to a new trial. In addition, case law indicates in an action by a motorist against the other driver's employer for property damage and personal injuries sustained in an automobile collision, that the court committed reversible error in refusing to permit plaintiff's counsel to cross examine the other driver, for limited purposes of impeachment, on his guilty plea to a charge of failure to yield right of way for an identical traffic mishap. Addyman v. Specialties of Greenville, Inc., 273 S.C. 342, 257 S.E.2d 149 (1979). There is also authority for the proposition that where there is an allegation of a willful violation of duty, evidence of habitual violations of the same duty is admissible on the issue of willfulness. The admission of such evidence under the general allegations of recklessness, willfulness and wantonness, without specific allegations thereof, is fully sustained in the case of Kirkland v. Augusta-Aiken Ry. & Electric Corp., 97 S.C. 61, 81 S.E. 306. (1914). A defendant's driving record is also admissible to show habitual violations of duty on the sole issue of punitive damages as it related to reckless or willful behavior. Sturken v. Richland Oil Co., Inc. 248 S.C. 355, 364, 150 S.E. S.E.2d 341 (1956).

III.

Under the thirteenth juror doctrine, the trial judge may grant a new trial absolute in the event he finds that evidence does not justify the verdict. First South Bank v. South Causeway, LLC, 414 S.C. 434, 778 S.E.2d 493, (Ct. App. 2015). The trial judge, sitting as the thirteenth juror is charged with seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case and upon a finding that justice has not prevailed. Similarly, the judge may grant a new trial upon the judge's finding that the verdict is inconsistent and reflects the jury's confusion. Johnson v. Parker, 270 S.C. 132, 303 S.E.2d 95 (1983). Under the thirteenth juror doctrine, a trial judge is not required to give reasons for granting a new trial absolute. Folkens v. Hunt, 300 S.C. 251, 387 S.E. 265 (1990).

In the case at bar, there is evidence that the verdict as to the loss of consortium of Daniel Campbell (\$-0-) is grossly insufficient. There was uncontroverted medical testimony that the Plaintiff Tracey Campbell had prior low back problems which were successfully treated shortly after the incident and resolved her back issue. The records of her spine physician indicated that after the collision, her problem was not her back. But for the hip injury she sustained in the collision which required surgery three years after the collision once it was finally properly diagnosed, she would have been fully restored and able to engage in daily activities, chores, hobbies and marital relations with Mr. Campbell. A verdict of \$-0- is so grossly inadequate that the Plaintiff Daniel Campbell would ask for a new trial on the issue of whether he is entitled to damages for loss of consortium.

In addition, the Plaintiff Tracy Campbell would ask for a new trial on the basis of the thirteenth juror doctrine inasmuch as the question submitted to the judge during deliberations regarding payments made or balances owed by her for various medical bills indicates the jury's confusion as to whether it could consider collateral source payments. There was undisputed evidence that the Court

directed the jury to that the only evidence in the record to consider was Mrs. Campbell's medical expenses of Fifty Seven Thousand (\$57,000.00) Dollars. The question submitted during deliberation indicates that jury failed to heed the instruction of the trial judge. In light of this apparent confusion, she is entitled to a new trial. In addition, she would argue that a verdict of \$50,000 is woefully inadequate and contradicted undisputed evidence. There was no evidence disputing that Plaintiff had \$57,000 in medical bills related to the hip injury that was proximately caused by the accident along with three years of pain, suffering, surgery and recovery, as well as a permanent scar.

IV.

The Plaintiff is entitled to a new trial due to a) the trial court's grant of Defendant's motion in limine to exclude the de bene esse testimony of Dr. James Logging that Plaintiff had a 47% permanent impairment to the right leg prior to surgery as well as the b) the trial court's refusal to admit the statement of Dr. Logging or allow a continuance for the Plaintiff Tracy Campbell to procure additional de bene esse trial testimony from Dr. Logging regarding her residual impairment following surgery. Plaintiff took the testimony of Dr. Logging on March 13, 2023, at which point he confirmed that when he initially examined the Plaintiff, Tracy Campbell, she had a permanent impairment rating under the AMA Guides to Permanent Impairment of 47% to the right lower extremity unless she elected to seek additional treatment. Unfortunately, during his de bene esse deposition, the doctor was unable to quantify her residual post-surgical impairment without additional review of the AMA Guide. On May 23, 2023, Dr. Logging issued a statement indicating that he had recalculated Plaintiff Tracy Campbell's post-surgical residual permanent impairment of the right lower extremity to be 42%. In anticipation of Defendant's motion in limine objecting to the admission of Dr. Logging's recalculation of the post-surgical impairment, Plaintiffs' counsel requested a continuance in order that specific testimony on this issue could be elicited. These matters were heard via virtual teleconference on May 25, 2023 immediately prior to the Memorial Day weekend and holiday. The court denied Plaintiff a

continuance to elicit additional testimony from Dr. Loging and also refused to allow the pre-surgical impairment of Dr. Loging to be entered into evidence over the Plaintiffs' objection, though there was no objection to the authenticity of the medical record or the qualifications of Dr. Loging as an expert. It was error to grant Defendant's motion in limine as Dr. Loging had been long known to the Defendant and the Plaintiffs offered to allow additional time for Defendant to cross examine her expert on her residual impairment such that there would be no prejudice to the Defendant. In addition, it was error to refuse to allow Dr. Loging's testimony as to her impairment on the date of initial exam, as that was her state of health for at least three years until her surgery was performed and was probative of her physical condition as well as pain and suffering she endured as a result of the condition and failure to admit it was highly prejudicial to the Plaintiffs.

V.

The Plaintiffs are entitled to a new trial as the court did not allow Plaintiffs to correct in closing that if punitive damages were not in issue, the Defendant's financial condition was not relevant in determining actual damages. Likely in anticipation of Plaintiffs' request to charge punitive damages, there was testimony elicited from the Defendant that his financial situation was poor. The general rule in a tort seeking only compensatory damages is that evidence of a defendant's wealth is not admissible at trial nor subject to disclosure during discovery. Trial Court Restrictions on Evidence of Defendant's Wealth, 30 AmJur Trials 711. The Plaintiffs would therefore argue that they are entitled to a new trial inasmuch as the jury was allow to consider evidence of the defendant's poor financial condition after a ruling that the Plaintiffs were not entitled to a charge on punitive damages.

VI.

The Plaintiffs are entitled to a new trial inasmuch as defense counsel improperly made an argument to the jury in closing, citing only his own personal knowledge, that had the Defendant had a seizure at or near the time of the collision it would not necessarily have been apparent nor would he

have necessarily needed medical evaluation as the effects of seizures dissipate quickly. It is generally improper for counsel to argue facts that are a matter of his own personal knowledge or opinion. An argument that discusses facts not in evidence is improper. State v. Homewood, 241 S.C. 231. 128 S.E.2d 98 (1962). Closing argument cannot be used, however, as a vehicle to introduce new matters into a trial which otherwise have not been properly admitted into evidence. State v. Sinclair, 275 S.C. 608, 274 S.E. 2d 411 (1981).

For all of the above reasons, Plaintiffs hereby move for a new trial in this case.

RESPECTFULLY SUBMITTED.

NICHOLSON, MEREDITH AND ANDERSON, LLC

s/W.H. Nicholson, III

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June 9, 2023

Greenwood, South Carolina

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"The jury's determination of damages ... is entitled to substantial deference." *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996). "The consideration of a motion for a new trial *nisi additur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." 324 S.C. at 405, 477 S.E.2d at 723. The discretion of a trial court in considering such a motion is "not absolute." *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993). If a court chooses to grant a new trial *nisi additur*, "the trial judge must state compelling reasons for invading the province of the jury." *Green v. Fritz*, 356 S.C. 566, 570, 590 S.E.2d 39, 41 (Ct. App. 2003); *see Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995) ("Compelling reasons ... must be given to justify invading the jury's province in this manner."). "The requirement is imposed to balance the wide discretion given to a trial judge in ruling on a new trial motion with the substantial deference courts must give to a jury's determination of damages." *Luchok v. Vena*, 391 S.C. 262, 263, 705 S.E.2d 71, 72 (Ct. App. 2010). "[I]f inapplicable grounds are given for granting *additur*, the order fails by error of law." *Green*, 356 S.C. at 570, 590 S.E.2d at 41. The mere listing of the plaintiffs' claimed damages compared to the jury verdict "does not constitute compelling reasons for invading the jury's province." *Id.* Furthermore, "[a] trial court does not abuse its discretion in denying a motion for new trial *nisi additur* where there is evidence in the record to support the jury's verdict." *Ligon v. Norris*, 371 S.C. 625, 635, 640 S.E.2d 467, 473 (Ct. App. 2006).

For instance, recently the South Carolina Court of Appeals found that a trial court did not abuse its discretion in denying a motion for a new trial *nisi additur* when the jury awarded the plaintiff the exact amount of his medical bills. In *Nestler v. Fields*, 426 S.C. 34, 824 S.E.2d 461 (Ct. App. 2019), the defendant admitted that he was at fault for causing an accident and the plaintiffs' injuries. The plaintiff claimed injuries of a cervical strain, left elbow contusion, tennis elbow, and a permanent impairment rating of 53% for his left upper extremity, which translated to a 32%

impairment rating for the whole person. 426 S.C. at 37, 824 S.E.2d at 463. The medical bills submitted into evidence for the plaintiffs alleged injuries totaled \$7,117.50, and the jury awarded \$7,117.50 in actual damages. The plaintiff moved for both a new trial *nisi* and a new trial *nisi additur* and argued that he was entitled to such relief because, "despite the extensive evidence as to his permanent impairment, pain and suffering, and other non-economic damages, the jury awarded him the amount of his medical bills." 426 S.C. at 39-40, 824 S.E.2d

at 464. The Court of Appeals found that the trial court did not abuse its discretion in denying these motions. With respect to the denial of the new trial *nisi additur*, the court stated that "the trial court here found no compelling reason to impose its will on the parties and invade the jury's domain. We must accord the trial court's decision 'great deference,' and respect its superior position to gauge credibility and the field of evidence." 426 S.C. at 41, 824 S.E.2d at 465.

Likewise, in *Todd v. Joyner*, 385 S.C. 509, 685 S.E.2d 613 (Ct. App. 2008), the defendant stipulated to her negligence stemming from an automobile accident with the plaintiff. The plaintiffs medical bills totaled \$37,191.11, and the jury awarded the plaintiff that precise amount. The trial court denied the plaintiffs motion for a new trial *nisi additur*, and the Court of Appeals affirmed, holding:

The jury awarded Todd \$37,191.11, her exact medical costs. In the jury instructions, the circuit court provided the jury with a thorough explanation of how it could determine a monetary value for the damages to which it believed Todd was entitled. This included a full explanation of actual damages, including: "past and future medical charges related to the injury, pharmacy charges, related expenses, pain and suffering, loss of enjoyment of life, as well as mental anguish and impairment of health or physical condition." We find evidence in the record to support the jury's verdict. Joyner argued that all of Todd's claimed damages were not proximately caused by the accident and that all of the medical treatment was not reasonably necessary. Joyner cited the relatively low impact of the collision along with Todd's apparently limited injury immediately following the accident in support of her position. Because there was evidence in the record to support the jury's verdict, we find no error in the circuit court's denial of Todd's motion for new trial *nisi additur*.

385 S.C. at 518, 685 S.E.2d at 618.

Moreover, in *Lynch v. Carolina Self Storage Ctrs.*, 409 S.C. 146, 760 S.E.2d 111 (Ct. App. 2014), the jury returned a verdict for the exact amount of medical expenses the plaintiff claimed. However, at trial the defendant argued that the plaintiff "failed to prove proximate cause as to the vast majority of her medical expenses because, by ignoring her physician's medical advice to stay off her foot and keep her cast dry, she was the sole cause of the medical expenses associated with the surgery to repair her ruptured Achilles tendon and the treatment for the resulting infection." 409 S.C. at 150, 760 S.E.2d at 113. As such, the Court of Appeals found, "The trial court properly denied Lynch's motion for new trial *nisi additur* because there was evidence that the medical expenses Lynch incurred to treat her injury and her resulting noneconomic losses were not proximately caused by Carolina Self Storage's negligence." 409 S.C. at 163, 760 S.E.2d at 120-21.

In fact, even in cases where the verdict did not cover all of the medical bills claimed by plaintiffs, South Carolina courts have found that it was an abuse of discretion for the trial judge to grant an additur. In *Luchok v. Vena*, 391 S.C. 262, 705 S.E.2d 71 (Ct. App. 2010), the plaintiffs alleged medical bills were \$10,071.00, and the jury returned a verdict for only \$3,023.90. The defendant admitted fault for the accident but did submit evidence questioning whether some of the plaintiffs chiropractic bills were reasonable and necessary. While the trial judge granted the motion for additur based on the fact that the verdict did not cover all of the chiropractic bills, the Court of Appeals reversed and held that "[i]n the face of the sharply conflicting evidence, this is not a compelling reason to grant the motion." 391 S.C. at 265, 705 S.E.2d at 73. Likewise, in *Green v. Fritz*, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003), where the jury's award had been increased from \$2,000.00 to \$14,000.00, the Court of Appeals held, "Where, as here, the evidence of damages is disputed, the mere listing of Green's claimed damages by the trial judge in his order does not constitute compelling reasons for invading the jury's province." 356 S.C. at 570, 590 S.E.2d at 41; see *Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 18, 419 S.E.2d 795, 799 (Ct.

App. 1992) ("While the evidence of this case could certainly have supported a much larger verdict, we cannot say as a matter of law that the verdict of the jury in this case was grossly inadequate and resulted from the jury's disregard of the facts or the trial judge's instructions.").

The case of *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000), on which Plaintiffs' entire motion relies, is clearly distinguishable from this case. In *Waring*, the undisputed medical evidence presented at trial was that the plaintiffs alleged pain and suffering was caused by the accident. The court noted, "[e]ach doctor who testified expressed his opinion that Waring's various pains were associated, at least in part, with the accident. Even if the greatest portion of Waring's pain was caused by her pre-existing conditions, there is no question that the accident aggravated or accelerated those conditions." 341 S.C. at 260, 533 S.E.2d at 912-13. Thus, in *Waring*, each of the plaintiffs treating physicians testified at trial and related her injuries to the accident, and there was no evidence presented by the defendant to the contrary. Moreover, the evidence of the amount of pain and suffering endured by the plaintiff in *Waring* was also not in dispute. The undisputed evidence from trial was that the plaintiff had sought medical treatment for over five years following the accident, and the court noted:

Waring visited numerous doctors for years after the accident, seeking relief from varying degrees of pain and discomfort. She underwent surgery for a condition which numerous doctors testified was aggravated by the wreck. Waring took advantage of every recommendation of her physicians and, unfortunately, will most likely suffer pain for the remainder of her life. In addition to the pain she has and will continue to suffer, Waring found herself unable to continue her previous active lifestyle.

341 S.C. at 260, 533 S.E.2d at 912. As such, the court found that the plaintiff was entitled to an additur for this pain and suffering.

Here, there is substantial evidence in the record to support the jury's verdict, and the Court should deny the plaintiffs' request for new trial *nisi additur*. In her testimony, co-defendant Tracy Campbell admitted that she had significant pre-existing medical issues, particularly to her low back, for which she underwent low back surgery for after this accident. In fact, the testimony of co-plaintiff Tracy Campbell was that she had significant low back pain before this accident, which continued for months after this accident, and she admitted that her prior low back pain had no relation to this motor vehicle accident. Thereafter, co-plaintiff Tracy Campbell admitted, and it was supported by the plaintiff's medical records, that following her low back surgery she was able to return to work full-time, she was able to care completely for herself, (as her husband was out of the familial home routinely for 4 to 5 days out of the week because his job out-of-state job requirements), and was able to exercise on a frequent basis. The testimony indicated that it was not until 3 years after this accident that she presented to testifying expert witness, Dr. James Logins, for complaints of right hip pain. Shortly thereafter, co-plaintiff Tracy Campbell underwent right hip surgery. From the beginning, the defense argued that co-plaintiff Tracy Campbell's hip complaints were not related to this accident. It was also argued by the defense that co-plaintiff Tracy Campbell experienced years of low back pain which she admitted had no relation to this accident. As such, it was argued by the defense that any increase in pain and suffering from this accident was minimal, at best. Based on the jury's award, the defense would argue that the jury agreed with the defense, and therefore, returned an award that clearly did not include co-plaintiff Tracy Campbell's questionable hip surgery, or the claim that co-plaintiff Tracy Campbell had a significant decrease in her quality of life since this accident. The defense's position since the inception of this lawsuit was that the hip surgery was not related, or any substantial increase in pain and suffering, and it appears that the jury agreed with that position.

Because there is evidence in this case supporting the jury's verdict of \$50,000.00 in actual damages, there exists no compelling reason for the Court to invade the province of the jury in this case and grant the extraordinary remedy of a new trial *nisi additur*.

II. Plaintiffs' Motion for New Trial Absolute Should Be Denied.

While "[a] trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate ... [t]he jury's determination of damages ... is entitled to substantial deference." *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996). A new trial absolute is warranted "if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." *Id.* This is an even higher standard than that for the granting of a new trial *nisi additur*. See *Waring v. Johnson*, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000) ("When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice."). As set forth hereinabove, the plaintiffs have provided no compelling reason to invade the province of the jury, as the amount of the actual damages found by the jury is reasonably supported by the evidence presented at trial.

In addition to the argument regarding denying co-plaintiff Tracy Campbell's motion for a new trial, (which the defense reincorporates herein in opposition to co-plaintiff Tracy Campbell's motion for New Trial Absolute), co-defendant Daniel Campbell's motion for a new trial, etc., regarding his Loss of Consortium claim should also be denied. As stated above, testimony was presented at trial that for several years after this accident, co-defendant Daniel Campbell was out-of-state for 4-5 days week for his job responsibilities. During this same period, when co-defendant Daniel Campbell was out-of-state for work, the defendants admitted that co-defendant Tracy

Campbell was able to care for herself, as well as maintain her home, and complete related chores. As such, there was imply no reliable evidence that co-plaintiff Daniel Campbell sustained any damages in this lawsuit under his Loss of Consortium claim.

Further, the plaintiffs have argued in this motion that the Court “directed the jury to that the only evidence (sic.) in the record to consider was Mrs. Campbell’s medical expenses” of \$57,000.00. While it is conceded that the plaintiffs’ attorney argued that the amount submitted to the jury was related, it was clearly known that the full claim of the plaintiffs damages was being challenged under the premise of proximate cause. In fact, the Court properly charged the jury on the issue of proximate cause, and based on the monetary award returned, the jury clearly did not believe that the plaintiffs had sufficiently proven that the full amount of medical bills submitted by the plaintiffs to the jury were proximately related to this accident.

III. Testimony regarding Dr. Logings

Regarding the motion for a new trial based on the testimony of Dr. James Logings, the defense maintains the plaintiffs’ motions should also be denied. In his trial deposition, which was completed on March 13, 2023, Dr. Logings testified that on his first treatment date with co-plaintiff Tracy Campbell on March 24, 2021, (approximately 3 years after this accident), he assigned the plaintiff an impairment rating which he noted would only apply if the plaintiff did not undergo any further treatment. However, after the first treatment visit, co-plaintiff Tracy Campbell underwent significant subsequent treatment, including surgery. In his trial deposition, Dr. Logings testified that his initial permanent impairment would not currently apply because of the additional treatment and surgery. It should be noted that the plaintiffs filed this lawsuit on November 13, 2019, and at some point this case was dismissed pursuant to 40(j). It should also be noted that co-plaintiff Tracy Campbell’s allegedly related hip surgery was performed on June 22, 2021. As such, any new impairment rating, if any, could have been calculated within the two years between co-plaintiff

Tracy Campbell's surgery and additional treatment, and Dr. Loging's videotape trial deposition. Instead, during the pre-trial conference with the Court, just days before trial, the plaintiffs' attorney requested a continuance to take a second trial deposition of Dr. Logings, which the defense objected to, and the Court properly denied. Instead, the Court stated that plaintiffs' counsel could call Dr. Logings live at trial to present any new specific numerical impairment rating. Despite the Court's ruling, the plaintiffs' attorney declined to call Dr. Logings live at trial.

IV. Defendants financial condition

During the defendant's testimony, the defendant presented testimony of his general background, education, and work history. This also included testimony that the defendant was not currently employed and had not been for some time. The defense maintains that it never argued that because of the defendant's financial condition that the jury should not return an award against the defendant. The presentation of the defendant, as with any plaintiff, routinely includes providing the jury with background information on a party to a lawsuit, and it was no different in the subject trial.

V. Defendant's seizures

The defendant testified that he had recently experienced a significant seizure which had caused him to have trouble with his memory. The defendant also testified that he had experienced seizures since he was a young child, but only recently, the seizures had become more severe. Of course, this was presented, without objection, to explain the fact that the defendant could not recall the subject accident. All comments during the trial regarding seizures was the direct result of the defendant's trial testimony, not any type of claimed personal knowledge by the defendant's attorney.

VI. Punitive damages

Punitive damages can be awarded if a jury finds, by clear and convincing evidence, that a

defendant acted wilfully and recklessly in committing a negligent act which caused injury to a plaintiff. In this case, the plaintiff's attorney argued that the defendant's lack of a license was a negligent act which raised to the level of reckless conduct. However, simply not having a license does not raise to the level of reckless conduct. Further, any other alleged conduct presented by the plaintiff at trial, did not, by clear and convincing evidence, establish sufficient evidence of recklessness to support that punitive damages be presented to the jury. Further, any evidence of other accidents that the defendant may have been in, is inadmissible in the adjudication of the subject matter, and would have no relation to any claim of recklessness on the date of the subject motor vehicle accident.

Further, there likewise is no evidence that this jury verdict was actuated by passion, caprice or prejudice, requiring the granting of a new trial, or any of the other plaintiffs post-trial motions. Therefore, the plaintiffs' motion should be denied.

CONCLUSION

For the reasons set forth hereinabove, the defense requests that the plaintiffs' Motions be denied.

June 28, 2023



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STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 8
COUNTY OF GREENWOOD) DOCKET NO. 2022-CP-24-00431

TRACY CAMPBELL AND DANIEL CAMPBELL,)
Plaintiffs,)
versus)
BRIAN KEITH NEWMAN AND KIMBERLY NORMAN,)
Defendants.)

H E A R I N G
BEFORE THE HONORABLE DONALD HOCKER

DATE: May 30 - June 1, 2023
TIME: 10:32 a.m.
LOCATION: South Carolina Circuit Court 8
TRANSCRIBED BY: Natasha Barrientos

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
 25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: Ladies and gentlemen, good morning. Let me
2 welcome you to a term of Circuit Court for the county of
3 Greenwood. My name is Donald Hocker. I am a circuit court
4 judge and I have been assigned by the South Carolina Supreme
5 Court to preside over this week of court circuit Courts in
6 South Carolina. Ladies and gentlemen are the highest trial
7 courts that we have and we hear several cases in the court of
8 common pleas and criminal cases in the court of general
9 sessions.

10 You are here for a week of common pleas court. We only
11 have one case on the -- on the trial dockets. So if you're
12 not selected on the trial jury, the --n then there will not
13 be any other cases for you to come back to, even though I
14 will not excuse you for the remainder of the week today.
15 We'll get into the week some before we do that and I'll
16 explain how we'll work on that.

17 But what we have to do, ladies and gentlemen, is
18 determine your qualifications and your eligibility to sit on
19 any jury in this state, and then your qualifications and
20 eligibility to sit on this case as being called for trial.
21 Today. The first part of this process, ladies and gentlemen,
22 is roll call when your name is called out stand, provide us
23 with the information that appears on the card that you were
24 given when you got here today. Be sure to speak up loud and
25 clear. For any of you who maybe have elected to wear a mask,

1 I don't see any, but if you do have a mask on, just lower the
2 mask so we can hear you. Your names will be called out in
3 alphabetical order so you'll kind of determine when your name
4 will be called out. Okay? All right. So I'm going to turn
5 things over to our very capable clerk of court staff.

6 And clerk?

7 THE CLERK: Okay. If everybody will stand and please
8 raise your right hand and repeat after me. You shall
9 truthfully answer all questions asked of you concerning this
10 matter now, before the court, by the court and order thereof,
11 you shall speak the truth, the whole truth, and nothing but
12 the truth, so help you God. Will you? Yes?

