

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No.: 2009-CP-02-2460
Appellate Case No. 2012-211915

Julie Tuten,

v.

Respondent,

RECEIVED

JUL 29 2013

SC Court of Appeals

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover

Defendants,

of whom

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are

Appellants.

SUPPLEMENTAL RECORD ON APPEAL

Desa Ballard
Stephanie Weissenstein
Harvey Watson
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: stephanie@desaballard.com

ATTORNEYS FOR APPELLANT

Tom G. Woodruff, Jr.
Woodruff Law Offices, LLC
Post Office Box 2783

Aiken, South Carolina 29802
Telephone: 803.649.1910
Facsimile: 803.642.5622
Email: tw@aikenlaw.com

ATTORNEY FOR RESPONDENT

INDEX

Transcript Pages:

- Julie E. Tuten – Direct Examination by Mr. Woodruff:
 - Pages 61-74¹.....1
 - Pages 87-8815
- John P. Freeman – Direct Examination by Mr. Woodruff:
 - Pages 118-135².....17
- Ann Weaver Clark – Cross Examination by Mr. Woodruff:
 - Page 213-214³35
- Argument of Counsel
 - Pages 321-328.....37
 - Page 333.....45

¹ Pages 61-64 and pages 67-74 of the transcript were included in the Record On Appeal at pages 42-53, but duplicated here for convenience for reference.

² Pages 118-122 and pages 126-127 of the transcript were included in the Record On Appeal at pages 79-85, but duplicated here for convenience for reference. Page 131 of the transcript was included in the Record On Appeal at page 86, but duplicated here for convenience for reference. Pages 134-135 of the transcript were included in the Record On Appeal at pages 87-88, but duplicated here for convenience for reference.

³ Page 214 of the transcript was included in the Record On Appeal at page 124, but duplicated here for convenience for reference.

1 Q Are you on Social Security Disability?

2 A Uh-huh, yes.

3 THE COURT: Ma'am, please say yes or no. The court
4 reporter has a hard time with uh-huh and huh-uh.

5 THE WITNESS: Okay. Sorry.

6 Q How long have you been on Social Security Disability?

7 A About maybe going on four years now; three to four
8 years.

9 Q Why are you on Social Security Disability?

10 A Because after the accident I was in I was -- My back
11 is totally messed up. I can't work. I can't do the
12 things I used to. I can't -- I'm not supposed to lift
13 over 10 pounds. I can't stand in one place for a long
14 amount of time. I can't sit for a long amount of time. I
15 can walk but not eight hours.

16 Q All right. You said because of the accident that you
17 were in. Is that the accident that occurred on October 18
18 of 2003?

19 A Yes.

20 Q Okay. Tell me about that accident. What happened?

21 A Okay. We were going out. A friend of mine was in
22 town and we and some friends were going out and a friend
23 of mine -- There was another guy that I knew had opened a
24 new place. It was called The Wagon Wheel. I wanted to go
25 by and see it; so she drove me by and dropped me off and

1 went on out. We were going to an all-night club. We had
2 been at my house partying a little bit; so she went on
3 over there and Cliff was in the bar and I asked him---

4 Q All right. Who was Cliff?

5 A Cliff was the guy driving the car.

6 Q All right. What is his full name?

7 A Clifford Still.

8 Q Okay. Go ahead.

9 A Okay. I asked him would he give me a ride back over
10 to the bar with my friends and he said he would, to let
11 him finish his beer; so I waited on him to finish his
12 beer. He gave me a ride back and we were -- He took a
13 short cut. It's Power House Road.

14 Q Is that in the North Augusta area?

15 A In North Augusta, yea, and you could get from Power
16 House Road back over to -- it was called Jerricho's then,
17 but it's something else now. Anyway, he was giving me a
18 ride back and the road is real curvy and he was driving a
19 little bit fast and I think just before we wrecked I said,
20 You better slow down because this road has got some bad
21 curves on it, and the next curve we went around and they
22 say it was about a 6-foot drop off. I don't know, but a
23 friend of mine and my nephew went down to look where we
24 were at.

25 MRS. BALLARD: Objection, Your Honor.

1 THE COURT: Hold on. What is your objection?

2 MRS. BALLARD: She is testifying -- she's about to
3 testify to what other people said.

4 THE COURT: Well, that's hearsay. Obviously, you
5 can't do that.

6 MRS. BALLARD: Thank you.

7 THE COURT: Ma'am, you can only testify about what
8 you know, not what somebody told you.

9 THE WITNESS: Oh, okay. Okay. We were going around
10 the next curve that we went around -- I don't know. He
11 lost control of the car. I don't know if something
12 happened to the car or he doesn't see good at night or
13 what happened, but we left the road and went off about
14 they say a 6-foot drop-off.