13 MULTIPLE SPEAKERS: Yes. Okay.

14 THE CLERK: You may be seated. And then just as the
15 judge has stated, whenever your name is called, if you'll
16 just stand up and read off the information on your sheet.
17 Okay?

18 (WHEREUPON, jury selection and Voir Dire were not
19 transcribed.)

20 THE COURT: All right. Congratulations ladies and
21 gentlemen. You have been selected as the trial jury in this
22 case. Now, what I want to do is I want to talk with the
23 lawyers for a few minutes for scheduling purposes. We may
24 very well not start the trial until in the morning, but I
25 want to talk to lawyers about that. So -- so if you'll just

1 go back to the jury room. Now, I'm going to instruct you,
2 now you're going to hear me say this throughout this trial.

3 You cannot begin any discussions about anything related
4 to this case. I realize you don't know much about it, you
5 will. You will learn more about it as we go through the
6 trial, but don't have any discussions about anything related
7 to this case. The parties involved, the lawyers, anything.
8 Those discussions can't -- cannot start until I give you the
9 case to begin your deliberations. And that would be at the
10 end of the case. So talk about something else. Just don't
11 talk about anything related to this case. So go back to the
12 jury room, we'll get you back out shortly. Okay. Plaintiffs
13 have any exceptions to jury selection?

14 MR. NICHOLSON: No, Your Honor.

15 THE COURT: Defense?

16 MR. COULTER: No, sir.

17 THE COURT: Okay. All right. Thank you very much.

18 All right. Ladies and gentlemen, I know that some of you
19 maybe are a little disappointed that you were not selected.

20 I know that some of you probably maybe are glad that you were
21 not selected. let me just tell you this before I release you
22 for the -- for the afternoon we have the greatest justice
23 system anywhere in the world in this country. And juries
24 play a very vital and important role in our judicial system.
25 without a jury, things would not -- would not work very well.

1 So your presence here today, even though you were not
2 selected, is very important. Some people consider jury
3 service as the second highest civic responsibility that we
4 have, second only to serving in the military. So while you
5 were not selected, your presence here was -- was very
6 important.

7 I don't want to release you for the full week yet. I
8 don't like to do that on the first day of court. So what I
9 need for you to do, look on that card, that sheet of paper
10 that you got, there's a call in number, and I want you to
11 call that number after 6:00 this evening. Okay? And it will
12 tell you what to do either call back after Wednesday at 6:00
13 come in Wednesday for something that has happened to this
14 jury. or you're excused for the remainder of the week. So
15 don't forget to call that number after 6:00 this evening so
16 you can hear what that recording says. Okay? All right.
17 You're free to go have a good rest of your day. Oh, okay.
18 That -- that juror needs to go. Okay.

19 All right. We talked about starting, I know I've got
20 pre-trial that we need to deal with. I'm just kind of, I'm
21 -- I'm thinking just do start pre-trial and the trial
22 tomorrow. Y'all can get me -- before we leave, get me the
23 deposition pages that I need to read concerning Dr. Loging's
24 testimony. And I'll be glad to take a look at that. I know
25 we have an issue about lost wages that we'll need to deal

1 with. You think we can do pretrial in say, like an hour and
2 a half, Mr. Nicholson?

3 MR. NICHOLSON: Judge, I'd prefer to do this afternoon
4 if we could -- just because it would clarify some of the
5 issues --

6 THE COURT: Okay.

7 MR. NICHOLSON: --- in the trial. I just -- it -- it
8 --

9 THE COURT: Yeah.

10 MR. NICHOLSON: If you were planning, I mean, if you're
11 not going to be here, that's one thing. But I know Ms.
12 (inaudible) was helping. She's -- she's ---

13 THE COURT: Yeah. Well, we need to break for lunch.
14 I've got a virtual hearing at 1:45. So -- and give me time
15 to take a look at whatever y'all give me. So -- so you want
16 to go back -- say start back about 2:15. Will that -- that
17 work?

18 MR. NICHOLSON: (Inaudible).

19 THE COURT: Okay. All right. So I'll -- I'll just
20 have the jury then report at 9:30 in the -- in the morning or
21 10:00. What -- what's -- what works better?

22 MR. NICHOLSON: Say 10:00.

23 THE COURT: 10:00? Okay. That's fine. You got an
24 hour's drive, so. All right. Let's do that. So I'm going
25 to get the jury out, go ahead and cut them loose for the day

1 and then we'll take our lunch break and then get back at
2 2:15.

3 UNIDENTIFIED SPEAKER: Changes every time I drive.
4 Days it's -- one hour, sometimes two and a half. I don't
5 know why, but.

6 THE COURT: Well ---

7 UNIDENTIFIED SPEAKER: (Inaudible) see this?

8 THE COURT: Yeah,

9 UNIDENTIFIED SPEAKER: Okay. (Inaudible).

10 THE COURT: All right. Let's -- let's bring the --
11 bring the jury out.

12 UNIDENTIFIED SPEAKER: Okay. Everybody put their phone
13 number down. Everybody good? Okay.

14 THE COURT: That's just in case we needed to call you
15 to adjust a schedule. Or if somebody is -- is -- is late
16 showing up to court, then we can call and find out what's
17 going on. That's, that's the reason for your, on one of your
18 numbers. All right. Ladies and gentlemen, what the plan is,
19 is we'll start back at 10:00 in the morning. I've got some
20 pretrial matters that I need to work on with the lawyers this
21 afternoon, so we'll be working on that. So we'll start the
22 trial of the case at 10:00 in the morning and make sure you
23 get here on time. Allow yourself enough time for anything
24 unexpected. So you can be here because if we don't have all
25 14 of you, then we can't -- we can't start, okay? And if we

1 don't start promptly at 10:00, that means we're doing
2 something, some work on the case outside of your presence.

3 Now, one thing I need to do, I'll have a few more
4 instructions to give you in just a minute. I need to go
5 ahead and appoint the foreperson of the jury. Now, I'm
6 confident that all 14 of you would make excellent
7 fore-persons, but I can only have one. Let me tell you what
8 -- what the foreperson does. If it is a male, it's foreman.
9 If it is a female, it's forelady. I need someone to be the
10 communicator between the jury and the court. If at any time
11 during the course of this case there's an issue that arises a
12 question that arises, or even when you begin your
13 deliberations, there's a question that is comes up, then I
14 need someone to serve as that communicator between the jury
15 and the court. All communication must be in writing and
16 signed by the foreperson of the jury. You'll have plenty of
17 paper back there if that needs to be done.

18 Secondly, I need someone, while this is everyone's
19 responsibility, I need someone primarily to make sure that
20 all of my instructions are being followed. I've already
21 given you one; no early discussion about anything related to
22 this case, and I'm going to give you some more instructions
23 in just a minute. And thirdly, when I do give you the case
24 to begin your deliberations, I need someone to get this
25 discussions and deliberations started and oversee the -- that

1 discussion and those deliberations leading up to a unanimous
2 verdict in the case. Okay? And again, I'm confident 14 of
3 you would make excellent fore persons, but only can have one.
4 Shannon James, I'll appoint you as forelady of this jury when
5 we start back in the morning. You will maintain that seat
6 right there, the very first one.

7 Too often it's maintain your back seats. Everybody
8 else can sit wherever you like. That's been my experience
9 doing this job that more times than not, jurors like to sit
10 in the same seat throughout the whole trial. It's kind of
11 like you got your seat at church and nobody there sit in that
12 -- in that seat. so that's up to you. The foreperson,
13 forelady, has assigned seat. Two alternates have the
14 assigned seat. But everybody you can do as you like, as far
15 as where you sit. Now, concerning the two alternates, your
16 role is very important. It's not unusual to -- to -- one of
17 the 12 an illness, an emergency at home, something like that.
18 And they need to be excused. And so I need someone that has
19 sat through that trial up until that point where I've had to
20 excuse that juror to just bill those shoes and we'll keep on
21 -- keep on going.

22 So it's not unusual for one of the 12 has to be
23 excused. I was in Beaufort last week in a case and sure
24 enough we had somebody that came ill and couldn't continue
25 serving. So I had some alternates and they -- they -- one of

1 them filled -- filled those shoes. Okay? Now, some further
2 instructions before I let you go. You cannot talk about this
3 case with anybody that you come into contact with, friends,
4 family, coworkers. If you happen to go work this afternoon,
5 you can say, I've been picked on a jury, but leave it at
6 that. And you can't have any discussions with anybody that
7 you come into contact with during the course of this --
8 course of this trial. And lastly, and I'll go into more
9 detail on this tomorrow, but it may be tempting for some of
10 you to go on the internet or social media and try to find out
11 something about this case.

12 Don't do that. And I'll explain why in the -- in the
13 morning why you cannot do any of your own research or
14 independent research into anything related to this case. All
15 right? All that said we look forward to getting started with
16 you in the morning and have a good -- good rest of your day.
17 Get some rest because I'm going to tell you in the morning,
18 it's very important for you to be very alert and very
19 attentive and I know you've got a clipboard there. And I'll
20 go and tell you now and I'll explain more detail later. I
21 don't let -- let jurors take notes. so that's one reason why
22 you have to be alert and attentive so you hear everything
23 that goes on in this case. Okay? All right. Have a good
24 rest of your day. We'll see you in the morning. All right.
25 We'll -- we'll be down until 2:15. You've got?

1 UNIDENTIFIED SPEAKER: I got three pages, Judge.

2 THE COURT: Three pages? Okay.

3 UNIDENTIFIED SPEAKER: So you want to double check
4 that? Page 19 through 21. It was the only place that I
5 (inaudible) I tell you what? It'll take you seconds to go
6 through it, Judge. You just want to read before we ---

7 THE COURT: Yeah.

8 UNIDENTIFIED SPEAKER: --- see that's case.

9 THE COURT: Yeah. Yeah, I'll take a look at it. over
10 lunch.

11 UNIDENTIFIED SPEAKER: (Inaudible) the rest of it.

12 THE COURT: Now, if there's any ---

13 UNIDENTIFIED SPEAKER: I've -- I've got another copy.

14 THE COURT: All right. Now, Mr. Nicholson, if there --
15 he's got pages 19, 20, 21 he wants me to review. If there
16 are any other pages that you want me to review, I'll be glad
17 to do that too. I think I'm reviewing it on the sole -- sole
18 issue of permanent rating, right?

19 MR. NICHOLSON: Yes, sir. Judge, I do have one issue.
20 I would ask that you ask the bailiffs to call out the name of
21 Brian Newman, Mr. Defendant in this case.

22 THE COURT: Okay.

23 MR. NICHOLSON: (Inaudible).

24 THE COURT: Okay. Brian Newman. Okay. All right.

25 MR. NICHOLSON: And if they're not, I haven't seen him

1 show up

2 THE COURT: Okay.

3 MR. NICHOLSON: And I don't know whether he'll show up
4 this afternoon.

5 THE COURT: Okay, I will get that and make sure that
6 everybody in the jury's already left. And I assume, Mr.
7 Coulter, you want me to tell the -- the jury at some point in
8 time in the opening the fact that no defendants are seated
9 there, placed no significance to that whatsoever because the
10 burden of proof is on the plaintiffs. You want me to do
11 something like that?

12 MR. COULTER: Yes, sir.

13 THE COURT: Okay.

14 MR. COULTER: Yes, sir. And I think you understand
15 this is a (inaudible).

16 THE COURT: Right. And -- and -- and we're going to
17 tell them too that liability is not an issue for them to
18 decide it's only issues related to damages and approximate
19 causation of those damages. Okay. All right -- all right.
20 Jay, would you go out there and sound the name three times in
21 the hallways of the courthouse and one time outside the
22 courthouse; Brian Keith Newman, Brian Keith Newman? Please.

23 MR. NICHOLSON: (Inaudible) don't find him. I don't
24 really know the procedure, but I think -- I think what I'll
25 do is ask the court, give us some order (inaudible) he did

1 not file.

2 THE COURT: Yeah, I mean ---

3 MR. NICHOLSON: I pick him up. We know where he's

4 THE COURT: Okay. I think the better course of action
5 is for a rule to show cause to be issued to have him served
6 and appear before the court. As opposed to just sending the
7 sheriff out to pick him up. I mean, give him the benefit of
8 the doubt. And then, of course, if he doesn't comply with
9 the rule shall cause then yeah, the next step would be to
10 send the sheriff out. So I think ---

11 MR. NICHOLSON: I'm kind of disadvantaged because I --
12 I haven't spoken to him. I'm not supposed to talk to him. I
13 don't think I -- I haven't spoken to, it's not like I can
14 call up and say, "Where are you? Come on down."

15 THE COURT: Well ---

16 MR. NICHOLSON: Somebody else did.

17 THE COURT: Well, I mean, I -- I don't have a problem
18 with sending a -- a deputy out and just find out why he
19 hasn't complied with the subpoena. I mean, I can -- I can do
20 that. And then see what -- see what he says. Over lunch.
21 Lonnie, can you just get the address where he apparently
22 lives, you've got that where he was served with the subpoena?

23 MR. NICHOLSON: Where police department found him.

24 THE COURT: Okay.

25 MR. NICHOLSON: And I think they may know where he's.

1 MR. COULTER: I'll -- I'll make contact with Chief
2 Lewis over lunch.

3 THE COURT: Okay.

4 MR. COULTER: To see if we can locate him.

5 THE COURT: See if he can -- yeah. And just find out.
6 I don't want necessarily for him to be picked up, but he
7 hasn't complied with the subpoena and he needs to comply with
8 it. Now, if he -- if he needs transportation, then, then
9 maybe they could help along those lines. But at least try to
10 find him first and see what's going on. Okay. All right.
11 Yeah. But tell him that ---

12 UNIDENTIFIED SPEAKER: We know he does.

13 MR. NICHOLSON: We know he does.

14 THE COURT: He needs transportation? Okay. All right.

15 MR. COULTER: I'll get an address of billing him then.
16 We got a good two hours. I don't mind running up there.

17 THE COURT: Sure. Okay.

18 MR. COULTER: And I mean, I live up there, so. I mean
19 I ---

20 THE COURT: Okay. Do you know the guy?

21 MR. NICHOLSON: I -- I know of him yesterday. He used
22 to (inaudible) I know he's (inaudible) Brian's number. I
23 don't really have ---

24 MR. COULTER: I have ---

25 MR. NICHOLSON: I think they found him during the

1 (inaudible).

2 MR. COULTER: I'll call Brian and talk to him. Brian
3 Lewis.

4 THE COURT: Okay.

5 MR. COULTER: If you can give me ---

6 THE COURT: All right. Good ---

7 MR. COULTER: I don't have an address. I can meet with
8 Brian?

9 MR. NICHOLSON: That's fine.

10 THE COURT: Okay.

11 MR. COULTER: Okay. I'll (inaudible) over lunch.

12 THE COURT: All right. Has Mr. Newman responded to
13 your -- your call?

14 UNIDENTIFIED SPEAKER: No.

15 THE COURT: Okay. Thank you very much. All right.

16 We'll be down until 2:15 if you want to just give me that
17 deposition to -- to look at over lunch. You want me to look
18 at any other pages other than 19, 20 and 21?

19 MR. COULTER: Yes, sir.

20 (Off the record.)

21 THE COURT: All right. We're on the record. And --
22 and I know of one issue and that is related to Dr. Loging's a
23 portion of Dr. Loging's's deposition as it relates to a
24 permanent disability, permanent disability rating. And Mr.
25 Coulter, you do not want that to come in. Be glad to hear

1 from you first and hear from plaintiffs. I have read the
2 three pages that you provided to me. Pages 19, 20 and 21.

3 MR. COULTER: Yes, sir. All right. May it please the
4 court, Judge? And you heard a little bit about this, I
5 believe on Friday maybe it was Thursday, but anyways, it was
6 about this impairment rating issue with Dr. Loging's. And we
7 took the videotaped trial deposition of Dr. Loging's on March
8 13, 2023. So just a couple months ago. And it was noticed
9 for trial videotaped and so forth. And as you read the last
10 few pages of what -- what would be the, or excuse me, the
11 last few pages of the direct examination and then the -- the
12 beginning of my cross-examination, there's this dealing with
13 the impairment rating and there was a -- an IME that was
14 performed long ago that said there was a 4747 percent
15 impairment rating for the plaintiff if there was no further
16 treatment done. And there was a significant amount of
17 treatment done after that. So much so that she underwent
18 surgery at some point.

19 And that was not, no other impairment rating was
20 discussed at any time. And then we had the videotaped trial
21 deposition of the doctor. And as you read from pages 19
22 through 21, he says she may have an impairment rating, but he
23 hadn't calculated that. And what I'm concerned about
24 because, and again, I know this isn't on the record, we had
25 this discussion and there was some -- some comment made.

1 Yeah. But she has some impairment rating. Well, okay, maybe
2 you know, she may have 1percent, she may have 100percent, who
3 knows. But no expert has said what her impairment rating is
4 since she underwent this surgery about a year and a half
5 after that initial IME was done.

6 And I think for my concern is, is that the plaintiff's
7 attorney is going to argue that there's some impairment.
8 rating Okay. But it's not able to be quantified and that
9 it's just complete speculation on the part of the jury if
10 they actually believe there is one or isn't one just, I mean,
11 again, the spectrum's just too wide. So that's why I'd ask
12 that impairment rating not come in and actually would ask
13 that. And I've -- it's page 19, line 16 through 21, actually
14 be page 21, line 19 be removed if you will, from presentation
15 of the jury because it talks about just exactly that.

16 THE COURT: Okay. All right. Mr. Nicholson, be glad
17 to hear from you.

18 MR. NICHOLSON: And the -- the doctor, I think if you
19 read that, you know, the doctor did an exam of -- of Ms.
20 Campbell when he, she first came to him and he gave that
21 rating, which was a statement as to what her disability was
22 at that time. It was a -- it was a matter of time. He
23 clarified, I think it's pretty evident that that impairment
24 rating is not what she ended up with after surgery. And what
25 we have is he said she had some impairment. We do not have

1 an impairment rating after surgery. If he wants me to
2 stipulate to that, I will stipulate to that and we can enter
3 a stipulation to the jury. He's trying to wipe out any
4 discussion that she had this impairment rating. His -- his
5 analysis on that date shows how she was when she walked in
6 the office, which shows some pain and suffering.

7 I mean, to be fair to her, this is the doctor she found
8 who discovered the problem. We asked, you know, what the
9 impairment rating was at the time she walked in. I think in
10 questioning Mr. Coulter clarified that, that does not exist
11 after her surgery, but it still is a, an analysis of the, of
12 the time when he gave the rating. So it is not a -- that's
13 just -- that's just the status of her existence at the time
14 she first saw him. And -- and as I said, he gave a 42percent
15 impairment rating on a form. We went over this. I asked for
16 a continuance. You said that I could try to get it Monday,
17 you know, on Memorial Day or something, or today I think
18 maybe he -- he had 10 surgeries today.

19 And he said he would do it at six o'clock in the
20 morning and I, you know, just didn't try to get that together
21 to get it done. The reason I did that is because I knew
22 already in there he had a rating of showing what our
23 condition was when she first saw him. And then he just said
24 she has some impairment. Am I establishing, you know, we
25 don't, you know, I'll stipulate we don't have a doctor's

1 opinion on what her impairment rating is right now. And I
2 think that's, that's where it exists and that's what the jury
3 will believe when they see this video. That's what he said.

4 THE COURT: Well, I -- I -- I think there's certainly,
5 I would assume that there's absolutely no question that 47
6 percent permanent rating should not come in because he said
7 you know, that's without treatment and you've indicated that
8 there has been surgery, treatment, et cetera, et cetera. So
9 I think part one, certainly the 47 doesn't come in or 42.
10 What -- what'd you say? 40.

11 MR. NICHOLSON: It was 47. I -- I -- Judge, I really
12 don't -- I mean, I would've pushed to get a deposition this
13 morning.

14 THE COURT: I -- I -- I know -- I know. And -- and I
15 -- I pushed them because it doesn't mean that that was wrong.
16 Right. It just means it was there at that time and she had
17 further treatment. So it negates that rating. He
18 established that, yeah, once she had the treatment it negates
19 the rating. But that shows what a serious problem was at the
20 time she walked in the door. Right. That is extremely
21 crucial evidence for us and that's why Mr. Coulter wants to
22 keep it out. But again -- all right. First of all is it 42
23 or 47? I don't know why I've had in my -- my -- my mind 47,
24 but it's 42?

25 MR. COULTER: Well, 47 is what he said in his IME.

1 THE COURT: Okay.

2 MR. COULTER: 42 is what he said when he supposedly
3 filled in this form last week.

4 THE COURT: Right.

5 MR. COULTER: Okay. So that's where that comes from.
6 Now, mind you, the other issue is when 47 was discussed way
7 back when, that's a permanent impairment, not just
8 impairment, permanent impairment. And that's clearly not
9 what the case is. I mean, I don't know how you can just say,
10 "Hey, I can just set -- " And by -- and the other thing is
11 you'll find out through the testimony, Judge, the plaintiff
12 was on -- had extreme issues with back problems for years,
13 underwent a back surgery four or five months after this
14 accident occurred. I didn't even get into the fact that
15 there was certainly with a fusion.

16 There isn't one person I've ever seen that had a fusion
17 that didn't have an impairment rating. I didn't go into that
18 with the doctor during the deposition, the trial deposition
19 because he said, "I don't have an impairment rating." I
20 mean, so what am I supposed to do? Well, I -- I mean that's
21 what he said in the trial deposition. Do you get to -- I
22 mean it's like getting two bites at the apple. I put a guy
23 -- a guy on the stand, he testifies to what he testifies to.
24 He says he can't assign an impairment rating. He's off the
25 stand and then he gets to be recalled at some point to say,

1 "Oh, I've changed my mind?

2 MR. NICHOLSON: Yeah. He didn't say that that was
3 wrong, what he said about 47 percent.

4 THE COURT: Well, page 21 Mr. Coulter asked, so the
5 jury doesn't have to think about a 47-impairment rating
6 because that doesn't apply from what we know at this point.
7 "Correct. Yeah, I'd have to recalculate it." So I think --
8 and I'm -- I'm -- I'm splitting this up in two parts. So I
9 think that is clear from his testimony that 40percent -- 47
10 percent rating is off the table. And I don't see how in the
11 world we can give that to the jury. Even though that was his
12 initial assessment. The fact that she has had treatment he
13 felt like he needed to recalculate. So I think that is clear
14 that the 47 percent would not come into the jury. Now, part
15 two, I mean Mr. Nicholson is clear said 47 percent does not
16 -- the jury doesn't have to think about it. Correct. Yes.
17 I'd have to recalculate. So ---

18 MR. NICHOLSON: (Inaudible) rating, but he did not say
19 that was wrong. He did not say she did not have a 47 percent
20 disability to the leg when she walked in the door. When she
21 walks in the door, she has a disability. Well, what he
22 calculates, Mr. Coulter wants to use it one one way, you
23 know, in his direction. But when it comes back to him, he
24 had a full chance to cross-examine him as to how you
25 calculate that 47 percent.

1 THE COURT: Well, again, the 47 percent based upon Dr.
2 Loging's testimony is not coming in. Okay? Now, what I have
3 to determine can -- do we allow in or not allow in any
4 testimony from Loging concerning the existence of a permanent
5 situation with respect to the plaintiff, medically does a
6 permanent situation, does it require in all cases a rating or
7 not? That's what I'm kind of struggling with. Can he say,
8 "Yeah." She -- she has some permanent problem and leave it
9 that, does it require a rating? I don't -- I don't know -- I
10 don't know. That's -- that's the question I have.

11 MR. NICHOLSON: Workers' comp cases require impairment
12 ratings.

13 THE COURT: Sure. Yeah. Yeah.

14 MR. NICHOLSON: (Inaudible) can say yes, she has a
15 disability. I mean he -- he obviously did that. I mean, I
16 -- I don't -- I -- I still don't understand and I take
17 exception to it obviously, that -- that that does not come
18 in. He did an analysis on a certain day and that was it.
19 That's his impairment rating. If she didn't do anything.
20 And I stipulate that that is not what her permanent after
21 surgery, that that's ---

22 THE COURT: So why should the jury know that?

23 MR. NICHOLSON: Because that -- that says how serious
24 her problem was before she had the surgery. It is what she
25 lived with for three years. It is what she lived with for

1 three years.

2 THE COURT: Right. I -- I think it'd just be -- it'd
3 be misleading to the jury for them to hear that number. So
4 they're not going to hear the number. But what I need to
5 determine is whether or not, and I don't know if -- if -- if
6 it can even be done with this deposition without the number,
7 can it -- can it be done to just for him if he just says
8 there's a permanent a permanent problem. I think he -- I --
9 I think he -- he -- it feels like it is, but there's just no
10 number to correspond with the permanent because he said I'd
11 have to recalculate it. Let me look at it again.

12 MR. NICHOLSON: Judge, the other thing is I think it's
13 very unfair that we had this long discussion on the phone
14 about this thing being continued to do another thing Mike
15 never said, "I don't want the 47 percent to come in." I told
16 you -- we said that on the telephone.

17 THE COURT: Yeah. Well, I think -- I think what --
18 what -- what we specifically talked about during our little
19 conference is that you needed a new rating. That's why you
20 were going to try to schedule some sort of follow up
21 deposition during the holidays or today or whatever. I
22 understand the doctor being not cooperative to get that done.
23 But my -- my -- my recollection of the discussion was yeah,
24 we -- we need to get the new rating from Dr. Loging's.

25 MS. MEREDITH: I read it, Your Honor. He Objected to

1 it coming in.

2 THE COURT: Well, you know, we had the rating I ---

3 MS. MEREDITH: To cross ---

4 THE COURT: I specifically -- wait -- wait a minute now
5 I can't have my talk at the same time

6 MR. NICHOLSON: I specifically said on the phone with
7 y'all. I said, "Well, I have the 47 percent rating." And he
8 says there's a disability. I'm not sure I need anything
9 else. Mike was completely silent. Then he shows up in court
10 and wants to throw out both of those things. That's why I
11 said I don't know that I really need it. I'm willing -- I'm
12 probably just going to go forward with it with -- with what I
13 have. And now, you're taking out what I had.

14 MR. COULTER: Could I -- could I interject?

15 THE COURT: Sure. Yeah.

16 MR. COULTER: Judge, I'm not sure what was unfair about
17 what I said this case, it was filed in 2019. I've asked for
18 this and by the, again, I'm going to emphasize this again.
19 They had a videotaped trial deposition, meaning that's the
20 testimony and that testimony's done. That's why I didn't go
21 into all these other things about impairment ratings.
22 Because he said he didn't know. So what am I supposed to do
23 in a trial deposition for video start questioning the doctor
24 about impairment ratings he doesn't even know about? I mean,
25 I'm confused. Discovery, I'm -- I'm not a stickler stickler

1 for discovery and rules for the most part. But let me tell
2 you, when -- when I'm told there's a 47 percent impairment
3 rating and then there's not one, why do I have to continue to
4 question his expert about that issue when he says he doesn't
5 know? And I never conceded anything on that phone on Friday.
6 I -- and if I did -- I apologize because I -- I never
7 intended that.

8 THE COURT: Well, I -- I -- I don't remember anybody
9 conceding anything. I thought we left it where you are going
10 to try to get a follow up deposition from Dr. Loging's and --
11 and with the case being called for trial today. And, and I
12 even said, you know I know I'm not helping you too much,
13 Billy, but you know, if we need to start the case on -- pick
14 a jury but start the case on Wednesday to kind of allow for
15 some more time to get this follow up deposition from Loging
16 to get a new rating, you know, I said I'd be more willing to
17 do that. I'll throw you a little bone. And so that's how I
18 remember we -- we left it.

19 And so -- but again what I need to -- my ruling is
20 firm, no, 47 percent. What I got to determine, can I still
21 allow Dr. Loging's testimony that there is a some sort of
22 permanency without a rating? I'll just have to go through
23 this deposition again and try to figure that out. Because
24 again, my question is, can a doctor testify? Yeah, there's a
25 permanent problem without giving a rating. Like ratings are

1 required in workers' comp cases. I know that. But do they
2 have to always give a rating? They can just say permanent,
3 leave it up to the jury. Kind of like pain and suffering,
4 you know, there's no formula and you know, it's just up to
5 the jury to -- to make that determination. So I'll just need
6 to take a look at that and decide. Any other discussion on
7 -- on that issue. I know we got some lost wages discussion
8 we need to ---

9 MR. NICHOLSON: Note my exception to it.

10 THE COURT: Excuse me?

11 MR. NICHOLSON: Note my exception.

12 THE COURT: Oh, sure. You -- you -- you're fully
13 protected on the record Mr. Nicholson, no question about
14 that. Okay. All right. Next issue. Did you get the tax
15 returns?

16 MR. NICHOLSON: What I got, Judge -- and -- and could
17 -- could we go back before we go into the next issue? And I
18 wanted the exception to be noted with the stipulation that
19 that permanency rating would not, we are stipulating that it
20 does not continue after the surgery. That the doctor's
21 rating was a point in time at the time he saw her and gave
22 her that rating that, that should come in for what her
23 condition was at that time with a stipulation that it is not,
24 does not go into the future after her surgery. I know. And
25 that he did not give an opinion as to that. Right. That's

1 what I think it says. And that's what I -- I think should
2 come in. Is that fair.

3 THE COURT: I -- I -- I understand your your position.
4 I -- again, without beating a dead horse, I just think it's
5 -- it -- it's just be too confusing to give a -- give the
6 jury a number when the number's not accurate. We all know
7 that 47 percent is not an accurate number and -- so just
8 because it shows the seriousness of the injury at the outset
9 does not indicate the -- the same seriousness, you know,
10 later on because the surgery, the treatment was somewhat
11 beneficial or productive in treating your client's injuries
12 that she sustained. So anyways -- so I will make a
13 determination whether if, if it can even be done on this
14 deposition, whether or not testimony concerning a permanent
15 situation is still -- would still be permitted. Okay. Lost
16 wages, tax returns. Where are we on that?

17 MR. COULTER: Yeah, Judge. If I could Judge, could I
18 just -- this is the -- this just kind of sets up where we're
19 going with this. If I can hand this report, this is the
20 plaintiff's responses that should come in. Okay. This is
21 the plaintiff's responses to discovery from back in 2020.

22 MS. MEREDITH: Which is prior to surgery, correct?

23 MR. COULTER: I don't know, you know when the surgery
24 is, I think, right.

25 THE COURT: What page do you want me to take a look at?

1 MR. COULTER: If you look at it's number 13, Judge.

2 THE COURT: Oh no. Okay. Item number 13. Got you.

3 MR. COULTER: Right. So this is discovery that I
4 received from the plaintiff's attorney three years ago, and
5 as you can see, I'd asked for tax returns. And I was told at
6 that time, as you see, 13, and that is they object to
7 producing tax returns because no significant lost wages are
8 being claimed. Okay. All right. And at that time, the lost
9 wages were \$282, so I didn't -- that's fine. Okay. I didn't
10 have a problem with that. Right. And then I think sometime,
11 I'm not exactly sure when, but I have an email from September
12 of 2023, a few months back, three years after that discovery
13 saying that the new lost wages was \$8,346.

14 So pretty significant, obviously, increase, but had not
15 gotten any tax returns. And so I'd sent an email last week
16 in preparing for the case, "Get -- please get me the tax
17 returns by Monday so I can look at them." I got tax returns
18 this -- this afternoon from 2019, 2020 a W2 from 2021. And
19 then after we came back from lunch, I got something from 2022
20 and I -- this accident happened in 2018. What I'm looking
21 for when I'm looking at lost wages is what did you make in
22 the years before. Right? What did you make the year of and
23 what did you make after? I still haven't been given anything
24 from before. And I was asking for the tax returns from five
25 years before suit was filed, which was 2019.

1 THE COURT: So what -- what year did you get this
2 morning or this afternoon?

3 MR. COULTER: Yes. I got 2019, 2020, a W2 from 2021
4 and a 2022 return. And again, I mean, look, I -- I -- it was
5 said that the tax returns are irrelevant earlier today. I
6 don't know, I hadn't seen them, but I, I know that I can't
7 say something's irrelevant and then that's it. I would like
8 to see, Judge, and if I can get them at some point today, I'm
9 fine with it. 2017, 2018. I just want to see where we are
10 with before versus after. And I've been asking for that.

11 THE COURT: All right. Okay. All right. Mr.
12 Nicholson. What about the 20 17 20 18 tax returns?

13 MR. NICHOLSON: Well, we can't seem to find them, so
14 that's the one problem. As far as -- now, I think we, we
15 went on the IRS website and got transcripts of earned income.
16 We hadn't been able to print it yet. Is that what it means?
17 Yeah, we -- we were trying to print it. We found it right
18 before we walked over here, so we were trying to get that
19 printed. So ---

20 THE COURT: So you have -- you said you couldn't find
21 it, but now, you have found them 20 17, 2018?

22 MR. NICHOLSON: When people can't find their -- their
23 tax records. All you can do is go to the IRS and try to get
24 a transcript. And that's what people do in (inaudible).

25 THE COURT: So you're going to be able to get that?

1 MR. NICHOLSON: We'll be able to get that.

2 THE COURT: Okay. All right.

3 MR. NICHOLSON: We got it right here.

4 MR. COULTER: I just want to see it.

5 THE COURT: Sure.

6 MR. COULTER: I'm not saying it's going to make any
7 difference one way the, I just want to look at it. A lot of
8 things in discovery aren't right admissible. I just need to
9 see it.

10 THE COURT: Yeah. Well, and -- and you know, failing
11 that, and it sounds like you're going to be able to get that,
12 but failing that, certainly the employer, and I know you
13 offered for Mr. Coulter and you to go over to the employer,
14 but certainly they can put their hands on W2's, which would
15 basically show what -- what Mr. Coulter's looking,

16 MR. NICHOLSON: I'm trying to get this afternoon, is a
17 complex statement from them about the actual time Mr. Coulter
18 knows the time out of work. The doctor has testified about
19 that. He knows physical therapy, you know, and, and he did
20 not question that. So it's not a question of whether she was
21 out of work. The reason I'm saying they're irrelevant is
22 because, you know, every defense lawyer likes to get those
23 tax returns.

24 They don't mean anything. There's so much collateral
25 source in payments, whether it's paid time off or charity by

1 the, you know, by the company or for whatever other reason,
2 unless you have the actual payroll records, you know, you
3 would know it. Now, we went through mediation and Mr.
4 Coulter did not ask for any of this. I mean, we, we talked
5 about lost wages, we had a mediator. He didn't say, well,
6 I'm not going to consider that because you hadn't given me
7 tax returns that comes up, you know, after this thing's put
8 number one on the trial list. Then he says, I got to have
9 this.

10 THE COURT: Well ---

11 MR. COULTER: Judge, that's just not -- I mean, we had
12 mediation about a month ago. Okay. And you know, for me,
13 the question isn't whether or not he thinks this is relevant
14 or not. The question is I've asked for it. And I haven't
15 been given it. Right. That may not be relevant, but I
16 certainly should be able to see it. Well ---

17 THE COURT: Let -- let -- suffice it to say, let's --
18 let's get the 2017, 2018 stuff before Mr. Coulter heads back
19 to -- to Greenville. And then -- and then we'll go from
20 there on that. All right. Anything else other than these?

21 MR. COULTER: I -- I've got a couple standard motions,
22 Judge, that I do in every case and Yeah, I,

23 THE COURT: I saw that. Let me -- me ---

24 MR. COULTER: I have those. I don't know where I -- I
25 got other copies here if you ---

1 THE COURT: Yeah. In your pretrial brief I think is
2 just a standard -- all right. No mention of insurance
3 traffic citations police reports. You weren't planning to
4 get into that, were you Mr. Nicholson? Okay.

5 MR. NICHOLSON: Well, and I'm not sure what's going to
6 come up at trial. I -- you know, we've done a lot of
7 research on this. There's some courts that say that, you
8 know, convictions are relevant for the purposes of punitive
9 damages. There is a statute that says that, you know,
10 magistrate court offenses are not admissible in common pleas.
11 I don't know how those, you know, go together. I mean this
12 is --

13 THE COURT: Well, I -- I think probably if -- if you do
14 put it into you -- that you're wanting to put it in your case
15 and chief, let Mr. Coulter know and let me know and then we
16 can flesh that out. It may come -- it may turn out to where
17 you decide not to -- try to pursue that line. Come from what
18 I'm hearing you say.

19 MR. NICHOLSON: I know that the defendant can bifurcate
20 the trial. I mean, if he wants that evidence not to come in
21 and case in chief or in the trial as to actual damages that
22 that can be bifurcated. One way that can be handled.

23 THE COURT: Yeah.

24 MR. COULTER: Of course. Again, I think that's up to
25 the defense to do that option. And I -- and I do a lot of

1 punitive damage cases, what concerns me is that if you
2 bifurcate the jury gets upset, the fact that they've thought
3 they're done for the day and they come back, so. And have to
4 do another deliberation. So I typically don't do that.
5 Yeah. And so the -- I'm -- I'm the statute's pretty clear,
6 but I agree with you. This is just something I've given to
7 the court to give just heads up on that something might be
8 coming up. I -- I know you don't, haven't heard it, but I
9 think the statute's pretty clear.

10 THE COURT: Yeah -- yeah. Well, you know, we can -- I
11 mean you feel like it's definitely something that you want to
12 try to to get in. Is that -- are you just considering it?

13 MR. NICHOLSON: Well, we have -- we have really two --
14 two items that could go to punitive damages. One is, you
15 know, the violation of the statute on the -- the two fast for
16 conditions are speeding, which there will be some testimony
17 on that.

18 THE COURT: Right.

19 MR. NICHOLSON: And I know we, you know, the statute
20 seems to say we can't get the speeding conviction in.

21 MS. MEREDITH: The factual evidence of being too fast
22 for conditions or the actual observations of people would not
23 amount to a technical disclosure of whether someone had a
24 traffic ticket. It would not involve going through whether
25 they had a conviction or a guilty plea. It would just be the

1 observation of witnesses.

2 THE COURT: All right. Okay.

3 MR. COULTER: I would -- maybe I can make this short,
4 Judge, I don't disagree that any violation of a statute can
5 give rise to a charge of punitive damages. Whether or not a
6 person was convicted of that wouldn't be admissible. But
7 certainly the, Judge, I assume the plaintiff's attorney will
8 be asking for a charge on too fast for conditions, whatever
9 it is. Right. That doesn't mean he's been convicted of it.
10 It just means that that is a violate. Anytime you have an
11 accident, you violate a statute.

12 That's what I've come to find out. There is no time
13 where you hit somebody in the rear going two miles an hour
14 that isn't a violation of a statute. And you can ask for
15 punitives, but that doesn't mean convictions come in. That's
16 a different thing, I think. And I'm not sure what
17 observations they're talking about because I -- I only see
18 ---

19 THE COURT: Well, you know, we -- we get into this
20 sometimes when there's, you know, been a guilty plea or not.
21 You kind of just touched on that, Ms. Meredith. You know,
22 guilty plea would be an admission against entrance, but a lot
23 of times, especially in master's court, you just pay the
24 fine, there's no guilty plea proceeding or a trial and
25 convicted. So I think before we can even consider the

1 conviction, I think we would need to know exactly how did the
2 conviction come about. Did they just pay the fine and be
3 done -- done with it, you know, at the magistrate's window?
4 Or was there actually a proceeding before the magistrate and
5 -- and -- and there's an admission of guilt? I think we need
6 to make that determination before we do anything else on
7 this, apart from a charge on the statute itself. So I think
8 you need to make that determination.

9 MR. COULTER: Okay. And I guess what -- and I still I
10 still have a couple more, unfortunately, Judge, but I'm
11 really concerned. I just, I'm hoping that we're -- we can
12 stay away from the stern openings. I will too until the
13 court rules on all the admissibility of that. But I do have
14 a couple more here that might help us speed things along.
15 And I don't know. I've been got -- I've been given a number
16 of different cost lists in terms of damages and -- and in
17 reviewing the most recent one I received.

18 Billy, there is a just -- there is a cost included for
19 a Piedmont plastic surgery and revision estimate, which comes
20 to about \$3,000. That was no one's testified to, it wasn't
21 performed. Nothing is included in that. And so I'm just
22 concerned about the itemization. There is also a cost for --
23 for Dr. Loging's IME, Independent Medical Examination, which
24 Mr. Nicholson had sent his client to, which is 1200 bucks,
25 which an IMEI don't believe should be included either.

1 THE COURT: Right -- right. Okay. So Loging's was not
2 a treating physician then?

3 MR. COULTER: Well, he became one.

4 THE COURT: He became one, but initially -- okay, I got
5 you -- I got you. Okay. All right. Well ---

6 MS. MEREDITH: They actually found the doctor that as
7 is often the case when there's litigation involved, they
8 require an IME payment.

9 THE COURT: Oh, really? Okay. All right. Well, those
10 two costs if, you know, if y'all can resolve that, fine. If
11 you can't let -- let me know.

12 MR. NICHOLSON: Yes, sir.

13 THE COURT: Okay.

14 MR. NICHOLSON: Outside of that, are you okay with
15 (inaudible) is on that list, have you verified the rest of
16 it?

17 MR. COULTER: I think so. I -- I -- I -- those are the
18 two that stood out to me, Billy, yesterday when I looked at
19 this. And I'll double check before ---

20 THE COURT: Yeah. Double check.

21 MR. COULTER: But I think we're okay other than that.
22 Other than, they're included in these is the lost wage as
23 well. So that's -- there's that issue. But anyways.

24 THE COURT: All right. So here -- here's the plan
25 then. Is you going to, before, before Mr. Coulter leaves to

1 go back to Greenville, you going to try to get him stuff on
2 2017, 2018 tax returns. I will make a determination, even
3 though I've ruled the 47 percent is, is out make a
4 determination by looking at this deposition, this trial
5 deposition, whether or not to allow any statements by the
6 doctor of the existence of a permanent problem without the
7 rating. I don't know if it can be done or not. I'll just
8 have to look at it. And then we'll start -- we'll start back
9 at 10:00 if we need to get together a little bit earlier in
10 that, I mean, the jury's coming in at 10:00, so if we got any
11 lingering issues, of course I'll make my ruling. But if
12 there's any other issues lingering, we can deal with that
13 before we start up.

14 MR. COULTER: Forgive me, Judge. I actually have two
15 more.

16 THE COURT: Okay, Sure.

17 MR. COULTER: Forgive me.

18 THE COURT: That's all right.

19 MR. COULTER: One, I don't think should be a big issue
20 Trooper Brown was identified as a witness today?

21 THE COURT: Yeah.

22 MR. COULTER: Okay. Although he is on the action
23 report. I confirmed that afterwards he had not been
24 identified as a witness before. And Mr. Nicholson said in
25 approaching the bench that it was limited testimony. And I

1 don't know what that is. My concern is, and -- and let me
2 tell you in a -- there's been a whole lot of chatter and Mr.
3 Nicholson brought up mediation and I didn't know we could go
4 into that, but there's been a whole lot of chatter during all
5 that kind of discussion about conspiracies, about the officer
6 being a friend of my client, that my client was under --
7 under the influence and all this stuff. And I don't -- and
8 he mentioned, I believe Mr. Nicholson mentioned to you that
9 the investigating officer had been fired. Okay. So I don't
10 know if that's the angle they're going in. I don't know what
11 that relevance would have to do, but I just want to make sure
12 we don't go too far field of things that would cause a
13 problem. Because I don't think that would be ---

14 THE COURT: If you can maybe just give Mr. Coulter,
15 either one a heads up on what you want to get out of Trooper
16 Brown to see if it's going to be an issue or -- and that was
17 -- that was Trooper Brown sitting in the back here this --
18 this morning. Yeah. Or two, make him available for Mr.
19 Coulter to talk with him since he has not been identified up
20 until -- until now. So either way, just so he's not
21 blindsided and ---

22 MR. NICHOLSON: He can talk to me. He has a lot of
23 information about the other Trooper not being there. He does
24 not, no -- no. There -- that is not going to come in. He's
25 just going to say that he's no longer working there. That he

1 reviewed the accident report. He will not -- obviously, he
2 can't testify about what was seen at the -- at the thing. I
3 -- I think he'd be used for a couple of other different
4 reasons, but really to verify that he wasn't the owner of the
5 car. I'm trying to think of what else would be there. But
6 ---

7 THE COURT: Well, before Trooper Brown testifies, just
8 let Mr. Coulter know what you intend to get out of him and
9 hopefully it won't be an issue. But if it is, bring it to my
10 attention, we'll decide.

11 MR. COULTER: Yeah. And I'll stipulate the fact that
12 my -- the defendant driver was not the owner and the who the
13 owner of the car is. He's my dead client. He'd be more than
14 happy to stipulate to that. I'm just concerned that there's
15 going to come in something somehow is going to be firing this
16 trooper and that this Trooper did something wrong or
17 something like that, because that has been the theory that's
18 been bounded about in mediations.

19 MR. NICHOLSON: Nothing to do with that.

20 THE COURT: Yeah. But I think Mr. Nicholson has
21 indicated they -- they're not going to get close to that.

22 MR. COULTER: That's fair enough.

23 THE COURT: Okay. And you got something else?

24 MR. COULTER: The last one.

25 THE COURT: All right.

1 MR. COULTER: Judge, and that is that. Again, there's
2 about a lot of things that have been talked about and I -- I
3 did not see, because Mr. Nicholson mentioned it on the phone,
4 the other -- on Friday about a tow truck driver. I don't see
5 him on the list. Is he ---

6 MR. NICHOLSON: He's not going to be called.

7 MR. COULTER: Okay. Because there was some discussion
8 about intoxication, this sort of thing with the court, which
9 I don't know of any evidence of that at all. He's not going
10 to be called, I just don't want that to be brought up in.

11 THE COURT: Sure. Okay. And they're not calling the
12 -- the tow truck guy, so.

13 MR. COULTER: Okay.

14 THE COURT: All right. Okay. All right. We will --
15 we'll recess for the day and like I said, let's get back
16 together a little bit before 10:00, before the jury gets here
17 and deal with whatever we need to deal with. Okay?

18 MR. COULTER: Yes, sir.

19 THE COURT: All right.

20 MR. NICHOLSON: (Inaudible).

21 THE COURT: Yes. Oh yeah. What -- Mr. Newman?

22 MR. LONNE: I did contact Mr. Newman, I'm talking with
23 him personally. Face to face. He said he would be here in
24 the morning. I thought he'd be here at 9:30.

25 THE COURT: Okay. All right.

1 MR. LONNE: He would be here. I did -- his address is
2 54 West -- excuse me. 54 East Court Street in Greenville.
3 But he said he would be here.

4 THE COURT: Okay. Good deal. All right

5 MR. NICHOLSON: Judge, there may be one other issue.
6 We had some medical records that were produced and I think
7 Mike, you said you had an objection to any and we can go
8 through these and redact them, but any kind of diagnosis in
9 the medical records and what, what I was going to do is
10 present those just to show what she was complaining of, go
11 through it with her, what dates she went to, what doctors,
12 what she was complaining of at the time.

13 MR. COULTER: I think I can address that, Judge?

14 THE COURT: Yeah.

15 MR. COULTER: I don't have any problem with, because
16 that's what I typically do on cross-examination is to use it
17 to refresh recollection. No problem with her complaints at
18 the time and that sort of thing. What I do get concerned
19 about is whether there's a diagnosis. I mean, I -- the
20 hearsay objection talks about something said for a diagnosis,
21 but diagnosis itself doesn't count. And I've been bit on
22 that before because I've agreed to it and then the
23 plaintiff's attorney starts talking about concussions and
24 sprains and that's -- so, I don't have a problem with that.

25 THE COURT: Yeah, just make sure that pretty much clear

1 on, because there is a -- there's a little gray area there.
2 Does it go over into diagnosis or not. So just make sure
3 that Mr. Coulter is aware of what you intend to go over the
4 records with -- with your client.

5 MR. NICHOLSON: Okay.

6 THE COURT: All right -- all right. So if Mr. Newman
7 shows up I guess he'll be seated with you. So you'll have a
8 a client and so I'll explain to the jury that the owner is is
9 deceased. That's why she's not here. And also I'll just
10 tell the jury at the outset this liability is not an issue
11 for them to consider. It's only issue of damages and
12 approximate cost. Okay. Guys, appreciate y'all's hard work
13 and we'll see you in the morning. And Lonne, appreciate you
14 doing that for us.