15 Q You can't say what---

16 A Yea.

17 Q You can say what you know, but you can't say what
18 somebody else told you, okay?

19 A Okay. Well, I didn't measure it, but it's a long
20 ways down, maybe 6-foot drop-off into some trees.

21 Q Then what happened?

22 A Well, I hit the windshield and I fell over -- When I
23 woke up I was laying in the seat of the car, but I
24 couldn't move. I couldn't get up. I couldn't push myself
25 up and I thought I was paralyzed or something. I couldn't

1 get out of the car and I moved my toes. I could do that.

2 Ambulance got there and I was taken to the trauma
3 unit and the only thing at the time I thought was wrong
4 they found that I had broken a vertebrae in the bottom of
5 my back; so that's the only thing at the time. That and I
6 had a collapsed lung, three broken ribs, a concussion, and
7 I was in the trauma unit about a week, six days, something
8 like that in the trauma unit and I didn't really know
9 anything and until I woke up and I don't know -- When I
10 woke up I was going home and I had to wear a back brace.
11 Actually, I wore a back brace a year and a half and then
12 -- Did you want to hear the rest of the story about later
13 on when they found out about the other problems?

14 Q Well---

15 A Or just that?

16 Q Let's take things one step at the time.

17 A Okay.

18 Q That night you acknowledge you had been drinking?

19 A Yes.

20 Q Were you drunk?

21 A I was -- I was buzzing I would say, yes.

22 Q Okay. When you got into the car with Clifford Still
23 was he -- did he appear to be drunk?

24 A He says he wasn't. I---

25 MRS. BALLARD: Objection, Your Honor.

1 THE COURT: All right, ma'am. Please. The rule is
2 this. You can only testify about what you know. You
3 can't testify --

4 THE WITNESS: Okay.

5 THE COURT: -- about what somebody else says.

6 THE WITNESS: He didn't seem drunk. He didn't seem
7 like he was drunk.

8 Q But he had been drinking?

9 A But he had been drinking, Uh-huh.

10 Q If you thought that he was too intoxicated to drive
11 would you have ever gotten in the car with him?

12 A No.

13 Q And it was a one-car accident; is that correct?

14 A That's right.

15 Q And you were the passenger?

16 A Yes.

17 Q Did you contribute to the accident in any way
18 whatsoever?

19 A No.

20 Q All right. So you spent approximately six days in
21 the trauma unit at the Medical College of Georgia; is that
22 correct?

23 A Yes.

24 Q You've got one collapsed lung, three broken ribs,
25 smashed vertebra, and a concussion; correct?

1 A Yes.

2 Q And when did you regain your memory?

3 A When I woke up from the accident -- when I woke up I
4 was still -- I don't really know, I mean, because I was
5 just -- they put me on some medicine that was a little
6 strong and when it was time to take my medicine I was just
7 right back asleep and so I don't know. I mean, after that
8 -- I mean, I don't know. I didn't lose my memory totally,
9 but I only remember bits and pieces.

10 Q Bit and pieces of being at the trauma unit?

11 A Well, I don't remember much of that at all, but the
12 accident, I mean, that was a tragedy. I remember when I
13 would wake up I would know what was going on and when I
14 said I couldn't get out of the car they had to go in the
15 driver's side and pull me out of the driver's side.

16 MRS. BALLARD: Objection, Your Honor. I think she's
17 repeating something she's been told.

18 THE COURT: Well, she didn't say that. She said they
19 had to pull her out of the driver's side. I assume you
20 know what side they pulled you out of, didn't you?

21 THE WITNESS: Driver's side.

22 MRS. BALLARD: Well, I object to the lack of
23 foundation, Your Honor.

24 THE COURT: Overruled.

25 Q You had to be pulled out of the driver's side of the

1 vehicle because the passenger side was so smashed?