15 MR. LONNE: Yes sir.

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CERTIFICATE OF TRANSCRIBER

I, NATASHA BARRIENTOS, a court-approved transcriber, 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 South Carolina Circuit Court 8 of Greenwood County, South Carolina, on the 30th Day of May, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 23, 2024

Natasha Barrientos
Transcriber

1 CONTINUATION OF PROCEEDINGS: MAY 31, 2023

2 THE REPORTER: Wednesday, May 31, 2023. Greenwood
3 County Common Pleas Court, Judge Don Hocker.

4 THE COURT: Okay. All right. We're back on the record
5 this morning. And we have some issues that we need to sort
6 through. So turn it over to whoever wants to go first.

7 MR. COULTER: May it please the court? Judge, less
8 than two minutes ago, Mr. Nicholson gave me a brand-new lost
9 wage statement. That says the plaintiff's claim of lost
10 wages is now \$14,000. That was given to me two minutes ago.
11 This case had been going on since 2018. The initial
12 discovery responses said, if you recall, 200 bucks something
13 dollars and that they didn't want to give me the tax returns
14 because it was -- wasn't important. And -- and I said,
15 that's fine. And then a couple months ago, they gave me a
16 new one that says eight grand. Okay. Now, I have some
17 issues about that. But then on top of that, I just get this
18 for 14 grand. I -- I This is a 5-year-old case. I -- I
19 don't know what else to -- I have to, Judge, object to this.
20 I mean, just -- I mean, it's just, I'm doing the best I can
21 but that just -- it doesn't make any sense.

22 MR. NICHOLSON: Right. I -- I -- I did not give that
23 to him as the purpose of an exhibit. We're not going to use
24 it as an exhibit. Now, what happened in this case is that he
25 took the deposition of my client and he found out where she

1 worked, how much she made per hour. You know, and then what
2 happened is she had lost wages after that deposition. So you
3 knew that. And we were -- we've been talking about this last
4 two days. We were trying to get whatever evidence to give to
5 him, you know, for him to review if he wants to review it.
6 But all I'm going to do is have my client testify where she
7 worked, how much she made, how long she was out of work. And
8 the issue there is we have collateral source rule. So you've
9 got -- I want to make sure the jury wasn't in.

10 THE COURT: They -- they're going to let us know when
11 the jurors shows up.

12 MR. NICHOLSON: So, you know, she's going to -- she
13 will say she was paid for part of it using paid time off.
14 You know, that's -- she loses her paid time off.

15 THE COURT: Okay.

16 MR. NICHOLSON: These employment issues get fairly
17 complicated. Part of it, she gets temporary total
18 disability. But that is -- that's quite a source. So that
19 doesn't get to the jury anymore. Mr. Coulter, we took the
20 deposition of the doctor. The doctor stated at the time she
21 was out of work. We -- We know the parameters when she was
22 out of work, she was out of work a couple weeks, shy of six
23 months.

24 THE COURT: Let -- let me ask you this. Why does it
25 keep you start off in the initial discovery responses, couple

1 hundred bucks, and then a month or two prior to today, it
2 jumps up to 8,000. Now, it's -- it's 14,000. Why does it
3 keep increasing and -- and that I have to kind of -- I don't
4 necessarily take sides, but I can certainly understand Mr.
5 Coulter's frustration. Now, he's presented where the
6 plaintiff is going to present a lost wage amount of 14,000,
7 which is a brand new figure that he has not been aware of
8 until today.

9 MR. NICHOLSON: Well, he knew the -- he knew it was way
10 over \$300. I mean, if you want, the -- the first issue is
11 when the accident happened, she's out three days, three years
12 later she has surgery, and the surgery is even after she took
13 -- she gave her deposition, you did not ask to get another
14 deposition, so.

15 THE COURT: Right. But -- but he -- you know, he's
16 still thinking up until a couple months ago that that the
17 claim is just a couple hundred bucks for lost wages.

18 MR. NICHOLSON: That was not true. He -- he was
19 (inaudible).

20 MR. OULTER: Judge, that is true. And here's the
21 problem. Discovery was served in 2019 and the discovery was
22 quantify your damages. I mean, it's pretty simple. Tell me
23 what your medicals are. Tell me what your lost wages are.
24 Yeah, I mean, you can sit there and say, "Hey, I -- you know,
25 whatever." And to point the finger at me to say I'm at fault

1 because I didn't take another deposition of his own client
2 that I'd already taken. And then all of a sudden, just two
3 months ago, I'm given this, what -- I don't know, a hundred
4 fold amount above what was done.

5 MR. NICHOLSON: Let's -- let's back up ---

6 MR. COULTER: Okay. Well, that's fine.

7 MR. NICHOLSON: -- this is absolutely ridiculous for
8 you to go back to a \$300 figure. The \$300 was for the two or
9 three days after the accident. He knew she was out of work
10 for six months. We took the doctor's deposition. The doctor
11 kept her out of work for six months. Only way there is not
12 lost wages for six months. He had her -- he knew how much
13 she made per year. He knew that it would at least in the
14 neighborhood of what it was.

15 THE COURT: All right. Let me ask you this. Did you
16 get the tax returns just afternoon?

17 MR. COULTER: I got some -- some stuff, Judge. I did
18 get some tax returns from 2000 -- I want to make sure I get
19 this right.

20 THE COURT: Supposed to 2017, 2018 was what was ---

21 MR. COULTER: Yeah, they -- Judge, I'm sorry. They
22 were just -- and I think I've got them right here. They're
23 just kind of like IRS printouts. They don't ---

24 THE COURT: Did they show income?

25 MR. COULTER: They didn't show me anything. Well, they

1 didn't really show anything. And as I understand, and just
2 briefly talking with Mr. Nicholson, and I think you in
3 chambers, is that the plaintiff didn't have any lost wages.
4 Now, they're arguing collateral source, which is kind of a
5 different topic than the one I'm bringing up about the 14,000
6 bucks. But, you know, but if you have -- if you don't have
7 lost, you can't sit in front of a jury and say, "I lost, well
8 now \$14,000." And yet never lost \$14,000.

9 I think that's disingenuous to say to a jury, you've
10 lost that kind of money for a number of reasons. What --
11 well -- okay, go ahead, Billy. I don't mean to interrupt
12 you.

13 MR. NICHOLSON: The collateral source rule is what it
14 is. I mean, it's been around (inaudible) for a hundred
15 years.

16 THE COURT: Well, here -- what I'm concerned about is
17 that the day of trial the defense is being provided
18 documentation to show even a greater amount of lost wages. I
19 understand what you're saying about the collateral source
20 rule, and we can get into that in a minute. But what
21 concerns me is that the defense on the day of trial gets
22 documentation to support a figure that has never been brought
23 out prior to today. That -- that -- that's what concerns me.
24 And let me ask you this, Mr. Coulter, were you willing to
25 live with -- it's kind of a loaded question, but live with

1 the \$8,000 figure that you got a couple months ago?

2 MR. COULTER: Well, that is an interesting question. I
3 mean, I -- I -- so the other, I guess, I mean, obviously
4 that's better than 14. So I'll start with that. Secondly,
5 I'd say I'm still not quite convinced that, I can't say, "Did
6 you lose any wages?" I mean, they can then explain. "Oh,
7 Yeah, I -- I used --" because there's a whole lot of weird
8 stuff going on here that I just can't understand. She was
9 out for three or four months because she had cervical surgery
10 at some point. That's why we didn't -- and right, I guess I
11 should have noticed her deposition again, I guess, but you
12 know, when it was only three days of lost wages for two years
13 after the accident, and all of a sudden now we've got this,
14 which is presented two months ago. Okay. So fine, I get
15 that. But -- but I think I can ask, "Did you lose money in
16 this case?" And if they want to explain to the jury, which I
17 haven't been provided with anything that says it was vacation
18 time.

19 Okay. Nothing about talk about disability, short term
20 disability. That hasn't been provided to me. I don't know
21 if it's collateral source or not. They just tell me that,
22 just like I was told yesterday in chambers, that the tax
23 returns were irrelevant even though I hadn't seen them. So,
24 I mean, how -- how do I know if it's collateral service or
25 not? Now, if they want to explain that to the jury that, "By

1 the way, I'm at \$8,000, although I didn't lose \$8,000, it's
2 because I took vacation time and that sort of stuff." That's
3 a lot of vacation time, but, okay. Okay. But that's
4 something to explain to the jury, not for me just to agree to
5 and say that's fine.

6 THE COURT: Okay. Has there been any -- I mean, Mr.
7 Coulter says no documentation to support what apparently your
8 client would can -- let's hold this second. Yeah -- yeah, go
9 ahead. Mr. (Inaudible) you realize that you're -- you're 20
10 minutes late. Okay. I don't want that to happen again.
11 Okay. As Mr. Coulter says there's been no documentation to
12 corroborate what evidently your client is telling you, Mr.
13 Nicholson, that she had to use vacation time had to received
14 some short term disability, no documentation to that, to
15 support what your client's telling you?

16 MR. NICHOLSON: Well, I feel like she's inclined --
17 she's entitled to claim whatever time she was out, unless it
18 is charity by the, you know, the company just chooses to pay
19 her. Now, whether it's -- whether it's -- whether it's under
20 the collateral source rule or not be, I mean, we might have
21 to get employment lawyers to figure that out. But at least
22 during the mediation, Mr. Coulter knew that we were claiming
23 lost wages. And he --

24 THE COURT: Well, you know, again ---

25 MR. NICHOLSON: (Inaudible) not going to show.

1 THE COURT: Yeah, I -- I don't think we can expect, and
2 I'm not suggesting that your client would be telling
3 anything. That's not true. I'm not suggesting that. But I
4 think in all fairness, if she's going to try to claim a
5 collateral source i.e., disability, i.e., vacation time,
6 whatever. You know, I think he's entitled to have something
7 to support that. So let -- let me throw this out. Let them
8 claim whatever they claim, let you ask her as far as anything
9 she received to where there's maybe your argument would be
10 there's not actually lost wages and -- and don't get into
11 whether or not the collateral source would prohibit such line
12 of questioning. Can we handle it in that way? And then let
13 the jury do with it as they want to.

14 MR. COULTER: I get it, Judge.

15 THE COURT: Okay. All right.

16 MR. NICHOLSON: Can you explain that again? I just --

17 THE COURT: Okay. All right. You're going to put her
18 up and -- and say, "Okay I lost \$14,000." And then Mr.
19 Coulter would be permitted to say, "Okay, well you didn't
20 actually lose it because you got disability or you got
21 vacation time or whatever." And -- and I'm just not going to
22 allow the collateral source rule to otherwise bar possibly
23 that line of questioning. And then let the jury do with it
24 as they want to. It's kind of splitting the baby, is what
25 I'm doing. Okay.

1 So you could argue -- listen, we -- she shouldn't be
2 penalized for, you know, having used vacation time to -- to
3 secure some income while she's out of work. The jury may --
4 may go along with that, but since there's nothing to support
5 her claim of what she has received, then I -- I don't think
6 you should expect Mr. Coulter to blindly accept what your
7 client says. And again, ma'am, I'm not suggesting that
8 you're telling anything that's not -- not true, but I mean,
9 in all fairness. So I will allow that. Otherwise I may not
10 allow any lost wages at all.

11 MR. NICHOLSON: (Inaudible) suggestions. And I just
12 think -- I don't think we need to get into source rules.
13 What we have to pay back told me disability, if we get award.

14 THE COURT: Well, I -- that -- that's -- that's not up
15 to me nor the jury to decide whether or not you through the
16 disability company, whether or not you have to, you know,
17 reimburse. I mean, that's -- that's not -- that's not for us
18 to decide.

19 MR. NICHOLSON: Good to say she used (inaudible) at
20 work to get (inaudible).

21 THE COURT: Again, what, what I will allow, if you want
22 to claim \$14,000 in lost wages, then have at it, but I'm
23 going to allow Mr. Coulter to examine her as far as whatever
24 she received, disability vacation time, whatever. And then
25 the jury may say, "Well, yeah, that's not fair for her to

1 have to use vacation time to get some income coming in."
2 They may award lost wages, then again, they may not. So I --
3 I'm going to allow that. But if you can't live with that,
4 then I may just say, "Well, that's not going to get in lost
5 wages at all." You live with that Mr. Nicholson?

6 MR. NICHOLSON: Yes.

7 THE COURT: Okay. All right.

8 MR. NICHOLSON: Sounds good.

9 THE COURT: Okay. All right. Now, anything else
10 before we bring jury out?

11 MR. COULTER: I don't think so, Judge, unless we want
12 to mark exhibits to get into things. We do have some
13 exhibits. I -- I would say that some of the exhibits we've
14 been reviewing that. Some -- some of these have a bunch of
15 highlights in them, and I don't mind -- I -- I would rather
16 them not have highlights in it. I mentioned that, but if
17 they're going to go back to the jury but other than that we
18 could probably just agree.

19 THE COURT: Well, let -- let me ask you this. Can we
20 go ahead and get started, get openings done, and -- and then
21 maybe during a break deal with some exhibits?

22 MR. COULTER: Yes.

23 THE COURT: Okay. All right. Just a second. We'll
24 get -- we'll get cranking here. All right. What I'm going
25 to tell the jury that this is an admitted liability case, so

1 duty and breach of duty, it's not for them to decide. And
2 I'll tell them, I'll explain more about that at in my final
3 charge. But the issue, approximate cause and damages would
4 be for their consideration. And again, I'll explain more
5 about that in the charge. I also just tell them for their
6 information that that the owner of the car, Kimberly Norman,
7 is deceased. That's why she's not in -- in the courtroom.
8 And just really -- just -- that's for their information. And
9 -- okay. And Mr. Newman, nice to have you with us today.

10 MR. NEWMAN: Thank you, sir.

11 THE COURT: Oh, Judge, I was talking to this defendant.

12 MR. NEWMAN: I'm so sorry.

13 THE COURT: That's okay. Nice to have you, Judge
14 Foster. That's okay. All right. Let's bring the -- bring
15 the jury out, please. You got your oath handy?

16 THE CLERK: Sure do.

17 THE COURT: Do you know it by heart?

18 THE CLERK: No.

19 THE COURT: All right. Let the record reflect the jury
20 is back in. Good morning ladies and gentlemen.

21 MULTIPLE SPEAKERS: Good morning.

22 THE COURT: Hope you all are doing well and got some
23 rest

24 and ready to get to work. Okay. First order of business is
25 we need to swear you in as the trial jury in this case.

1 Madam Clerk?

2 THE CLERK: Please stand. Raise your right hand. Do
3 you swear and affirm that you shall well and truly try the
4 issues before the court, a true deliverance make a true
5 verdict render according to the evidence and law presented.
6 So I hope you, God.

7 MULTIPLE SPEAKERS: Yes.

8 THE CLERK: Thank you.

9 THE COURT: All right. Ladies and gentlemen, I'm just
10 going to make a few kind of opening remarks and turn it over
11 to these good lawyers to -- for them to give you their
12 opening arguments. As I mentioned yesterday, I don't allow
13 juries to take notes. And the reason why I don't allow that
14 is because I have found that oftentimes if you've taken
15 notes, you're paying more attention to the note taking than
16 you are listening to the witness testimony or statements
17 being made by the lawyers or that sort of thing.

18 So what that requires you to do is to be alert and
19 attentive throughout this trial. While this is not going to
20 be a long trial but if you're alert and attentive, then when
21 I give you the case to begin your deliberations, then
22 hopefully collectively you'll have a really good memory of
23 what's been presented to you. Individually, you're not going
24 to remember everything, but collectively, hopefully, you'll
25 remember everything that's been presented to you. So that's

1 why it's real important to be alert and attentive get a good
2 night's rest and so be prepared to come each day to -- to
3 work.

4 Secondly, it's real important not to not to make any
5 quick decisions about this case. Keep an open mind wait for
6 all the evidence to be presented to you. The closing
7 arguments are made by the lawyers and my charge to you on the
8 law that you are to use in -- in this case. So keep an open
9 mind. Don't make any quick -- quick decisions. I mentioned
10 to you yesterday briefly about the prohibition against doing
11 any independent research into this case. The reason for that
12 is -- is that your -- your verdict in this case has to be
13 based 100percent on what is brought out in this courtroom.

14 So if you are out doing some independent research into
15 this case, while the information could very well be wrong or
16 false information, it's information outside of this courtroom
17 that the other jurors don't have the benefit of of receiving.
18 So that's why don't do any -- don't get on the internet,
19 social media, anything like that. Unfortunately, I had a
20 case several years ago in Laurens and three jurors
21 disregarded my -- my instructions and went on the internet
22 and got some information. And luckily we were able to catch
23 that because if we had not, it may have really been a bad
24 situation. So just don't do it after the case is over with,
25 have at it, but while the case is going on, don't do that.

1 Okay?

2 Now, this is an, as I told you, an automobile accident
3 case, a personal injury case, and it's a negligence, what we
4 call a negligence case. And there are four factors in the
5 case that's a duty owed, a breach of that duty, approximate
6 cause of that breach causing damages, if any, and then the
7 existence of damages. The first two elements you will not
8 have to consider the duty and the breach. And I'm going to
9 explain all that in more detail at the end of the case. This
10 is what we call an admitted liability case. Now, what is
11 that issue is still whether or not any damages claimed by the
12 plaintiffs exist and whether or not they were approximately
13 caused by the -- by the accident.

14 So -- so there'll be some things that you just won't
15 have to consider, which in a lot of automobile accident cases
16 or negligent cases the jury does have to -- to consider
17 those. So, and again, don't be real concerned if you don't
18 quite understand what I just told you, because I will explain
19 it in greater detail at the conclusion of the case. Okay?
20 All right. And lastly, the owner of this automobile who was
21 named as a -- this is just from your information only,
22 Kimberly Norman. She is deceased, so that's why she's not in
23 the courtroom today. I'm giving that to you for your
24 information or for your information only.

25 Does not change anything about what the -- the case is

1 about or what the lawyers will present in this case. I'm
2 just letting you know why there's not a, a second dependent
3 sitting next to Mr. Coulter. Okay? Now, the lawyers are
4 going to make their opening arguments to you. It's not
5 evidence of what they tell you during the opening arguments.
6 It is just what they believe this case is about and what they
7 anticipate the evidence will show. Mr. Nicholson, you ready
8 for yours?

9 MR. NICHOLSON: Yes, sir.

10 THE COURT: Okay, thank you.

11 MR. NICHOLSON: May it please the court? Ladies and --
12 members of the jury, thank you for being here. It is a -- I
13 don't think you were -- I don't think you were here when the
14 Judge talked about our jury system. I think you'd already
15 been picked and you were back in the room and he was speaking
16 to the -- the rest of the group out here, and he was talking
17 about -- told them that it's important what you do that a --
18 you know, with a jury -- well, the jury duties one of the
19 most important things you do other than voting probably in
20 your civic duties. But it is a system designed in the world
21 for making decisions of this sort.

22 Not all countries have it. It's one thing we should be
23 proud of in the United States is having this -- this jury
24 system. And it's been found that 12 people getting together,
25 six or 12 people getting together and having to make a

1 decision together, You're more intelligent than the most
2 intelligent person in the group. Studies have been done on
3 that getting together and discussing things and going through
4 it ends up being a more accurate decision. So it -- it is --
5 is a very good system. I've always wanted to be on a jury.
6 I never have. I've been -- I've been put out in that pool
7 before, but for some reason, one side or the other doesn't
8 want a lawyer on the jury.

9 So I've never been able to do it. But I'm going to
10 talk a little bit about the more -- more about that later.
11 What happened on June 14, 2018 to Tracy and Dan Campbell, my
12 client's here, this couple. What happened on June 14th, 2018
13 should never have occurred. We're going to show to you that
14 on that evening, early, about 7:00, Brian Newman, who's
15 sitting next to Mr. Coulter over there, somehow acquired,
16 borrowed whatever a car from Kimberly Norman, we're assuming
17 it was permissive, that she let him have this car, that he
18 had not been licensed to drive in South Carolina for over 20
19 years.

20 This accident should never have occurred. He should
21 never have been behind the wheel of a car. So this is not a
22 case of a simple mistake we call simple negligence.
23 Somebody's just careless and they cause an accident. That's
24 not what this is. This is reckless conduct. This is a
25 conscious disregard for the safety of others. And we're

1 going to ask you to consider that when you render your
2 verdict. In this case, let's talk about, I'm just going to
3 give you a little background. You're going to hear from
4 Tracy and Dan Campbell. That night, June 14, 2018, they had
5 met and they've been married for a while. They have two
6 grown children in town. They met their children,
7 grandchildren, had a dinner at a place called George's
8 Restaurant.

9 Some of you may know where George's was. I think
10 George's was at several different places. And I had to ask
11 them and figure out where it was. because when they talked
12 about where they were driving, I said, well, that doesn't
13 make sense where I knew George's was. But they were at the
14 Georgia's that kind of near, you know, if we get in trouble
15 saying the old Walmart and new Walmart, I'm saying the
16 Walmart near the Lowes, which I call the old one right now.
17 There was a Georges that was there. It's no longer there.
18 They met for a family dinner.

19 Finished dinner, and they turned -- they went down to
20 what you call Calhoun. But it really is 225. If you turn
21 there and you go south. They lived at the time on the south
22 side of town, I think it's called Hilltop Drive, which is out
23 South Greenwood. So they turned on 225 to head South. And
24 if you can picture this, you know, you're heading in that
25 direction. You go on that road, you go past Emerald High

1 School, go past kind of Connie Maxwell, go over the -- over
2 the railroad tracks. You keep going around, you'll come to
3 the intersection where Alexander is and the CPW. and then
4 you keep going and you go kind of down a slow hill. The
5 bottom of that hill, maybe you hadn't noticed it, there's a
6 bridge there that's hard, Labor Creek.

7 And you hit hard Labor Creek and you start going uphill
8 the general curve and you get to Florida Avenue. Okay? So
9 they were traveling that way and I think Tracy had said, "I
10 got to get some groceries for tomorrow." So they were going
11 to go to Food Lion. So they had decided to say, "Well -- Dan
12 said, well, I'm going to turn on Florida Avenue." So he
13 slows down, puts his signal on is and prior to that, he had
14 noticed a car. And he'll tell you about that. He had
15 noticed a car behind him, a good way back, slowed down as a
16 fairly short turn lane right there at Florida Avenue. We'll
17 show you some pictures of it.

18 But he slowed down to turn and before he even got into
19 the turn lane, or just as he got into the turn lane, this car
20 slams him from behind at a high rate of speed. It throws his
21 car in front of a tractor trailer truck that fortunately
22 missed them across the highway to the left. And if you can
23 picture this, and those of you who travel there, there's a --
24 there's a ditch there that goes up a little bit. Slams into
25 the ditch, airbags deploy. And they -- they end up resting

1 up at the top of the hill above that ditch.

2 They're both stunned. They had a -- their car -- this
3 was in 2018. The car was a 2017 SUV an Equinox. Car was
4 totaled, airbags came out when they hit the ditch. And as I
5 -- as you can imagine, they're both stunned at what happened.
6 Dan tries to get out of the car as he's getting out. The --
7 the truck driver had stopped and Dan not able to stand up.
8 The truck driver helps him to the ground. And they see to
9 Tracy and she has a problem standing up. So she sits there
10 and -- and EMS shows up, takes her to the hospital. So
11 you're going to hear about this accident, you're going to
12 hear about where that car was behind Dan.

13 You're going to hear about this collision from them and
14 how it felt. You're going to hear about how Dan felt, how
15 Tracy felt, and really we're here on Tracy's claim, not Dan's
16 claim. The claim you're asked to consider is Tracy's claim.
17 Her claim against Brian Newman, her claim for negligent and
18 entrustment against Kimberly Norman and Dan's claim for loss
19 of consortium. And -- and I'll talk a little bit more about
20 that later. We will go through her medical records in -- in
21 pretty good detail and I'm going to explain why we're going
22 to do that. Tracy had -- had back problems prior to this.

23 She had been seeing the spine clinic down here. I
24 don't know if any of you all probably heard of Dr. Lau and
25 Dr. -- at the time, Dr. McLaughlin, she was seeing Dr.

1 McLaughlin and her back really hadn't gotten bad enough where
2 they had done surgery yet, she rarely admits she had a back
3 problem. She was worried it was aggravated by this accident,
4 as it turns out it really wasn't. So that's not going to be
5 a complication in this case because she's not claiming that.
6 What happened was when -- when she gets to the emergency
7 room, when she's treated in the weeks after that, she's got
8 bumps and bruises. But the biggest thing is a bad contusion
9 on her right hip Is what she ends up having problems with.

10 She ends up having surgery with the spine center here
11 about three months after this accident. So she went ahead
12 and had that surgery. But that surgery's not a part of this
13 case. It is to the extent that we have to figure out what
14 she was suffering from during these times. Now, I want to
15 answer one question that probably comes up to your mind. It
16 may have come up to your mind when you were sitting out here
17 or when you first heard about this case. Why are we here
18 five years later? 2018. So that's -- that's -- that's a
19 good question. Well, one is you hear about the back surgery.
20 So she had to have the back surgery and recover from that
21 before she could even deal with the hip problem. So that's
22 -- that's one problem. Of course, COVID started not too far
23 long after that, but she started treating and she had
24 consistent treatment for this hip problem.

25 And that's why I -- I need to show you that and that's

1 why I'm going to go through these records. She had
2 consistent treatment for that hip problem, but no doctor
3 could figure it out for almost three years, you know,
4 although talking about injections and therapy and treatment
5 and medication and different things. And, and that does
6 happen, you know, with her medical system. But she ends up
7 going to see Dr. Loging who's down in Newbury, a different
8 orthopedic doctor. And as it turns out, he did some
9 diagnostic tests that hadn't been done before to actually see
10 the area that was affected.

11 And he talks about her problems, you'll hear from him
12 by video. We did a deposition and you'll actually see the
13 video during the trial. And Dr. Loging ended up kind of
14 figuring out what was going on there. And he, he recommended
15 the surgery that she said, "Yes, I'm -- I'm willing to do
16 that." And she had surgery in June of 2021. And then she
17 had about a almost a six month recovery from that. The
18 recovery from the hip problem, believe it or not, it was --
19 was more serious than the recovery from the back surgery.
20 Took a longer time.

21 So she just missed a -- a little bit of time from work
22 where she had to, to stay at, I mean, three days at the time
23 this accident happened. But then she had the surgery she was
24 not able to work for about six months. So we're going to go
25 through all that. Let me go back through one thing I want to

1 tell you about jury duty and what I see about jury duty.
2 because I've never done it. You're -- you -- you're more
3 experts at it than I'm at this point. because you've been
4 back there a couple hours. But this is what I see about it.
5 I've been doing this for 37 years. It's a great experience.
6 It is a little bit frustrating I think because sometimes
7 you're going to sit back there and you've already done it and
8 you're saying, "What the heck are they doing?" You know, "Why
9 are we just sitting here? We don't have anything else to do?
10 I got better things to do?"

11 But there are things we have to take care of. And I
12 think sometimes you don't know what the plan is. You're
13 sitting back there and you don't know, is this going to take
14 one day? Is it going to take 10 days? Is it going to be
15 like the murder trial or, you know, is caught up for a month?
16 No, it's not going to be like that. So let me give you a
17 little -- a little game plan here. We don't have that many
18 witnesses. It's not going to take that long to go through
19 this today, tomorrow. I -- I don't think it will last past
20 that. So put you at ease over that. I think the judge
21 mentioned something about going through the weekend. We're
22 not going to be here for the weekend, I don't think.

23 But as you can understand, this woman had back surgery
24 a few years later. She continued to have hip problems, she
25 had hip surgery. So it is very important to go through the

1 week by week records and, and show what she was going
2 through. So that is something I need to show you and show
3 you how serious this problem was. And you're going to hear
4 from both of them about how this affected their lives. That
5 this hip surgery, this hip problem changed her life
6 significantly, both of their lives significantly during these
7 three years before she had surgery. And it continues to
8 affect them. This is a permanent problem. And it didn't
9 have to happen. It did not have to happen. This man should
10 not have been in a vehicle that day.

11 At the end of the case, I am going to ask you for an
12 award for an judgment of money damages. And I'm going to
13 explain a little bit about the elements of it. because I
14 think as you're going through the testimony, you need to know
15 the different elements of damages. I'm going to say this to
16 you now that Mr. Coulter may get up and say, "This is about
17 money. It's all about money." Let me tell you something and
18 the judge will tell you this. This is what this court is
19 about. And that's the only thing that this court can do.
20 That any jury can do. In a jury trial. Is really give an
21 award of money.

22 And I want to explain something to you about that. And
23 this goes back in history and it is part of our civilization.
24 Because before we had jury trials, people would you know, if
25 somebody damaged somebody else in other societies, they still

1 have this. You do something like this. Well, I'm going to
2 send my cousin over there, I'm going to beat you up. You
3 want to do that? I'm going to burn your house. You know,
4 I'm going to take it out on your -- you and your family. We
5 have a civilized society. You can't put -- you know, you
6 can't really put somebody in jail because they -- they owe
7 you money. In the United States, we don't have debt or
8 prisons.

9 So this is what is our civilization. It is when
10 someone damages someone else, you're able to go in front of a
11 jury, this is the civilized part of this. Just give me an
12 award for a fair amount, a verdict, a judgment for the
13 damages. And that's all I'm asking you for. Asking for
14 money is not a dirty thing. Mr. Coulter wants you to think
15 it is. But this is part of our civilization. This is why we
16 hopefully don't have violence and people taking it out on in
17 another way. This is the civilized way of doing things. And
18 you don't have any other options. You can't say make him pay
19 for medical bills. Make him do this. Since she has a bad
20 hip. We're going to hit him with a baseball bat. No, you
21 can't do that. That's not civilized. Okay? This is our
22 system. This is -- this -- money is not a bad thing in this
23 -- in this situation.

24 So let's talk about damages. There's some damages that
25 are pretty easy to figure out. And one of them is medical

1 bills. And -- and I'll submit to you now, I don't think the
2 medical bills, it'll be pretty clear what was related to the
3 hip surgery. We're not claiming anything related to the
4 back. I already told you that, but that'll be pretty easy
5 for you to figure out. She was not able to -- Tracy was not
6 able to work for certain periods of time. She did get some
7 benefits to cover that and we'll discuss that. That'll be
8 something for you to consider. But there are other damages
9 that are very, very important and maybe more important than
10 those things. She has a -- and -- and we call it pain and
11 suffering. But she went through a lot. You'll see through
12 these medical records, what she was going through treatment,
13 going to the doctor's injections, ended up having surgery, a
14 seven- or eight-inch gash on her hip to do this surgery.

15 The removal of a very big mass from her hip. A scar on
16 her hip. She has a limp that she continues to have. She has
17 pain when she works too long. She has pain when she tries to
18 have fun, when they want to go ride a motorcycle. So there
19 it's a significant amount of pain and suffering. And there
20 are a lot of different elements in that. As I mentioned, she
21 has a scar, she has disfigurement to her body, she has
22 permanent disability, she has problems that continue even
23 after this last surgery. And as I said, it affects the
24 relationships between these two people. And that is a, you
25 know, the loss of consortium for Dan. And the effect on the

1 relationship to Tracy is an element of damages. So I'm going
2 to ask you to consider all of those things and I'll talk to
3 you more about it in closing, as the judge says, this is
4 admitted liability that they're asking you to determine what
5 the damages are. So I simply ask that you pay attention to
6 the testimony and we'll talk again at end. Thank you.

7 THE COURT: Okay. Mr. Coulter, you ready for your
8 opening?

9 MR. COULTER: Yes sir. May it please the court?

10 THE COURT: Yes, sir.

11 MR. COULTER: Thank you. Ladies and gentlemen. Good
12 -- good morning. My name's Mike Coulter to reintroduce
13 myself. This is Brian Keith over here. He actually goes by
14 Keith Newman. And this is his fiancé Angela over here behind
15 me. And I represent Keith. And as you also heard that I'm
16 representing also the owner of the vehicle, Kim, who's passed
17 away -- passed away some time ago. So I'm going to start
18 kind of like how the judge I think talked to you about some
19 things earlier yesterday about the different kinds of court.
20 He mentioned to you that there are two types of court in
21 South Carolina; general sessions, court and common pleas
22 court. General sessions court is criminal court where a
23 person charged comes in front of a jury as such as yourself,
24 makes a determination as to guilt or innocence.

25 Interestingly, I was a prosecutor here for 13 years in

1 this courtroom doing exactly that, doing what I could to make
2 sure justice was done for Greenwood County to punish people
3 for crimes they've committed. That's what I did for a long
4 time. Lived here off of Deadfall Road, 10 years. Second
5 kind of court is common pleas court, which is what this is.
6 And as the plaintiff's attorney told you just a minute ago,
7 it's about money. It's about money and what's reasonable.
8 And so what you've heard a minute ago is that this is
9 reckless wanting, so to speak. This is an accident and I'm
10 going to get into how it occurred in a minute. But it was an
11 accident as you can -- obviously it's an accident that occurs
12 with human beings every single day. That's what happens.

13 And so when an well a human being makes a mistake, what
14 -- what we would hope, and I think all you would or anybody
15 would if you are -- where I am, is for the jury to look at
16 this and be reasonable about what the award should be. And
17 yes, this is absolutely an admitted liability case. We're
18 not going to tell you that Keith is not at fault for this
19 accident. I'll tell you that he is at fault for this
20 accident. Did he have a license? He was under suspension
21 and had been for quite some time. There's -- we're not
22 saying he wasn't, he was living with Kim at the time. Kim
23 was undergo -- she had dialysis issues. She had to go to
24 dialysis twice a day. He cared for her, lived with her when
25 he needed, or she needed medication, groceries, what have

1 you.

2 He would go get them. Should he have done that while
3 he was under suspension? Maybe not, but he did. And this
4 accident happened. You're going to see photographs in a
5 minute of the rear of the vehicle that the plaintiff was
6 riding in at the time. And you're going to hear about what
7 type of complaints the plaintiff had after this accident
8 happened. You have heard a lot already about a back injury
9 and back surgery, which has absolutely nothing to do with
10 this case. Zero. But you're also going to find out that
11 from the time of this accident until about four or five
12 months after this accident, almost without -- every single
13 treatment date, for the most part, was all about this issue
14 with the plaintiff's back, which she said had nothing to do
15 with this accident.

16 And eventually, three years after this accident
17 happened, three, she had surgery to her hip to remove a mass.
18 And then you're going to hear from these records that Mr.
19 Nicholson said he wants to read to you and I -- and we will
20 go through those too. And that's the worst thing about this
21 trial is going to be going through medical records. I can
22 promise you that. Okay? This is not a Murdoch trial, okay?
23 It's not going to be that way. It is going to be a lot more
24 technical about that. You are going to see things that are
25 going to be presented from that TV screen.

1 And I'm old school so I'll probably bring up some, some
2 big things in front of you so I don't have to worry about
3 that. But it's going to show you, I submit to you the
4 complaints or non-complaints that the plaintiff had after
5 this accident happened. It was back, back, back, which had
6 nothing to do with this and then hit later on three years
7 later. But -- but -- but again, don't get me wrong, Keith
8 was that at fault for this accident? We're not trying to get
9 away from that. That's not the issue. He's at fault.
10 You're going to see the -- the photographs, you're going to
11 see what happened. And Keith himself has a hard time, and
12 you'll find this out, remembering what happened in this
13 accident.

14 He has epilepsy. It's, actually, I think March a
15 couple months ago, he had a very serious issue with that.
16 Had to go to the ER, is having trouble remembering a lot of
17 things that happened, happened in the past. But he doesn't
18 deny that he was involved in this accident. He's now caring
19 for his fiancé, Angela, seated behind Keith. And they live
20 together and her health isn't all that great right now, but
21 he's doing the best he can with that. He doesn't have an
22 income, they live off disability and that's what he has. And
23 that's important to understand because eventually what the
24 plaintiff's attorney is going to ask is that a large award
25 for money verdict damages be awarded against not only Keith

1 here, but Kim who's dead.

2 He not only wants to get a big award of money against
3 both of them, both Keith and Kim, but also wants both Keith
4 and Kim to be punished. Kim, of course, who's dead. That is
5 what this is about. It's about money. And -- and -- and
6 Keith is a big mistake, he -- he made for driving while he
7 didn't have a license to help out Kim, which is a shame,
8 shouldn't have happened. What in the spectrum of all this
9 means as far as a punishment or what's reasonable? And --
10 and I -- and I can tell you, I think there is a reasonable
11 award that should go to the plaintiff for this. I do believe
12 that. What -- but what is reasonable? When we're going to
13 see everything that we see and consider and I hope this
14 doesn't take care of. We want again, not Murdoch, certainly
15 won't be that way and I'll try to get through it as quickly
16 as we can to help you all out. Okay? Thank you.

17 THE COURT: Okay. Plaintiff ready to call first
18 witness?

19 MR. NICHOLSON: Yes, Your Honor. Plaintiff calls Brian
20 Newman.

21 THE CLERK: (Inaudible).

22 MR. NEWMAN: (Inaudible).

23 BRIAN KEITH NEWMAN,
24 being dully sworn, testified as follows;

25 DIRECT EXAMINATION

1 BY MR. NICHOLSON:

2 Q. Please state your full name Mr. Newman.

3 A. Brian Keith Newman.

4 Q. Why are you here today?

5 A. Because I was subpoenaed.

6 Q. You got a subpoena?

7 A. Yeah, yesterday.

8 Q. You got one yesterday?

9 A. Yeah.

10 Q. Who'd you get subpoena from?

11 A. A -- a police officer.

12 MR. NICHOLSON: Can we approach real quick?

13 THE COURT: Sure.

14 MR. NICHOLSON: Thank you.

15 BY MR. NICHOLSON:

16 Q. Mr. Newman. Did you get a subpoena from me?

17 A. I'm not sure. I don't know.

18 Q. And actually you got a subpoena last week, wasn't
19 it?

20 A. I might have got a letter in the letter.

21 MR. COULTER: I'm just -- I'm having a hard time
22 understanding this. He's been sued. He's here because he's
23 a defendant in a case, right?

24 THE COURT: He's defendant in the case and at some
25 point in time he was subpoenaed to be -- be in court.

1 BY MR. NICHOLSON:

2 Q. My office is that -- do you remember calling my
3 office after you got the subpoena?

4 A. I don't think I ever called your office.

5 Q. You -- you did not call my office?

6 A. I tried to, but I didn't get answer that.

7 Q. You didn't talk to anybody because we wouldn't
8 talk to you, right?

9 MR. COULTER: I'm sorry, Judge, what Mr. Nicholson ---

10 THE COURT: Move on to something else, Mr. Nicholson.

11 BY MR. NICHOLSON:

12 Q. How long have you lived in Ware Shoals?

13 A. About four years.

14 Q. All right. You a hard person to find?

15 A. Yeah.

16 Q. Huh?

17 A. Yeah, I'm not a hard person to find.

18 Q. Okay. All right. So you live in Ware Shoals?

19 A. Uh-huh.

20 Q. What's your address?

21 A. 54 East Cork Street.

22 MR. NICHOLSON: Mr. Coulter, your lawyer?

23 MR. COULTER: Can I approach please?

24 BY MR. NICHOLSON:

25 Q. Mr. Newman, how -- how often do you drive a motor

1 vehicle?

2 A. I don't drive anymore.

3 Q. You don't drive anymore as of -- what does that
4 mean?

5 A. That means I don't drive a vehicle anymore.

6 Q. When did you stop driving a vehicle?

7 A. I got epilepsy. The reason I don't drive because
8 I don't want to have a seizure and -- and really, really kill
9 somebody. I couldn't live with myself if I -- if I did.

10 Q. When were you ---

11 A. That's why I don't drive.

12 Q. When were you diagnosed with that?

13 A. When I was about seven years old.

14 Q. So have you been told never to drive?

15 A. No. I took it on my own, never to drive again.

16 Q. You never got a driver license?

17 A. That's why I haven't got one in 25, 30 years or
18 but resent that I'm not driving.

19 Q. That's the only reason you're not driving now is
20 because you have no license?

21 A. Yeah.

22 Q. How often do you have seizures?

23 A. He's -- I don't know how often. Couple -- I -- I
24 could have one anytime I could have one right here. I don't
25 know.

1 Q. When did you -- when did you stop driving
2 altogether?

3 A. I -- I mean, I don't understand the question. I
4 only drive, but I absolutely have to to help somebody out.

5 Q. All right. So when you've lost your license, you
6 lost your license and you admit about 20, 25 years ago?

7 A. Uh-huh.

8 Q. And the only reason you've driven since then is to
9 help people out?

10 A. Yeah.

11 Q. You own a motor vehicle?

12 A. No.

13 Q. When's the last time you owned a motor vehicle in
14 your name?

15 A. I can't remember. I don't know.

16 Q. How do you know Kimberly Norman? How did you know
17 her?

18 A. I don't -- I -- I -- I have no recollection of how
19 I met her. I don't know.

20 Q. What was your relationship?

21 A. Just friends.

22 Q. Just friends?

23 A. Yep.

24 Q. And how did you knew ---

25 A. She need it -- she -- she just needed help. So I

1 -- I moved in to help her out.

2 Q. You all romantically involved?

3 A. No.

4 Q. So how did you happen to get her vehicle on the
5 June 14, 2018?

6 A. I have no recollection. I told you I -- I had a
7 major seizure about two months back and I remember about
8 5percent of my whole past life, period. And that ain't
9 nothing. I mean, I don't have no memory. None.

10 Q. You don't remember what happened on June 14th?

11 A. No, I don't. No, I don't.

12 Q. You know whether you had an epileptic fit?

13 A. I -- I -- I'm thinking I probably did have a
14 seizure while I was driving. That's probably what happened.
15 I don't know. I -- I don't -- I can't remember. I don't
16 know. I don't -- absolutely nothing.

17 Q. Are you aware of the laws in South Carolina
18 concerning the operation of motor vehicles?

19 A. Of course I am

20 Q. Would you say these laws are put into place for
21 the protection of other people traveling on the highway?

22 A. probably so.

23 Q. And what you're saying is you don't remember
24 driving Ms. Norman's car in June of 2018?

25 A. No, I don't.

1 Q. And there was an accident where the vehicle you
2 were driving hit the back of a vehicle, an SUV driven by Dan
3 Campbell.

4 A. Evidently? Evidently.

5 Q. Did you go to the hospital?

6 A. I don't know. I just told you. I don't know.

7 Q. Do you know how fast you were going?

8 A. I don't know. No, I don't.

9 Q. You don't remember driving on highway 225?

10 A. No.

11 Q. And again, Mr. Newman, you say the only reason you
12 drive is when you absolutely have to. Is that right?

13 A. I don't have to anymore.

14 Q. You admit you were driving on August 19, 2021?

15 A. I don't know. I don't remember.

16 MR. COULTER: I'm sorry, Judge.

17 BY MR. NICHOLSON:

18 Q. Wednesday, August 19, 2021.

19 MR. COULTER: Can we approach, Judge?

20 THE COURT: Okay.

21 MR. NICHOLSON: We might want to let the jury --

22 THE COURT: Okay. All right, ladies and gentlemen, I
23 have a legal issue that I need to discuss with the lawyers
24 outside of your presence. So if you'll go back to the jury
25 room, remember, don't have any discussion about this case,

1 we'll get you back out shortly. Okay? The question again
2 was -- was he driving on some date in 2021 and this accident
3 was 2018? I think so.

4 MR. NICHOLSON: Well, you know, at this point we --
5 we're going into credibility. I mean, this man says he only
6 drives (inaudible). The man has numerous DUIs. Okay? I
7 mean, I -- I didn't want to throw that in front of the jury,
8 but, you know, he's not driving to help somebody when he has
9 a DUI, I think that's a major ground for impeachment at this
10 point.

11 THE COURT: Well, I -- I may would agree with you, Mr.
12 Nicholson, if this was not an admitted liability case, but it
13 isn't admitted liability case. So all we -- we need to deal
14 with is whether or not the accident approximately caused
15 whatever damages that you're claiming and what those damages
16 may be. So his credibility really, I don't think is at issue
17 coupled with the fact that he says he -- because of his
18 medical condition, he doesn't remember anything about the --
19 about the accident. So again, if it was not admitted
20 liability case, I may would allow you to get into some
21 credibility issues.

22 MR. NICHOLSON: We are claiming punitive damages both
23 against him and both against Ms. Norman and, you know, the
24 violations of statutes, and we can go into that because
25 violation of -- of a statute is negligence per se, is

1 evidence of recklessness, for wrong behavior. Just because
2 Mr. Coulter comes into court and at is convenience, as we
3 admit, liability, it does not cut off the analysis for
4 punitive damages.

5 THE COURT: Right. I -- I agree. However, violation
6 of statute in and of itself would not be the sole basis to --
7 to allow punitive damages to go to the jury. I mean, it is
8 -- it -- it is that -- but there's other elements involved in
9 -- in punitive damages other than just violation of statutes.
10 So that's just kind of one factor. All right.

11 MR. NICHOLSON: Well, we -- we have a ---

12 THE COURT: Okay. Well, let -- let me just lead
13 anything after the date of the accident would not be relevant
14 to his conduct on the day of the accident. Okay? The fact
15 that he is driven and has some DUIs several years later, we
16 need to look at leading up to the accident and the accident
17 itself as to anything that may go towards the issue of
18 punitive damages. But whatever he did after the fact would
19 not be relevant to the day in question. And that's what
20 we're concerned with, especially if you're wanting to try to
21 pursue the punitive damages.

22 MR. NICHOLSON: Well, I have cases that say
23 differently.

24 THE COURT: All right. Give me a case. Give me a
25 case. Be glad to look at it.

1 MR. NICHOLSON: I -- I beg the court's indulgence,
2 Judge?

3 THE COURT: Sure. Take -- let's -- let's go ahead and
4 do this. I -- my stomach growling, I need to catch a quick
5 snack. So you all take a few minutes break and then we can
6 get back on -- on that. Give you some time to take a look at
7 whatever you've got. Just keep your seat, Mr. Newman.

8 MR. NICHOLSON: I guess, Judge, are we going to go into
9 the whole punitive damage thing, which could be an hour or
10 two of discussion between us and -- and presentation. Or are
11 we just talking about impeachment? You want me to -- that's
12 where we are right now.

13 THE COURT: Well, what I -- what I'm going to -- what
14 I'm going to do is at the at the close of the case as far as
15 whatever's been put into evidence, and then if you still are
16 requesting a punitive damages charge, then I'm going to have
17 to evaluate and weigh whatever evidence been presented. And
18 if you've presented enough evidence on the issue, punitive
19 damages, I'll charge it. If not, I won't. So I don't know
20 -- you know ---

21 MR. NICHOLSON: I guess ---

22 THE COURT: And if you've got, if you've got a a case
23 that would allow you to ask them about driving situations
24 post-accident, that's really what I want to look at.

25 MR. NICHOLSON: Just -- just to throw this out there

1 before we take a break, there are a number of cases on that,
2 but the fact that he has not changed his behavior since then
3 is -- is relevant to an (inaudible). He says, "Oh, I just
4 trying to help out this poor old lady on this day, you know,
5 and that's the only reason I drove." And since then, you
6 know, he -- he has not paid the fine on his charges of this
7 case yet.

8 MR. COULTER: Well, Judge. Yeah, if I could first of
9 all, it's really important to understand, and I don't think
10 it's been brought up, he was not charged with DUIs as a
11 result of this accident. If he was talking about him being
12 DUI here and he kept doing that afterwards, I get that. Now,
13 if he wants to ask whether or not did you drive at some point
14 after this, okay. If he's under suspended, I guess so I
15 don't agree with that. But the fact that he -- he -- he had
16 had a DUI before or -- or after the whole point is, is that
17 the plaintiff's attorney is trying to use these other DUIs as
18 a way to create punitive damages in this case in front of the
19 jury. In my opinion. I may be completely wrong, but the
20 fact that he may have after, or may have before at -- has
21 nothing to do with this case at all.

22 MR. NICHOLSON: I -- I tend to -- and I had no
23 intention of bringing up DUIs until this man got on the stand
24 and said, "The only reason I drive is to try to help somebody
25 out." And that -- and that is not true.

1 THE COURT: Well, bottom line, if you've got some case,
2 a case or cases that would allow you to get into
3 post-accident information, whether it's on the issue of
4 punitive damages, credibility, and again, I'm not sure
5 credibility is really that important here because it's a
6 mid-liability case. Let me -- let -- let me look at those.
7 I'm just -- I'm -- I'm a little leery getting into anything
8 post-accident. But let's go ahead and take a break, give you
9 a chance to find those cases and we'll get back together.
10 You can step down, but you just can't talk to anybody about
11 the testimony. Okay?

12 MR. NICHOLSON: Judge, one second.

13 THE COURT: Yeah. So the record is, is complete then
14 --

15 (Off the record.)

16 THE COURT: All right. Let the record reflect the jury
17 is back in. Mr. Nicholson, you may proceed.

18 BY MR. NICHOLSON:

19 Q. Yes, Mr. Newman do you remember what kind of
20 damage was done to Ms. Norman's car as a result of this
21 accident?

22 A. No, I don't.

23 Q. Was the car totaled?

24 A. I don't know.

25 Q. Do you remember talking to her?

1 A. I told you I don't remember. I don't remember
2 nothing about it.

3 Q. I have another question. I'm asking you whether
4 you had a conversation with Ms. Norman at a later date when
5 you could have had some memory about ---

6 A. I don't remember.

7 Q. Will you listen to my question about what happened
8 to her car?

9 A. Not that -- not -- not that I can recollect.

10 Q. You don't recollect talking to Ms. Norman about
11 what happened with her car?

12 A. No, I don't.

13 Q. Did you ever see her again after this?

14 A. I don't. I -- I don't recall. I don't know.

15 Q. Steal her car?

16 MR. COULTER: Judge ----

17 MR. NICHOLSON: I'm asking ---

18 MR. COULTER: I object. Can we approach? Matter of
19 fact ----

20 THE COURT: Wait a minute. Got an objection. I
21 sustain the objection. Jury disregard the last question and
22 answer.

23 BY MR. NICHOLSON: .

24 Q. How old are you, Mr. Newman?

25 A. Sixty.

1 Q. How old?

2 A. Sixty.

3 Q. Sixty? Do you wear glasses?

4 A. Yeah. To -- to read.

5 Q. Okay. When's the last time you had an eye test?

6 A. I don't know. Been a while, I guess.

7 Q. When was the last time you had an eye test by the
8 highway department?

9 A. I haven't been to the highway apartment in quite a
10 few years, so I don't know.

11 Q. It would be over 25 years ago, wouldn't it?

12 A. I guess it would be.

13 Q. So you wear reading glasses or is that something a
14 doctor gives you or is that just ---

15 A. Reading glasses.

16 Q. And you have to let me ask the question because
17 the court reporter has got to take all this in. You got to
18 let me finish the question and then you can answer. Do you
19 go to a doctor to get glasses?

20 A. Nope.

21 Q. So you just -- are you -- I take it that you just
22 buy glasses from a store as to what you think you need?

23 A. Yeah.

24 Q. Did Ms. Norman know whether you had a driver's
25 license?

1 A. I don't -- I can't -- I don't recollect.

2 Q. How long were you -- I say with -- you said you
3 weren't in a romantic relationship with her. Right?

4 A. That's right.

5 Q. That's right? How long did you know her before
6 her death?

7 A. I don't know how many years it was. I don't know.

8 Q. It was a matter of years?

9 A. I -- I suppose it was.

10 Q. How often did you use her car?

11 A. I don't know.

12 Q. Did you have permission to use her car?

13 A. I can't tell you that either.

14 Q. When is the last time -- Mr. Newman, when is the
15 last time you went to a medical doctor for your epilepsy?

16 A. It hasn't been very long because I got probably a
17 month.

18 Q. Who was your doctor?

19 A. I don't know his name, but I got on -- it's on my
20 pill bottle, my -- my medicine bottle.

21 Q. When was the last time you knew that you had an
22 epileptic seizure?

23 A. About two months that I -- I can recall.

24 Q. When did you have your last epileptic seizure?
25 Before June 14th, 2018?

1 A. I don't remember back that far. I can't remember.

2 MR. NICHOLSON: That's all the questions I have right

3 now.

4 THE COURT: Mr. Coulter?

5 MR. COULTER: Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. COULTER:

8 Q. Hey Keith. Good morning. Actually -- yes. Good
9 morning. So Keith, you -- you talked about the fact that --
10 that you have epilepsy?

11 A. Yes.

12 Q. All right. Are you actually currently taking
13 medication for epilepsy?

14 A. I am.

15 Q. Yeah. And I think recently you showed me a pill
16 bottle that was from March of this year for some ALEC.

17 THE COURT: Verbally answer, don't nod your head, okay?

18 THE WITNESS: Yeah. I got it. Yes.

19 THE COURT: Fine. No problem.

20 BY MR. COULTER:

21 Q. Keith, you have to go to the emergency room within
22 the past couple months for that?

23 A. Yes. I think I actually called ambulance on me --
24 for me.

25 Q. Okay. All right. Now as far as your, your

1 relationship with Kim, you stayed with her for a couple
2 years, is that what I understand?

3 A. Yeah, I believe so, yes.

4 Q. Okay. And what type of health problems did -- did
5 Kim have the owner of the vehicle that you were driving at
6 the time?

7 Q. She had -- they had taken both of her kidneys out.
8 So -- so she didn't have kidneys, so that's why she was on
9 dialysis twice a day.

10 Q. And so did you -- did you and her stay at the same
11 home?

12 A. Yes.

13 Q. All right. And did you help her in her day-to-day
14 activities?

15 A. Yes.

16 Q. And I'm sorry, you said you're 60?

17 A. Yes.

18 Q. All right, so you were born in 63?

19 A. Yes.

20 Q. Okay. All right. Where are you from originally,
21 Keith?

22 A. I'm from -- I'm married from South Greenwood in
23 Grayer.

24 Q. South Greenwood. Whereabouts?

25 A. Right down Highway 34.

1 Q. Okay. Have you lived here your whole life?
2 A. Basically, yeah. Yes.
3 Q. Did you go to high school here?
4 A. Yes, I did.
5 Q. Where'd you go?
6 A. Greenwood High.
7 Q. Okay. And did you graduate from there?
8 A. No I didn't.
9 Q. All right. Did you get a GED?
10 A. Yes. I do.
11 Q. All right. And are you employed right now?
12 A. No.
13 Q. When's the -- when's the last time you had any
14 type of employment?
15 A. In quite a while.
16 Q. And what's the -- what's the primary type of job
17 that you did when you were employed?
18 A. Remodeling, ceramic tile.
19 Q. Okay. Kind of floor work stuff?
20 A. Yes.
21 Q. All right. And are you currently -- do you have
22 an income now?
23 A. No.
24 Q. Okay. Have you applied for disability?
25 A. Yes, I have.

1 Q. But you're not getting that yet?

2 A. No.

3 Q. Okay. And have you retained an attorney to help
4 you with that?

5 A. Yes, I have.

6 Q. And where do you live now?

7 A. In Ware Shoals.

8 Q. Ware Shoals?

9 A. Yeah.

10 Q. Okay. And Angela's with us here today?

11 A. Yes.

12 Q. Do you help her?

13 A. Yes, I do.

14 Q. Okay. All right. Do you own a home?

15 A. No, I don't.

16 Q. Do you own a car?

17 A. No.

18 Q. Do you have a bank account?

19 A. No.

20 MR. COULTER: Okay. Thank you. Appreciate it.

21 THE COURT: Mr. Nicholson, anything follow up?

22 MR. NICHOLSON: Can recall. No questions at this time.

23 THE COURT: Okay. You can step down, sir. Take your
24 seat back next to Mr. Coulter, please. Okay. Next witness.
25 Mr. Nicholson?

1 MR. NICHOLSON: Yes. Judge, I call Tracy Campbell to
2 the stand.

3 THE COURT: Okay.

4 THE CLERK: Swear or affirm the testimony you're about
5 to give this court, will be the truth, whole truth, and
6 nothing but the truth, so help you God?

7 MS. CAMPBELL: I do.

8 TRACY JOANNE CAMPBELL,
9 being dully sworn, testified as follows;

10 DIRECT EXAMINATION

11 BY MR. NICHOLSON:

12 Q. Tracy, give us your full name.

13 A. Tracy Joanne Campbell.

14 Q. All right. How old are you now?

15 A. Fifty.

16 Q. All right. Are you married?

17 A. Yes.

18 Q. What's your husband's name?

19 A. Daniel Campbell.

20 Q. How long you all been married?

21 A. Twenty-nine years. This year.

22 Q. I asked both of you all that you all one year off
23 between the ---

24 A. Twenty-eight. Twenty-eight years this year.

25 Q. No.

1 THE COURT: Is -- is that unusual Mr. Nicholson?

2 MR. NICHOLSON: No. It's ---

3 THE COURT: Wipe me off a little bit?

4 MR. NICHOLSON: (Inaudible) chance not to get in
5 trouble with the other one, but.

6 BY MR. NICHOLSON:

7 Q. 28, 29 years. You all have children?

8 A. Yes.

9 Q. I believe you have two grown children, right?

10 A. Yes.

11 Q. Do they live in this area?

12 A. Yes.

13 Q. Okay. And I believe you all -- you all are not
14 from

15 this area. You grew up in Michigan, right?

16 A. Yes.

17 Q. Both of you all?

18 A. Yes.

19 Q. Okay. And when did you all move down to the
20 Greenwood area?

21 A. In 2008.

22 Q. All right. And what was the reason for moving
23 down here?

24 A. My husband had a cousin down here and he kept
25 asking us to come down and check it out, so we did and we

1 moved down here.

2 Q. And I -- I think you started working at a company
3 here shortly after you got here, right?

4 A. Yes.

5 Q. And what's the name of that in place?

6 A. I worked at Food Lion, also Greenwood Regional
7 Rehab.

8 Q. You work at Food Lion now?

9 A. No.

10 Q. And that was years ago, wasn't it?

11 A. Yes.

12 Q. Okay. Now, do you -- do you still work at
13 Greenwood Regional Rehab?

14 A. Yes.

15 Q. Okay. And that's not part of self-hospital, is
16 it?

17 A. No.

18 Q. And what do you do for them?

19 A. Environmental services, layman terms,
20 housekeeping.

21 Q. And you've been doing that really looks like about
22 15 years now, is that right?

23 A. Yes.

24 Q. And your husband, what kind of work does he do
25 now?

1 A. Freezer and refrigeration.

2 Q. And I I'll ask him more about that.

3 A. Installs for free freezer and refrigeration for
4 grocery stores.

5 Q. And that involves some travel, doesn't it?

6 A. Yes.

7 Q. What kind of -- I want to go ahead and ask you
8 this. What, what do you and Dan do for fun? What -- what
9 kind of things do you all do outside of work?

10 A. We love to ride the motorcycle, go camping, spend
11 time together.

12 Q. What about, you mentioned camping. Do you all do
13 any hiking or?

14 A. Used to. Not now.

15 Q. But that was one of your hobbies. Did you all do
16 some hiking together?

17 A. Yes.

18 Q. Now, I want to move to June 14, 2018. Tell me
19 what was going on that day or that evening.

20 A. That evening, we got together with our grown
21 children to have dinner. I don't recall why, but we did.

22 Q. All right. So you -- you had a family dinner.
23 Was, where was that?

24 A. George's in Greenwood.

25 Q. And at that time, where was Georgia's located?

1 A. Georgia's was located by the old Walmart across
2 from the Lowe's and the China Garden.

3 Q. All right. In that area. Okay. And when you all
4 left Georgia's that night, who was driving?

5 A. My husband, Dan.

6 Q. All right. Do you know what route you all took?

7 A. We went down 225.

8 Q. Where did you all live at the time?

9 A. On Williams Hilltop, south end of Greenwood.

10 Q. Is that out -- I think it's all the way out.
11 Highway 25, isn't it?

12 A. You have to go to the end of highway -- yeah, it's
13 -- it is way out 25 from --

14 Q. All right, now were you all -- you were headed
15 home,

16 but were you going to make a stop before you got home?

17 A. Yes, we needed to go to the grocery store.

18 Q. What grocery store were you going to go to?

19 A. Food Lion. It was closest.

20 Q. And the Food Lion, I believe is on South Main
21 Street, isn't it?

22 A. Yes.

23 Q. Now, do you remember what happened as you all
24 approached Florida Avenue?

25 A. I remember an impact in the back of the car.

1 Q. All right. Tell me what kind of impact it was.

2 A. It was a powerful impact.

3 Q. All right. And what happened to your car?

4 A. My car was pushed to -- into oncoming traffic, the
5 left side of the road and then we went down the embankment
6 and up it and landed on the other side of the embankment.

7 Q. Did the airbags come out?

8 A. Yes.

9 Q. Did they come out immediately or did they come out
10 when you went down the embankment?

11 A. I don't -- I -- I don't recall that, but I know
12 that when we came to arrest all airbags were deployed.

13 Q. Now, were you all continuing straight on 225 or
14 were

15 you turning on Florida Avenue or what was going on there?

16 A. We were getting into the turn lane to turn onto
17 Florida Avenue.

18 Q. Do you remember whether Dan had on a blinker, had
19 he put on a blinker?

20 A. Yes.

21 Q. And you said something about oncoming traffic.
22 Was there, did you notice, was there any traffic in the other
23 direction?

24 A. Yes, there was an 18-wheeler coming straight at
25 us.

1 Q. And it didn't hit you, did it?

2 A. No.

3 Q. All right. So during this impact, what happened
4 to your body or what, did you hit anything in the car? Did
5 you hit the windshield? Did you hit anything else?

6 A. I hit the -- the passenger side armrest and door
7 panel with my -- with my right side of my body.

8 Q. Right side of your body was in -- hit on
9 vertically on your ---

10 A. From -- from my waist down on my right side.

11 Q. Does that include your rib area?

12 A. My rib area? Well yeah, my ribs, my right side of
13 my hip.

14 Q. Right side of your hip? Okay. what do you
15 remember feeling after that impact when the car is sitting
16 there up top of the hill?

17 A. Well, I was in shock and I just, I was hurting.

18 Q. Did you try to get out of the car?

19 A. Yes.

20 Q. How did that go?

21 A. Not good. as soon as I tried to step out of the
22 car, I -- my legs gave out and I sat back down inside the
23 car.

24 Q. All right. Do you remember whether Dan got out of
25 the car?

1 A. Yes.

2 Q. All right. Do you -- did you see the other
3 vehicle that hit you?

4 A. Did I see the other vehicle that hit me?

5 Q. After the accident -- after the accident? Well,
6 let me ask you, did you see it before the accident?

7 A. No.

8 Q. All right. Did you see it after the accident?

9 A. When I was getting loaded into the ambulance, yes.

10 Q. So tell me what happened as you remember who got
11 there, when they got there, if you remember.

12 A. Who got there as in?

13 Q. I mean, you said EMS got there.

14 A. EMS was there. there was a highway patrol and a
15 county and of course the 18-wheeler driver and a tow truck
16 driver.

17 Q. All right, so you were loaded in a -- in a -- in a
18 EMS. And were you taken to South Hospital?

19 A. Yes.

20 Q. Was Dan also taken?

21 A. Yes.

22 Q. Did you all go in the same EMS?

23 A. Yes.

24 Q. All right -- all right. yeah, I need you to set
25 that up. I beg the court's indulgence. We -- we've got a --

1 so we can look at some medical.

2 THE COURT: Oh, sure.

3 MR. COULTER: Judge, before anything's published to the
4 jury, I think we need to figure out if they've been admitted
5 into evidence. It hasn't.

6 THE COURT: Okay. All right. Well, I -- I guess what
7 you may want to do, Mr. Nicholson, is show those pictures to
8 your client and see if she can identify them and then move
9 them into evidence before we show them to the jury.

10 MR. NICHOLSON: As to these, we've given (inaudible)
11 the business records and there's a certification on that.
12 That's how we ask be admitted. there was a concern about
13 this highlighting and -- and we're not going to give these to
14 the jury at this point. I'm going to put them up on the
15 screen and read from them. The copy that we give the jury
16 ultimately will not have this highlighted on.

17 THE COURT: That -- okay. You good with that?

18 MR. COULTER: I -- before the, I just would say before
19 the -- I would suggest respectfully that before they're
20 published that we, they're moved into evidence and we have an
21 opportunity to -- to view what it is being published to the
22 jury.

23 THE COURT: Okay. All right. Let, let me make sure
24 what -- what is actually given to the jury when they, for
25 their deliberations are going to be unhighlighted documents.

1 Now is there any issue with now putting them on the screen
2 highlighted? I don't know if the screen will even show that,
3 I guess it will show the highlighting to some extent.

4 MR. COULTER: Yeah. I'm fine with that on the screen.
5 that's not a problem. I just -- and - and Mr. Nicholson and
6 I have been looking at these, I just don't.

7 MR. NICHOLSON: I'll -- I'll give you these copies, you
8 can look through them.

9 MR. COULTER: That'd be great. That'd be

10 THE COURT: Okay.

11 MR. NICHOLSON: (Inaudible) for me or is this -- no,
12 that's one.

13 MR. COULTER: Oh, okay.

14 THE COURT: Yeah. Okay. That's fine. I'm just --
15 that's fine.

16 MR. NICHOLSON: All right, Judge, we have -- this is
17 marked, for identification, Exhibits 14, 15, 16, 17, 18, 19
18 20, 21, 22, 23, 24.

19 THE COURT: 14 through 24?

20 MR. NICHOLSON: (Inaudible). 27.

21 THE COURT: 14 through 27.

22 (Plaintiff's Exhibits 14, 15, 16, 17, 18, 19, 20, 21,
23 22, 23, 24, 25, 26, and 27, were marked for identification.)

24 THE COURT: And what are those? Are those photographs
25 or records?

1 MR. NICHOLSON: Self regional. Okay. Parts of
2 self-regional system records. And I move these if there is
3 no question about it.

4 THE COURT: Okay. 14 through 27. Self-medical
5 records, Mr. Nicholson's moved into evidence. Mr. Coulter?

6 MR. COULTER: No objection.

7 THE COURT: All right. Without objection. 14 through
8 27 into evidence on behalf of the plaintiff. The
9 understanding that those records and given to the jury for
10 deliberations will be unhighlighted.

11 BY MR. NICHOLSON:

12 Q. Tracy, before we start looking at these records, I
13 want to ask you and I -- I -- you heard me mention it to the
14 jury, you had some back problems?

15 A. Yes.

16 Q. Before this accident, right?

17 A. Yes.

18 Q. All right. And -- and were those the result of
19 any kind of injury, workers' comp, injury, other automobile
20 accident or anything like that?

21 A. No.

22 Q. All right. Was it just kind of a degenerative
23 condition?

24 A. That's what it was.

25 Q. All right. And you were seeing the Spine Center

1 here?

2 A. Yes.

3 Q. And I believe you were seeing Dr. McLaughlin.

4 A. I was seeing Dr. McLaughlin.

5 Q. Unfortunately died of cancer, I think before you
6 had surgery, right?

7 A. He went out before I had surgery.

8 Q. He went out. Yeah. And -- and you -- did you
9 later have surgery with the Spine Clinic?

10 A. Yes.

11 Q. And who was the doctor that did that?

12 A. Dr. Lau.

13 Q. Dr. Lau, Samir Lau? Okay. And I believe that was
14 just within the three months after this accident you had back
15 surgery?

16 A. Yes.

17 Q. All right. At the time of this accident, were you
18 worried that it may have aggravated your back condition?

19 A. Yes.

20 Q. And obviously you saw the Spine Center after this
21 accident to -- to consult with them about any problems you
22 may have?

23 A. Yes.

24 Q. All right. And you're satisfied that this did not
25 aggravate any of your back problems?

1 A. It did not.

2 Q. Okay. But you were still having back problems,
3 right?

4 A. Yes.

5 Q. All right. And tell me about your back problem.
6 tell me the symptoms that you were having before this
7 accident.

8 A. The symptoms for my back was, I couldn't put my
9 shoes on. I couldn't put my socks on. I couldn't bend over
10 for a long period of time. it was very painful.

11 Q. And you -- you had probably had pain in your back,
12 didn't you?

13 A. Oh yes. Yes. I had pain in my back from, in, in
14 the lower part of my back.

15 Q. Did you have some pain that went down into your
16 leg?

17 A. Yes. It it would run down the back of my leg. My
18 right leg.

19 Q. Between -- between your -- let's just say your
20 bottom and your knee?

21 A. Yes -- yes.

22 Q. All right. Now, was that pain always there?

23 A. No -- no.

24 Q. And when that pain was there and we're talking
25 about before the accident, when that pain was there, did it

1 affect the way you walked?

2 A. Yes.

3 Q. All right. Was that -- was that constant or was
4 that something that just came up every now and then?

5 A. It only came up every now and then when my leg was
6 a -- when I would get the pain down the back of my leg.

7 Q. All right. And during those times you would --
8 you would ---

9 A. I would -- I would walk with a limb.

10 Q. All right.

11 A. I'd have to walk it out.

12 Q. Walk it out? And it would come and go?

13 A. Yes.

14 Q. All right. So June 14, 2018 you went to the
15 emergency room?

16 A. Yes.

17 Q. Is that right? At Self Hospital?

18 A. Yes.

19 Q. And we pull it up.

20 THE COURT: Can you see that from there or do you need
21 to step down, ma'am?

22 THE WITNESS: I may have to step down. I mean, I can
23 see it, but I can't read it.

24 THE COURT: All right. Step down because I imagine,
25 Mr. Nicholson, you going to ask her some questions?

1 MR. NICHOLSON: Well, I'm going to ask her some
2 questions. I'm going to read it. It'd be easier if I read
3 from it and then ask her a question.

4 THE COURT: Okay. All right. Well, let's try it that
5 way. And if you still need to step down, we can -- we can do
6 that too. But let's try Mr. Nicholson's approach first.

7 BY MR. NICHOLSON:

8 Q. So this says June 14, 2018. Provider says, John
9 Robinson, MD. Says, motor vehicle crash. This is time of
10 the record and I'm -- it looks like it's 9:14 p.m. And
11 injury illness talks about your being 45 years old at the
12 time, you're being treated for injuries from a -- a vehicle
13 crash. Says, "Now complaining of neck back pain, bilateral
14 hip pain, and left lower rib pain. Patient's ambulatory
15 unable to walk with a limp, which is chronic because she has
16 chronic low back pain. And she believes with the limp from
17 that chronic disc disease in her back. Patient has been able
18 to ambulate even with hip pain." Okay. Can you tell me what
19 you remember about that night? About what you were feeling?

20 A. About what I was feeling? I was in -- in pain.

21 Q. Okay.

22 A. Sore.

23 Q. And you were sore where?

24 A. In my right hip, in my ribs.

25 Q. At that point, did you really know what was going

1 on with your body?

2 A. No.

3 Q. You were able to leave that night, weren't you?

4 A. Yes.

5 Q. Okay. And I'm going to go to Plaintiff's Exhibit

6 15. And this is from June 22nd, which is about eight days

7 later. And -- and this Anderson Funke, who was -- was a

8 family doctor?

9 A. That was my family doctor.

10 Q. All right. So you went to him eight days later.

11 And it says, "Hip pain --" It says, "Hip hurts not getting

12 better, sharp pain, hurts to walk, put pressure against back

13 pain is stable and not affected by it." Anything you can

14 tell me about that period of time? What had happened during

15 those eight days?

16 A. The -- the -- the pain in my, in my right side,

17 right hip was, was not going away. I had bruising on my

18 right hip swelling on my right hip.

19 MR. NICHOLSON: And I'm going to show you what we've

20 marked as Plaintiff's Exhibit 1.

21 (Plaintiff's Exhibit 1 was marked for identification.)

22 BY MR. NICHOLSON:

23 Q. Do you recognize this picture?

24 A. Yes, sir.

25 Q. All right. And is -- is that your right hip area?

1 A. That is my right hip.

2 Q. All right. And those bruises, were they from this
3 accident?

4 A. Yes.

5 Q. All right. Was that the area where the swelling
6 and the pain?

7 A. Yeah, that -- yes, it is.

8 Q. Approximately when was this picture taken?

9 A. That picture was taken immediately probably a day
10 or two after the accident.

11 Q. All right. So it was shortly after that accident?

12 A. Yes.

13 MR. NICHOLSON: All right. I move Exhibit Plaintiff's
14 1.

15 THE COURT: Okay. Mr. Coulter?

16 MR. COULTER: No objection.

17 THE COURT: Without objection, number one into evidence
18 for the plaintiffs.

19 MR. NICHOLSON: And we will have this for the jury to
20 see. I'm going to go ahead and put this up on the screen
21 there.

22 BY MR. NICHOLSON:

23 Q. How long did the bruising last on your hip?

24 A. Oh, that bruise. Was there a while? It -- it --
25 I can't recall how long it took for it to go away.

1 Q. Was it more than a week?

2 A. Yes.

3 Q. More than two weeks?

4 A. I'd say between two and three weeks.

5 Q. All right. Now, this is a continuation of Exhibit
6 15. This is that -- with Dr. Funke eight days after the --
7 eight days after the accident, you went to the family doctor
8 and this is a continuation of page three of four. It says,
9 "Marked tenderness right (inaudible) person and hip stiff
10 some."

11 MR. COULTER: Sorry. Mr. Nicholson, what was the date?

12 MR. NICHOLSON: This is a continuation. I'll show you.

13 MR. COULTER: Oh, same thing? Same record?

14 MR. NICHOLSON: Same subject.

15 MS. MEREDITH: On 22nd.

16 MR. COULTER: I got you.

17 BY MR. NICHOLSON:

18 Q. All right. And this is the last page of that.
19 This motor vehicle accident. Contusion of right hip. Okay.
20 I will go to Plaintiff's Exhibit 16. And this is a record
21 from Dr. McLaughlin. And you said that was your spine doctor
22 at the time?

23 A. Yes.

24 Q. Not the one who did your surgery, but the one you
25 were seeing at the time of the accident.

1 A. Yes.

2 Q. Is that right? And this is at the Spine Center?
3 She was involved and I -- I meant -- not -- I -- I think I
4 meant the motor vehicle accident was part of that. "And
5 since then, her back pain really has not gotten much worse.
6 But she started experiencing right leg pain was localized as
7 to the right hip area with radiation posterior. The
8 posterior calf her (inaudible) antalgic favoring her right
9 leg." All right. Is this where you were going back to your
10 spine doctor to see if there was an aggravation of that -- of
11 your spine problem because of the accident?

12 A. Yes.

13 Q. And this was 7/12/18. That's less than a month
14 after your ---

15 A. Yes.

16 Q. --- the accident. Right? All right. Now, the
17 next one we're looking at is going to be Plaintiff's Exhibit
18 17. All right. And this is Dr. Anthony Timms and it says
19 7/16/2018, which is right at about 30 days after this
20 accident. Now how did you get to Dr. Timms?

21 A. Dr. Funke, my family doctor referred me over to
22 him.

23 Q. All right. And Dr. Timms is an orthopedic doctor?

24 A. Yes.

25 Q. With -- I still call it Lakelands Orthopedics, but

1 is something of the Lakelands now, Orthopedic (inaudible).
2 And it says, "Tracy Campbell, 45-year-old female presents
3 today for pain of right hip." It says, "Complaining." I'm
4 sure that's complaining of right hip pain after car crash.
5 Continuation of the same record. "She says she's having some
6 back and leg issues is being told that she needs some lumbar
7 spine surgery, that being evaluating treated by the
8 appropriate position." And then he says, "Contusion of right
9 hip." Continuation of the same record there. "There is
10 exquisite tenderness over the lateral hip in the area of the
11 trochanteric bursa." And recommendation, "My -- my
12 recommendation, her request injected right trochanteric bursa
13 with local anesthetic steroid mixture on sterile conditions
14 should calm it down dramatically and check back as needed."
15 Now, did you get that injection?

16 A. Yes, sir.

17 Q. And was that in the area of your right hip?

18 A. Yes, it was in the right hip.

19 Q. Is that in the area where that bruise was shown

20 ---

21 A. Yes.

22 Q. --- on Exhibit 1?

23 A. Yes.

24 Q. So we'll go to the next record. This is with Dr.
25 Timms, 10/24 /8. and I believe that that is after your back

1 surgery, right?

2 A. Yes.

3 Q. All right. your back surgery was in September,
4 2018.

5 A. September of 2018. Yes.

6 Q. And during that time you weren't really doing
7 anything with your hip, I mean you ---

8 A. No.

9 Q. Is that right?

10 A. Yes.

11 Q. Now, this is again, Dr. Timms 10/24/2018. Right
12 trochanteric bursa injection on 7/16/18. States, "The
13 steroid shot in the right trochanteric bursa area did
14 nothing. She's complaining of enlarging increasingly painful
15 mass in this area. Setting leaves out surgery on her lumbar
16 spine." Now, can you tell me what was going on here where it
17 says that was enlarging increase -- increasingly painful mass
18 there on your hip?

19 A. It was getting -- it was getting bigger. I -- I
20 couldn't -- I don't know why, but it was getting bigger and
21 it was painful and I -- you couldn't put pressure on it. You
22 couldn't touch it without it being painful.

23 Q. And it says that the steroid injection, I mean,
24 did that do much good at all?

25 A. No, sir. The -- the steroid shot did not help

1 with that -- with my hip whatsoever.

2 Q. And this is the second part of that same record
3 from 10/24/18. Right trochanteric bursa area enlarge now and
4 I can feel a mass for say, although is definitely very large
5 and she feels like there's a linear bone mass." It says,
6 "Enlarging mass right hip. MRI with contrast to assess this
7 mass, this will need to be delayed until her lumbar fusion is
8 healed because of the presence of hardware." And was there a
9 delay for them to do this diagnostic test because of you?

10 A. Yes, I had -- I had to wait for my back to heal.

11 Q. Before they could even do the MRI. Is that right?

12 A. Yes.

13 Q. All right. The next record I'm going to put up
14 Plaintiff's Exhibit 19 is from Dr. Timms 2/4/19, "Enlarging
15 mass right hip and MRI with contrast to assess this mass?"
16 Well, I guess that's -- I think he continued. Sometimes they
17 just reiterate the previous thing before they get into what
18 you're being seen. All right. This is the same date. I
19 think essentially the (inaudible) enteric bursitis on the
20 right is issue that was seen with the swelling here, had
21 previous injection did not help, but I think we should try it
22 again. All right. So this is -- looks like roughly eight
23 months after the accident and he's suggesting another
24 injection?

25 A. Yes.

1 Q. Is that right? Did you do the other injection?

2 A. Yes.

3 Q. Do you know if it was the same kind that you'd had
4 the first time?

5 A. Yes.

6 Q. All right. We'll go on to the next record.

7 Plaintiff's Exhibit 20, Dr. Timms April 8, 2019. Tracy

8 Campbell is 46 years old at this time. "Female who presents
9 today with mom." And let me ask you, was your mom there?

10 A. No -- no.

11 Q. Is your mom --

12 A. No, my mom is deceased.

13 Q. Okay. Do you know if someone else may have been
14 with you?

15 A. I believe my daughter was with me that day.

16 Q. All right. She says she was asked to come back
17 for back in for a longer about a comment when she described
18 as some persistent swelling in the right (inaudible)
19 posterior area. We discussed the MRI went over the findings
20 in this area. We did not see any type of tumor hematoma with
21 fat necrosis, et cetera. Continuation of the same record
22 there, trochanteric bursa area of the right. It says right
23 knee is swollen and tender. was it your right knee or your
24 right hip?

25 A. It's my right hip.

1 Q. He says, "I do not have an explanation for the
2 persistent discomfort in the -- patient describes some
3 persistent swelling in this area." All right. How are you
4 feeling at this time?

5 A. At that time?

6 Q. Yeah. I mean with your treatment you'd had two
7 injections. Had it gotten any smaller?

8 A. I -- I -- it hadn't gotten any smaller. It hadn't
9 stopped hurting. I mean I was feeling like -- like I didn't
10 know what -- what -- what could be done.

11 Q. Did you have some other fears about it? I mean,
12 about what it could be?

13 A. Well, I had a fear maybe -- maybe it was cancer in
14 there, maybe -- you know, and nobody could tell me what it
15 was at that point.

16 Q. And I want to ask you at this -- at this point
17 about the surgery you were -- at that date about at least 4,
18 5, 6 months after your spine surgery, right?

19 A. Yes.

20 Q. How did that recovery go?

21 A. Oh, that recovery went great. I, my back surgery
22 went great.

23 Q. And I think that your -- your back surgeon, what
24 did -- what did he suggest for you?

25 A. My ---

1 Q. To try to recover from the back surgery?

2 A. He -- he wanted me to walk to help heal my -- my
3 back surgery. So I walked.

4 Q. All right. Where did you walk Around the house or
5 did you walk, go somewhere and walk?

6 A. No, I went to Lander Track.

7 Q. All right. Is that the one by the Jeff May
8 Center? That's -- that's kind of a cushion track?

9 A. Yes -- yes. That has a cushion track.

10 Q. So how far would you try to walk? Or how far did
11 he tell you to walk?

12 A. He told me to walk until I -- he didn't really
13 tell me how far to walk or anything. I took it upon myself
14 to walk until I hurt or walk until I couldn't walk anymore
15 and sit down and rest. They have benches all the way around
16 the whole lander track. You can walk so far, rest, get up,
17 walk some more. So that's ---

18 Q. Where does around track?

19 A. They have signs. I don't recall how long one lap
20 is.

21 Q. You try to go around there a few -- a few times
22 when you would go?

23 A. Yes.

24 Q. And I -- I read somewhere you walked maybe even
25 three miles at times, right?

1 A. Yes.

2 Q. You walk all that at one time?

3 A. No -- no. I may go in the morning and walk some
4 and go in the evening and walk some more.

5 Q. And was the, you said at times you felt pain or
6 tired? I can't remember You said?

7 A. Pain -- I would feel pain.

8 Q. It was pain from the back or the hip.

9 A. The hip. It -- it kind of like a -- a -- a
10 numbness pain, a numbing pain.

11 Q. And I know these doctors are saying you came in
12 and kept getting they and they noticed it was getting larger
13 and larger. Tell me how that, I mean, how you felt about
14 that?

15 A. Discouraged, upset.

16 Q. Was it something that was very noticeable to you?

17 A. Yes.

18 Q. And was it noticeable to other people?

19 A. Yes.

20 Q. All right. Will you --

21 MR. NICHOLSON: I'm going to -- I'm going to show
22 what's marked as Plaintiff's Exhibit 2, for identification.

23 (Plaintiff's Exhibit 2 was marked for identification.)

24 BY MR. NICHOLSON:

25 Q. Can you recognize that?

1 A. Yes, sir.

2 Q. And is that a picture straight on? It shows both
3 your right and your left hip area?

4 A. Yes.

5 Q. Straight on? Approximately when was this taken?

6 A. That one?

7 Q. Was that after your back surgery?

8 A. Yes -- yes, that was after back surgery.

9 Q. Is that around the time we're talking about you're
10 going to these doctors and having injections?

11 A. Yes.

12 MR. NICHOLSON: I introduce Exhibit 2 into evidence.

13 THE COURT: Okay. Mr. Coulter?

14 MR. COULTER: No objection.

15 THE COURT: Without objection Number 2 into evidence
16 for the plaintiffs.

17 BY MR. NICHOLSON:

18 Q. Now did your, say your coworkers or your family
19 members or people like that did -- were they -- did they
20 notice the or point out that you had this disfigurement?

21 A. Yes.

22 Q. And again, I ask you about, did you -- did you
23 think your back surgery was a success? Did -- did the --
24 let's just say, did the pain in the back go away? Or ---

25 A. Yes.

1 Q. --- get less?

2 A. Yes.

3 Q. All right. After that point, did you feel the --
4 when you described the pain and the back of your leg that
5 would come in every now and then that would radiate down into
6 your leg, did that go away after the back surgery?

7 A. Yes. I -- I have no back pain or no pain in the
8 back of my leg.

9 Q. How long did it take you to, let's just say get
10 back to work from the back surgery?

11 A. I was out from September of 18 to January of 19.

12 Q. And at that point did you go back without --
13 without any restrictions by your back doctor?

14 A. Yes.

15 Q. All right. We'll go to Plaintiff's Exhibit 21.
16 Again, Dr. Funke, that's your family doctor, right?

17 A. Yes.

18 Q. 8/16/19. "She's still having pain with her right
19 hip. She had an MRI, which shows some gluteus medias
20 tendonitis as well as some fluid and the trochanteric bursa.
21 She's had the trochanteric bursa injected twice. She's not
22 getting a lot better, she's still having a lot of pain in
23 this area. she had back surgery a year ago, which has done
24 great. The pain in her leg is sharp as well as dull." And
25 it says, "Pain in her leg." Is that -- what -- what were you

1 feeling at that time or where was this pain?

2 A. That is my general right hip.

3 Q. And I'm going to show you the fourth page of that
4 same exhibit and it says, "Referral to Sports Medicine." Is
5 that what Dr. Funke did at that time?

6 A. Referred me over to Sports Medicine

7 Q. And I'm going to go to Plaintiff's Exhibit 22.
8 This is from 8/29/2019 and this is more than 14 months after
9 the accident, is that right?

10 A. Yes.

11 Q. "Tracy Campbell, 46-year-old female presents for
12 initial compensation to the Sports Medicine clinic for
13 evaluation of right hip pain. Motor vehicle collision with
14 residual mass on lateral aspect of right hip." Next page,
15 "Pain with palpation of lateral aspect of right hip.
16 Specifically, she's more tender out -- out -- outpatient." I
17 -- I don't know if that's the right word, "Slightly or
18 lateral and posterior greater track and trochanteric then on
19 the greater trochanteric itself does have slight tenderness
20 and tightness sense with extremes of internal rotation and
21 hip flexion." And they're under the assessment. "Tracy
22 Campbell, 46-year-old female who presents Sports Medicine
23 Clinic with right hip pain, been ongoing for a year since
24 motor vehicle collision in June, 2018. Exam consistent with
25 tendinopathy of the gluteus (inaudible)." You wrote and says

1 you were amenable to therapy. Did you begin therapy with
2 them?

3 A. Yes.

4 Q. Okay. This is shortly after, this is Plaintiff's
5 Exhibit Number 23. And it looks here like you had a
6 different kind of injection, is that right?

7 A. Yes.

8 Q. And can you tell me how it was different?

9 A. It was like a -- done on an X-ray machine.

10 Q. It says ultrasound guided, right? Gluteus medias
11 injection?

12 A. Yes. And it was an ultrasound that showed on like
13 an X-ray machine. So they went in my hip and they seen what
14 -- they did the ultrasound on a screen.

15 Q. Okay. And just a second page of that, it says you
16 had some improvement following that procedure or immediately
17 leave?

18 A. Yes. Because of the injection.

19 Q. All right. I'll get the Plaintiff's Exhibit 24.
20 This is a month or so later. This is Dr. -- again, Dr.
21 Funke, who's your family doctor, right?

22 A. Yes.

23 Q. 1/18/19. "Saw Sports Medicine, had an injection
24 and ultrasound really has not gotten any better. She's been
25 doing therapy (inaudible) and fine. Can you tell me why you

1 went back to him?

2 A. Because the injection more off. It didn't help at
3 the time of the injection, yes it helped but then it wore
4 off.

5 Q. (Inaudible) same exhibit. "Fairly significant
6 tenderness over the right trochanteric bursa caused
7 tenderness, longer gluteus maximus it a good range of motion
8 straight to the negative." And then the next page, it looks
9 like it's repeating -- well, no. This is a referral to
10 orthopedic surgery. Is that referring you back to Dr. Timms?

11 A. Yes.

12 Q. Know why he did that or did he explain that to
13 you?

14 A. No, he -- I don't recall.

15 Q. He wanted to see Dr. Timms again?

16 A. Yes.

17 Q. Okay. I'm going to go to Plaintiff's Exhibit 25.
18 This is December 27, 2019 and we're getting about 18 months
19 after the accident here. Dr. Timms again says, "Female who
20 presents today with right trochanteric bursitis pain. She
21 states that the shot and the physical therapy did not help.
22 She has been going to sports medicine doctor that has been
23 giving her injections for ultrasound and she states that she
24 is a very angry gluteus medius tendon. She has had,
25 apparently -- she's had apparently at Sports Medicine clinic

1 under ultrasound guidance and injection into gluteus medius
2 tendon and she states it did not help."

3 It says, "The mass laterally is enlarging." Down below
4 that it says, "Contusion of right hip. Up your mass right at
5 the area of the greater trochanteric on the right. Much
6 larger than the left. There's asymmetry in the hips and a
7 little enlarged. She's quite concerned that this is cancer.
8 She feels like it continues to enlarge so that we need to go
9 ahead and get an MRI with contrast of this right lateral pit
10 mass." So he suggested another MRI?

11 A. Yes.

12 Q. Going to Plaintiff's Exhibit Number 26 exams.
13 This is February 10, 2020. "Tracy Joanne Campbell is a
14 47-year-old female that presents today with a follow-up MRI
15 might have real persistent radius media tendonitis compared
16 with the previous MRI." Same exhibit, same date. "There's a
17 larger mass right at the area of the greater trochanteric on
18 the right, much larger than the left gluteus medius
19 tendonitis repeat injection as discussion. She states they
20 have really not helped." Same date says, "Weight loss, hip
21 up to exercises, intermittent and then inflammatories and ice
22 may maybe active as (inaudible)." Now, how did you feel
23 about your treatment or what was going on? Were you
24 frustrated?

25 A. Yes, because we weren't getting anywhere.

1 Q. Had it gotten any better with any of these
2 treatments?

3 A. No.

4 Q. And I think on Plaintiff's Exhibit Number 27,
5 which is back at the Spine Center, was there a suggestion
6 that you go to the Spine Center, see if it was all related to
7 the spine? Was that all related to the spine?

8 A. Yes. There -- there was a suggestion to go back
9 to the spine center to -- to rule out -- to rule my back out
10 of that.

11 Q. Okay. And this is with Dr. Lau and this is 5/20
12 of 20. This is getting close to two years after this
13 accident. "Patient presenting her follow up after being seen
14 by nurse practitioner for a new MRI of on her spine does not
15 have any pain in her back. And she has no classic radicular
16 signs and or symptoms of her main complaint as it has been in
17 area swelling of her right bilaterally. She's had injections
18 in the area and she has had an MRI, which shows some
19 tendonitis, but no other significant issues in her right hip.
20 she does not have the same symptoms that she had before her
21 back and her MRI was reviewed and we discussed it." Next
22 page is the same visit. "I do not think this is coming from
23 the patient's back. The location of problem is not
24 consistent in her examination is not consistent for the back.
25 this is also not consistent with the sacroiliac issue as

1 well." So is he telling you there that he doesn't think it's
2 from your spine?

3 A. Yes.

4 Q. All right. So tell me how -- I'm going to get
5 away from the records for a minute. Tell me how it was going
6 with you as -- as how -- as far as how this affected your
7 life at this point?

8 A. At this point I had slowed way down. I didn't go
9 hiking, camping as much as we would. We just -- it my daily
10 living doing things changed.

11 Q. Did you -- I mean you said you all liked riding
12 motorcycle and I guess you -- you had the two of you all had
13 a motorcycle at that time. Did you try riding some?

14 A. Yes.

15 Q. All right.

16 A. Yes.

17 Q. How did that go?

18 A. We would have to stop frequently for me to get off
19 and -- and because it would put pressure on my right hip area
20 and it would get sore. So we would stop and I would have to
21 get up and get off the bike and, and walk and rest and then
22 continue on.

23 Q. What about sleeping habits? How did that -- how
24 did it affect your sleeping?

25 A. I can no longer sleep on my right side. I had to

1 train myself to sleep on my left side because when I will
2 roll onto my right -- or onto my right side, it -- it hurt.
3 And till this day, if I roll over, it wakes me up and I have,
4 I roll immediately back onto my left side.

5 Q. And were you -- do you believe you were still kind
6 of limping because of the -- the hip pain?

7 A. Yes -- yes.

8 Q. And did people continue to notice that?

9 A. Yes.

10 Q. You -- you kept a little a diary and I'm not going
11 to introduce that, but I noticed she put in there September
12 of 19, you were helping your daughter with a wedding. Did
13 your daughter get married around that time?

14 A. Yes, sir.

15 Q. All right. Did you try to help her? Yes. In
16 what way?

17 A. Well, I tried to help her set up and help her get
18 dressed, you know, the things moms do when daughters get
19 married. I wasn't as much help as I wanted to be.

20 Q. How did that go physically with you?

21 A. Physically, I would -- I would have to sit and --
22 and because I can't stand in one spot for a long period of
23 time, so I would have to sit and rest or let my leg rest
24 anyway. And continue on.

25 Q. You -- when you went back to work after the spine

1 surgery, you continued working, didn't you?

2 A. Oh yes. Yes.

3 Q. Did you go to work every day?

4 A. Yes.

5 Q. All right. How did things at work affect your hip
6 or what problems did it cause you at work?

7 A. Well, I had to change positions at work because
8 the ---

9 Q. Positions. You mean job?

10 A. Yes, job positions.

11 Q. All right.

12 A. Same, same area, different -- how do I explain it?

13 Q. Different duties?

14 A. Different duties. Yes. Same, same department,
15 different duties.

16 Q. How? Tell me -- tell me the difference.

17 A. Okay. When I was in the first position, I would
18 do discharges after a patient would go home. There's a lot
19 of lifting and pulling and cleaning and -- and very
20 demanding. You had between 10 to 20 minutes to get the room
21 done. You -- you have, there's at least four to five people
22 in the room helping you. So -- but you had to move the bed
23 out, you had to clean all the cabinets, everything. And you
24 have to do that very fast for the next patient to come in.
25 That exertion would put a lot of stress on my hip.

1 Q. And I think you, I mean, you try to do things with
2 your husband. You mentioned motorcycle riding a motorcycle.
3 I think you all did some traveling. You -- you went to
4 Michigan one time, didn't you?

5 A. Yes.

6 Q. You went to see family or something. And that's a
7 long drive, right?

8 A. Yes.

9 Q. How did that go?

10 A. He stopped a lot, a lot more than normal.

11 Q. Did you ride in the front seat or the back seat?

12 A. I -- I would ride in the front seat sometimes in
13 the back seat. I have anxiety.

14 Q. And why do you have anxiety?

15 A. From the accident.

16 Q. From -- from this collision? Okay.

17 A. From this collision.

18 Q. All right. And you mentioned you cannot --
19 describing this pain in your leg. Does it? It really
20 aggravated it to sand in one place

21 A. In the general. It -- it aggravates only in the
22 hip area.

23 Q. Okay. Did -- I mentioned doing things with your
24 husband, I think in your diary you said you went to one work
25 function where it was a dance party or something, right?

1 A. Yes.

2 Q. And you -- you tried dancing a couple of dances,
3 right?

4 A. I tried dance a couple dances.

5 Q. How'd that go?

6 A. It went good until the next day.

7 Q. Okay. Caused you some problems?

8 A. Yeah. Soreness.

9 Q. And I'm going to ask you this. Did -- and I know
10 it's an uncomfortable thing to talk about, but I mean, you're
11 married to Dan, you all have a marriage relationship, you
12 have a sexual relationship. Does this -- did this affect
13 your relationship in that way?

14 A. Yes.

15 Q. Okay. How do you -- how can you tell me about
16 that?

17 A. My husband is afraid to touch me now because he's
18 afraid that he's going to hurt me and that affects me and
19 that affects him and that affects our relationship
20 personally.

21 Q. And was that the way it was before this accident?

22 A. No.

23 Q. So you -- you didn't have sexual relations as
24 often during ---

25 A. No.

1 Q. -- that period?

2 A. No, we don't.

3 Q. You still don't?

4 A. No.

5 Q. Is what you're saying? And -- and again say what
6 is the reason for that?

7 A. Could be because he's afraid to touch me because
8 he's afraid he's going to hurt me.

9 Q. Right. Is it painful for you?

10 A. He's afraid to touch me because he is afraid that
11 he's going to hurt me worse than I already am.

12 Q. So then it just doesn't happen. Is that what
13 you're saying?

14 A. Yes.

15 Q. Or it happen as often?

16 A. It happen as often I have to initiate because he
17 will not.

18 Q. Now, you eventually got to another orthopedic
19 surgeon, is that right?

20 A. Yes.

21 Q. How'd that happen?

22 A. I was at work and discussing just talking with my
23 -- the patients and one of my patients was there for hip
24 surgery and said.

25 Q. You (inaudible).

1 THE COURT: Don't -- don't go into what somebody told
2 you.

3 THE WITNESS: Okay.

4 THE COURT: As a result of your conversation with
5 whomever you did such and such.

6 THE WITNESS: Okay. As a result of my conversation, I
7 was referred to Dr. Loging.

8 BY MR. NICHOLSON:

9 Q. Dr. Loging -- Dr. Loging is an orthopedic surgeon
10 in located in Newbury, is that right?

11 A. Yes.

12 Q. And did you, you went to see him?

13 A. Yes.

14 Q. Did he -- and we're going to hear from Dr. Loging,
15 so I'm not going to go into a -- a lot of testimony about --
16 about him, but -- because he's going to testify himself
17 through this video. but he did some other diagnostic tests,
18 right?

19 A. Yes.

20 Q. And he had a suggestion for you, is that right?

21 A. Yes.

22 Q. And that involves some type of surgery?

23 A. Yes.

24 Q. And did -- did you agree to have the surgery?

25 A. Yes.

1 Q. Do you remember when the surgery was?

2 A. The surgery was in June of 2021.

3 Q. Yeah. So it was right at about three years after

4 ---

5 A. Yes.

6 Q. -- your accident? Okay. And did the surgery
7 involve cutting your hip?

8 A. Yes.

9 MR. NICHOLSON: And I'm going to show you Plaintiff's
10 Exhibit marked for identification as three.

11 (Plaintiff's Exhibit 3 was marked for identification.)

12 BY MR. NICHOLSON:

13 Q. Recognize that?

14 A. Yes. That's the incision, that's the cut.

15 Q. Shortly after the surgery?

16 A. Yes. It was probably a couple of days after
17 surgery.

18 THE COURT: You offered that into evidence?

19 MR. COULTER: No objection. I was ---

20 THE COURT: Without objection Number 3 into evidence
21 for the plaintiff.

22 BY MR. NICHOLSON:

23 Q. And was this incision about seven or eight inches?

24 A. Yes.

25 Q. Those staples or stitches? Did you have ---

1 A. Staples.

2 THE COURT: Let me see the lawyers just a second. This
3 is just for kind of scheduling purposes.

4 BY MR. NICHOLSON:

5 Q. Okay. Tracy, you -- you had this surgery, we
6 talked about the incision. Did -- did the surgery help you?

7 A. Yes.

8 Q. All right. How did it help?

9 A. The mass was gone, so. And -- and I -- I could
10 walk better. I still have a limp, but I could walk better.

11 MR. NICHOLSON: Yeah. I move to introduce Plaintiff's
12 Exhibit 28, which is the record --

13 MR. COULTER: No objection, Judge.

14 THE COURT: Okay.

15 MR. NICHOLSON: -- from Dr. Loging. He's certified
16 through his deposition about ---

17

18 THE COURT: Okay.

19 MR. NICHOLSON: --- authenticity of record.

20 THE COURT: Twenty-eight into evidence for the
21 plaintiff.

22 BY MR. NICHOLSON:

23 Q. Okay. You talked about Dr. Loging moving the
24 mass. All right. "Patient is a 48-year-old female who
25 presents following MRI results for complaints of pain and s

1 in the right hip that occurs during activities. Onset was
2 sudden with injury, which occurred on 6/14/18. Injury
3 occurred motor vehicle accident. She had an MRI 2019/20 as
4 well as an ultra-ultrasound. She has had multiple injections
5 with no improvement. Went to physical therapy, her lay on
6 the right side when sleeping.

7 She had back issues two years ago prior to the
8 accident. Was already scheduled with surgery when the
9 accident occurred. She's continued to have hip problems
10 since this injury. She has a large deformity over the right
11 hip, which is very painful to her. All the pain is located
12 laterally and over the area of the mass from her injury."
13 Says -- down below, I won't read the whole thing. He
14 explains the treatment to you and what he, the surgery he
15 wants to do. Is that right?

16 A. Yes.

17 Q. Description of procedure. "Patient was taken to
18 the operating room, placed in spine position on the operating
19 table. After general anesthesia was obtained, she was placed
20 in a lateral position." I'm not going to read all of it.
21 "The incision was made over the mass area and dissection was
22 carried out. The mass had a distinct thickened scar layer
23 around it and it was excised throughout its entirety.
24 Remainder of the mass was completely excised. A mass
25 measured approximately 13 centimeters by 15 centimeters.

1 The bursa was debrided and excised. Gluteus medius
2 tendon was exposed. There was tendinopathy and fraying as
3 well as a complete tear and detachment of the gluteus
4 insertion. The outer portion of the greater truck and tear
5 was roughened and a suture anchor by the manufacturer was
6 inserted, which was then passed through the gluteus tendon
7 and tied down with good repair." So did you understand what
8 was done to you?

9 A. Yes.

10 Q. All right. And you said it -- it -- it took care
11 of the mass or the most of the mass, right?

12 A. Yes.

13 Q. All right. What about the pain that you were
14 having? Did it get better?

15 A. It -- it got better, but I still have pain.

16 Q. Now, I want you to try to describe that because
17 you --

18

19 A. Okay. Go ahead.

20 Q. All right. You're talking about standing on one
21 leg hurts you, your work hurts you and this -- that and the
22 other. Did -- did this help that situation? Did it make it
23 a little bit better for you to work?

24 A. Yes -- yes.

25 Q. And you had less of a disfigurement, right?

1 A. Yes, I have less than.

2 Q. Do you still have some bulge in that area?

3 A. Yes.

4 Q. So the bulge in your hip is not completely gone?

5 A. No.

6 MR. NICHOLSON: And you have a a scar on your hip and
7 I'm going to ask you to look Plaintiff's Exhibit 4.

8 (Plaintiff's Exhibit 4 was marked for identification.)

9 BY MR. NICHOLSON:

10 Q. Is that a picture of your right hip?

11 A. Yes.

12 Q. Following the -- the healing of the ---

13 A. Yes.

14 Q. All right. And that was taken not too long ago?

15 A. No, that was taken not too long ago.

16 THE COURT: Is that without objection?

17 MR. COULTER: (Inaudible).

18 THE COURT: Okay. All right. Number 4 into evidence
19 for the plaintiff.

20 MR. NICHOLSON: And the jury will have this later to
21 look at.

22 BY MR. NICHOLSON:

23 Q. Now, how did the recovery go from the hip surgery?

24 Were you -- were you out of work?

25 A. Yes.

1 Q. Now, we -- the -- the surgery happened on June 22,
2 2021. when did you go back to work after that?

3 A. December 14th.

4 Q. All right. Now, I have that maybe through
5 doctor's records. November 15, 2021. Is that --

6 A. No, I continued therapy.

7 Q. All right. You continued therapy past that time?
8 Okay.

9 A. Yes.

10 Q. Let me see that other record. Did you return
11 before Christmas?

12 A. Yes.

13 Q. Okay. So before Christmas in -- in December. So
14 it's roughly six months?

15 A. Yes.

16 Q. Were you -- did you have to use a walker and be
17 ---

18 A. Yes.

19 Q. Were you non-weight bearing for a period of time?

20 A. I was non-weight bearing for six weeks.

21 Q. All right. After that did you have to use
22 anything to walk or did you have ---

23 A. I continued to use the walker.

24 Q. Did you go through any therapy?

25 A. Yes, I went through physical therapy all the way

1 until November. All the way until November 14th, 15th, 14th
2 and 15th is when I was supposed to be released from therapy.
3 But then they said they had decided that I needed a little
4 bit more.

5 Q. So you -- you actually missed work for about six
6 months, is that right?

7 A. Yes.

8 Q. And how much were you making in an hour?

9 A. How much was I making an hour?

10 Q. And I -- I believe it changed during that period
11 of time. It may have been 13.50 or so and ---

12 A. Yeah. It -- it -- it was in the 13.50 area.

13 Q. Okay. And did you have some benefits that covered
14 some of that? Did you -- were you able to use some paid time
15 off or sick?

16 A. Yes.

17 Q. Whatever we call sick day, some of that?

18 A. Yeah. Sick time.

19 Q. All right. But you lost that time, right?

20 A. Yes.

21 MR. NICHOLSON: All right. I'm going to ask you to
22 look at Plaintiff's Number 29.

23 (Plaintiff's Exhibit 29 was marked for identification.)

24 BY MR. NICHOLSON:

25 Q. Basically I'm going to ask you to look at

1 Plaintiff's 29. Is that a list of all the medical expenses
2 you have for the hip?

3 A. Yes.

4 Q. And what's the total until date?

5 A. \$57,272.52.

6 Q. All right. And that includes the surgery and
7 those doctors that we're discussing in these exhibits? Is
8 that ---

9 A. Yes.

10 MR. NICHOLSON: (Inaudible).

11 MR. COULTER: No objection, Judge.

12 THE COURT: Without objection, Number 29 into evidence
13 for the plaintiff.

14 BY MR. NICHOLSON:

15 Q. What was more difficult to recover from the hip
16 surgery or the back surgery?

17 A. The hip.

18 Q. And why was that?

19 A. Because I -- I could not put pressure. I could
20 not -- I was non-weightbearing for six weeks.

21 Q. Were you that way for your back surgery?

22 A. No. No, I could -- I got up and walked the next
23 day for my back surgery.

24 Q. All right. Now, you were still out of work, I
25 guess three or four months for your back surgery.

1 A. Yes.

2 Q. But you were out longer for your hip surgery, is
3 that right?

4 A. Yes.

5 Q. But the recovery, because it had to be non-weight
6 bearing to heal that, that's what made it more difficult or
7 longer recovery?

8 A. Longer recovery, more therapy.

9 Q. All right. Did you go home with a -- with a -- a
10 drain in the area where your incision was?

11 A. Yes.

12 Q. All right. How did that come out?

13 A. How did that come out? My daughter took it out.

14 Q. The -- the doctor showed her how to pull it out?
15 And she had pulled it out later, is that right?

16 A. Yes.

17 Q. Okay. Now, I'm just about through with your
18 testimony and I know that we'll -- and we will break for
19 lunch. You say that the hip surgery was a success, you would
20 call it a success. Would you?

21 A. I would call it a success, yes.

22 Q. And you feel better about your situation?

23 A. Yes.

24 Q. Are you back the way you were before this
25 accident?

1 A. No.

2 Q. All right. And I want to talk about that both
3 physically and mentally. Physically tell me how you're still
4 having problems.

5 A. Physically, I do not walk the same way I used to
6 normal at what I would call normal.

7 Q. Are you totally convinced that your problems
8 walking now are from the hip and not from the back?

9 A. Yes.

10 Q. And you -- you have a scar, right?

11 A. Yes.

12 Q. That affects your wearing certain bathing suits or
13 what you ---

14 A. I -- I -- I will not wear a normal bathing suit,
15 no.

16 Q. All right. You -- are you still self-conscious
17 about your -- your hip and the -- the bulging?

18 A. Yes. I'm very self-conscious. I -- if one of the
19 grandkids want to sit on my lap, they're going to sit on my
20 left side because I'm -- I am self-conscious of them sitting
21 on my right side or anything in that, nothing's going on my
22 right side.

23 Q. So you -- and you said it relieved some of the
24 pain and some of the discomfort. Are you still having some
25 problems when you work long hours or do very physical

1 activity?

2 A. Yes.

3 Q. All right. Are you able to ride a motorcycle
4 away? Are you all able to do that like you did before you
5 had this accident?

6 A. I can -- I can ride. We still stop.

7 Q. Still stop some?

8 A. We still stop.

9 Q. All right. Do you hike or do things like that
10 -- that you used to do?

11 A. I don't hike. We do go camping, but it's not the
12 same kind of camping. We used to tent camp, we cabin camp
13 now, and it's not because of my age because I will -- I would
14 tent camp if I could.

15 Q. Why can't you do it?

16 A. Because getting down there and then getting back
17 up and ---

18 Q. Down ground?

19 A. On the ground. Yes. I -- I need something to put
20 both feet on when I get up.

21 Q. Are you optimistic that this will get a little bit
22 better?

23 A. I would hope it would, but I feel that I'm as good
24 as I'm going to get.

25 Q. I noticed one time you said something about

1 wearing a wedge in a shoe.

2 A. Yeah, I wore a wedge in the shoe because one leg
3 shorter than the other.

4 Q. Okay. Did you try to do that to help the limp?

5 A. Yes.

6 Q. All right -- all right. And again, I'm going to
7 ask you about the -- your relationship with Dan. Is -- has
8 it gotten back to normal?

9 A. No.

10 Q. Still trying?

11 A. Still trying.

12 MR. NICHOLSON: Okay. All right. Thank you for your
13 answers. I think we'll take a break, but you need to answer
14 any questions Mr. Coulter may have.

15 THE COURT: Okay. We'll -- we'll do cross-examination
16 of this witness after lunch. So ladies and gentlemen, we're
17 going to take a lunch break. I want you back at 2:30. Make
18 sure that you are promptly back don't want to have any issues
19 as we have this morning. And see you back at 2:30. Now, if
20 you decide that you go -- want to go to lunch at a restaurant
21 here in town, if you don't mind keeping your juror badge
22 visible because probably wouldn't happen, but it might
23 somebody connected with the case.

24 Maybe these fine lawyers, somebody, and they may be
25 talking about the case and they may not recognize you at

1 being on the jury, but if they see that juror badge, they'll
2 know not to speak to where you could overhear them. So if
3 you do that, do that for me please and keep that badge
4 visible. Have a good lunch. See you back at 2:30. You can
5 step down, ma'am, you just can't talk to anyone about your
6 testimony.

7 THE WITNESS: Yes.

8 THE COURT: Let me see lawyers real quick. Just real,
9 real quick.

10 (Off the record.)

11 THE COURT: Plaintiff?

12 MR. NICHOLSON: Yes. Yes, sir.

13 THE COURT: Defense?

14 MR. COULTER: Yes. Yeah -- yeah. She -- well, Billy
15 brought up something to me just a minute ago. Maybe his next
16 witness, maybe the doctor, which we had some video tape
17 rulings. I don't know. I'm ready to go into the cross right
18 now.

19 THE COURT: Okay. Let's do -- let's do the cross.
20 Yeah. And I -- I need to let you know about what we're going
21 to do. I've already ruled that on Loging's deposition. No
22 mention, we're got to redact the 47 percent but I'll -- we'll
23 get into that next break.

24 MR. COULTER: Yeah, and I think it's probably going to
25 be cross, it's going to be about 45 minutes.

1 THE COURT: Okay. That's fine -- that's fine. Thank
2 you. All right. Let's bring the -- the jury out.

3 MR. COULTER: Oh, and Judge.

4 THE COURT: Wait -- wait a minute. One second, Jerry.

5 MR. COULTER: I'm sorry, my apologies. There are two
6 exhibits that have been marked for defense and as I
7 understand it's been no objection on that.

8 THE COURT: Okay.

9 MR. COULTER: Is that right? If there is -- that's
10 fine. I just want to see ---

11 MR. NICHOLSON: That's fine. No objection. No
12 objection.

13 MR. COULTER: Okay.

14 THE COURT: Okay. All right. Very good. Let's bring
15 the jury out please. All right. Let the record reflect the
16 jury is back out. Ladies and gentlemen, hope you had a good
17 lunch and ready to get back to work. We're in cross
18 examination of the plaintiff. You'll come back to the stand
19 please, ma'am. You may proceed, Mr. Coulter?

20 MR. COULTER: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. COULTER:

23 Q. Good afternoon Ms. Campbell.

24 A. Good afternoon.

25 Q. Just want to take a few minutes. We're probably

1 going to take more than a few minutes, but to go over some
2 things with you about your complaints and some of the things
3 that you described on direct examination, okay?

4 A. Okay.

5 Q. All right. And we're going to go through some
6 medical records just like your attorney did. So it may take
7 a little bit of time. I'm going to try to go through it as
8 quickly as I can, okay?

9 A. Okay.

10 Q. All right. First, we haven't seen a photograph of
11 your vehicle. Let me show this to you.

12 MR. COULTER: This is Defense Exhibit Number 1.

13 (Defense's Exhibit 1 was marked for identification.)

14 BY MR. COULTER:

15 Q. And if you just take a look at that.

16 MR. COULTER: It's okay to approach, Judge?

17 THE COURT: Sure.

18 BY MR. COULTER:

19 Q. Okay. You -- you recognize that photograph?

20 A. Yes.

21 Q. Is that a photo -- photograph of your vehicle?

22 A. Yes.

23 Q. Is that a photograph of your vehicle after this
24 accident?

25 A. Yes.

1 Q. That's a photograph of the damage from this
2 accident.

3 A. Some.

4 MR. COULTER: I guess I would turn this film off, but.

5 THE COURT: I -- I think that's coming in without
6 objection. Right, Mr. Nicholson? Okay.

7 MR. COULTER: I knew I should have done something
8 without (inaudible) okay.

9 BY MR. COULTER:

10 Q. All right. This is if you look at, can you see
11 that screen okay Ms. Campbell?

12 A. Yes.

13 Q. All right. So just to -- just for the jury to --
14 okay, got you. Yes. Anyways, that appeared to be the damage
15 to the rear of your vehicle as a result of this accident?

16 A. Yes.

17 Q. And that's where Mr. Campbell would've -- or Mr.
18 Newman would've hit the rear?

19 A. Yes.

20 Q. Okay. All right. Very good. All right. Now,
21 let's talk about some chronology. I want to try to get this
22 in an idea of some timeline of what we're dealing with. On
23 -- do you agree that this accident occurred on Jan -- or
24 excuse me, June 14, 2018?

25 A. Yes.

1 Q. Okay. And you were riding as a front seat
2 passenger at the time?

3 A. Yes.

4 Q. Okay. You were wearing your seatbelt?

5 A. Yes.

6 Q. Okay. And as a matter of fact, you mentioned that
7 all of the airbags in your vehicle went off?

8 A. Yes.

9 Q. Okay. So the vehicle did exactly what it was
10 supposed to do to protect you, right?

11 A. Yes.

12 Q. Okay. All right. And so that accident occurred
13 again June 14, 2018. At the time of June 14, 2018, you were
14 having some very, very serious problems with your lower back,
15 right?

16 A. Lower back? Yes.

17 Q. Okay. And it wasn't until three years after the
18 accident in June of 2021 that she actually had any type of
19 surgery to your hip, is that right?

20 A. Yes.

21 Q. Okay. All right> so that's just kind of a
22 chronology of it. When you were actually treated by EMS, you
23 remember the -- what you told them at the scene was you had
24 back problems, but it really hadn't been aggravated by this
25 accident and that's the only problem you had was for your

1 back?

2 A. For my back, but I had complaints of my hip also.

3 MR. COULTER: Okay. All right. Well, let's -- let's
4 look at -- let me hand what's been marked as Defense Exhibit
5 Number 2.

6 (Defense's Exhibit 2 was marked for identification.)

7 BY MR. COULTER:

8 Q. Can I hand that to you? Thank you. This has been
9 admitted into evidence. We'll go back to the jury room at
10 the end of this case. And if you look in, what's the
11 narrative on page one, would you agree and -- and your
12 attorney just read a lot of notes from different medical
13 records. Do you agree that what she had told EMS at the
14 scene, that you were only having pain to your lower back and
15 that you'd had this pain all the time that your neck feels
16 fine and you can move your lower extremities without any
17 problems?

18 A. Yes.

19 Q. Okay. Good. All right. And then when you went
20 to the ER, would you agree -- and again, we're talking about
21 your condition before this accident happened when you went,
22 because there was some talk about having problems with
23 limping and antalgic gait is what they call it. So you don't
24 really be able to -- aren't really able to move around really
25 well? You were already having that problem before this

1 accident ever happened?

2 A. Repeat that.

3 Q. Yeah. Okay. A -- a problem with a limp, you now,
4 you mentioned a limp and as a matter of fact you're saying
5 you look now.

6 A. Yes.

7 Q. Right. You were having a problem with your limp
8 with a limp prior to this accident ever happening?

9 A. Yes. But not a constant limp.

10 Q. Okay. Well, you were having low back pain since
11 2011.

12 A. Yes.

13 Q. Right. And it was significant low back pain?

14 A. Yes.

15 Q. And you had told the people in the R room that you
16 had a limp because you had degenerative disc disease in your
17 low back?

18 A. Yes.

19 Q. Right. And then you eventually, four months after
20 this accident were thereabouts underwent lumbar fusion?

21 A. Yes.

22 Q. Okay.

23 A. Correct.

24 Q. And what level would that have been? L four,
25 five?

1 A. I don't recall. I know it was lower.

2 Q. And for the jury, I mean you have cervical spine
3 up here and then the lumbar spine's down here.

4 A. Okay. Lumbar spine.

5 Q. So what they had to do -- and again, this problem
6 with your back that was surgically, you went under --
7 underwent surgery four months after this accident. It had
8 nothing to do with this accident.

9 A. No.

10 Q. Right. And they, they did a fusion, meaning they
11 fused together two levels of your spine to take pressure off
12 the nerve and off the disc in between the spinal parts,
13 correct?

14 A. Yes.

15 Q. Right. And -- and -- and that was pretty
16 significant surgery, isn't that right?

17 A. Yes.

18 Q. And you missed a lot of work following that,
19 right?

20 A. I missed four months of work, yes.

21 Q. Four months of work. Okay. Now, at the time of
22 this accident, in fact you had -- the pain was significant
23 enough to your low back for years. And just to understand
24 for the jury what type of problems you were having at the
25 time of this accident, you had been taking pain medication

1 for your low back for years?

2 A. Yes.

3 Q. Right. Okay. You told me your deposition that
4 you hadn't been taking any medication at the time, but it was
5 actually tramadol that you'd been taking for years. Right?

6 A. I have been taking tramadol

7 Q. For years?

8 A. I don't recall how long, but I had been taking
9 tramadol.

10 Q. Okay. And you were released from the hospital
11 that same day?

12 A. Yes.

13 Q. Okay. And as I understand and -- and you recall
14 we did -- we -- I deposed you back in August of 2020 and if
15 you need to look at it any time, let me know, but you were
16 actually having, and you addressed this on direct
17 examination, you were having substantial low back pain prior
18 to this accident that you rated as anywhere from an 8 to a 10
19 on a daily basis?

20 A. Yes.

21 Q. Right. Okay. And 10 being the worst pain you
22 could ever experience, right?

23 A. Yes.

24 Q. Okay. And that was well before this accident ever
25 occurred?

1 A. Yes.

2 Q. And it continued after this accident occurred

3 A. Until I had surgery. Correct.

4 Q. That had nothing to do with this accident.

5 A. Exactly.

6 Q. Okay. Now, let's talk about that prior treatment
7 because you were talking about your inability to work after
8 this accident. In fact, you had a lot of difficulty before
9 this accident ever occurred with doing your job because of
10 your physical problems?

11 A. Because of my back problem.

12 Q. That's right -- that's right. I mean you were
13 having a hard time just being able to bend over, pick things
14 up.

15 A. Yes.

16 Q. Okay. You were having problems sleeping well
17 before this accident ever occurred?

18 A. On -- on my back? Yes.

19 Q. You couldn't even bend over to put on your socks
20 before this accident occurred, right?

21 A. Correct.

22 Q. Okay. It was actually difficult for you to sleep
23 prior to this accident because you couldn't get in a
24 comfortable position is what I understand. Right?

25 A. I -- it all depends on what position I needed to

1 get into to get comfortable.

2 Q. Okay. Is it true that prior to this accident ever
3 occurring compared to after this accident occurring, you
4 would have difficulty sleeping because you had trouble
5 getting in a comfortable position?

6 A. Yes.

7 Q. Regardless of this accident?

8 A. Regardless of this accident?

9 Q. I point ---

10 A. Because of my back. Correct.

11 Q. Okay. Because one of the points that you, I
12 believe is trying to make as well as your husband as a
13 co-plaintiff is what's called that loss of consortium. Do
14 you remember that?

15 A. Yes.

16 Q. Okay. And that's your ability to do things prior
17 to this accident as opposed to after this accident, right?

18 A. Correct.

19 Q. Okay. And there was a lot of problems with what
20 was going on with your back prior to this accident ever
21 occurring. We -- we -- we've established that, right?

22 A. Yes.

23 Q. Now, after this accident, let's, let's talk about
24 the treatment because your attorney had spent a lot of time
25 with the treatment records and I don't know, did I give you