2 MRS. BALLARD: Objection, Your Honor, to the leading.

3 THE WITNESS: Yes.

4 THE COURT: Hold on. Mr. Woodruff, you cannot ask
5 leading questions on direct.

6 MR. WOODRUFF: Very good.

7 THE COURT: Sustained. Rephrase your question.

8 Q What was the condition of the car after the accident?

9 A I didn't see it. I never seen it, but it was---

10 MRS. BALLARD: Objection, Your Honor.

11 THE COURT: Ma'am, if you didn't see it, you can't
12 tell us what it was.

13 THE WITNESS: No, I can't tell you what it looked
14 like.

15 Q That's fine. The accident happens. You go to the
16 trauma unit. After you get out of the trauma unit what
17 did you do?

18 A I went home.

19 Q All right.

20 A My mother went home with me.

21 Q I'm sorry?

22 A My mother went with me.

23 Q Okay. And at some point did you start looking for a
24 lawyer?

25 A I did.

1 Q Tell me what you did to look for a lawyer.

2 A Well, I looked in the phone book and at first I
3 didn't look for a lawyer for a while for a couple of
4 months. I mean, I was hurt pretty bad and but when I did
5 I looked in the phone book and that's when I seen Joel's
6 ad and what got my attention is, We come to you if you
7 can't come to us, and that's when I -- Mr. Joel -- that's
8 when I called him.

9 Q All right. I am going to show you four older
10 Bellsouth telephone books. The first one that I am going
11 to show you is for North Augusta and Augusta for the time
12 period of July of 2000 to July of 2001. Do you recognize
13 that phone book?

14 A Well, these are the ones we get. We get Augusta,
15 North Augusta every year in Belvedere. I mean, we get the
16 same books.

17 Q Okay. Is this a book similar to what you would have
18 used?

19 A Yea, maybe a different color. I don't know.

20 MRS. BALLARD: May I get the exhibit number?

21 THE COURT: Yes, please.

22 MR. WOODRUFF: Exhibit 2A.

23 THE COURT: Thank you. Please refer to them as
24 exhibit numbers for the record.

25 MR. WOODRUFF: Very good. Thank you.

1 Then I am going to show you Exhibit No. 2B and I am
2 going to ask you if you recognize that phone book.

3 THE WITNESS: Well, see, when you say if I recognize
4 them, I recognize them, but I don't know -- I mean,
5 they're different colors. That's all.

6 Q Okay.

7 A I mean, we get these these phone books every year.

8 Q All right.

9 A They might not be the same color.

10 Q Is this the North Augusta -- North Augusta/Augusta,
11 Georgia phone book?

12 A Uh-huh.

13 Q And that is for the time period of July 2001 to July
14 of 2002; is that correct?

15 A Uh-huh.

16 THE COURT: Yes or no, please.

17 THE WITNESS: Yes. Sorry.

18 Q And that's been marked as Plaintiff's Exhibit 2B; is
19 that correct?

20 A Yes.

21 Q I am going to show you what has been marked as
22 Plaintiff's Exhibit 2C and this is the Augusta/North
23 Augusta phone book; is that correct?

24 A Yes.

25 Q And that is for the time period July 2003 to July of

1 2004; is that correct?

2 A Yes.

3 Q And I am going to show you what's been marked as
4 Plaintiff's Exhibit 2D and this is the Augusta,
5 Georgia/North Augusta phone book for the time period
6 July 2002 to July of 2003; is that correct?

7 A Yes.

8 Q All right. I am going to ask you -- I am going to
9 hand you---

10 A I will have to sit a little closer.

11 Q -- plaintiff's Exhibit 2D and I am going to ask you
12 if you can find your name and your telephone number in
13 that phone book.

14 A I can. I just need my reading glasses.

15 Q May I bring your reading glasses up to you?

16 MRS. BALLARD: Your Honor, we'll stipulate her name
17 is in the book.

18 MR. WOODRUFF: That's fine.

19 THE COURT: Very well. A stipulation means they
20 don't dispute that fact. Her name is in that phone book
21 and phone number and address.

22 Q And is this either the ad or similar ad that you saw
23 to find a lawyer?

24 MRS. BALLARD: Objection, Your Honor.

25 THE COURT: The objection is?

1 MRS. BALLARD: Leading.

2 THE COURT: Rephrase the question.

3 Q Ms. Tuten, is that phone book either the phone book.
4 or a similar phone book that you used to find a lawyer?

5 MRS. BALLARD: Objection, Your Honor.

6 THE COURT: Mr. Woodruff, the rules do not allow you
7 to lead.

8 MR. WOODRUFF: Yes, sir.

9 THE COURT: Rephrase the question.

10 Q How did you find a lawyer?

11 A In the book; in the yellow pages in the book.

12 Q And who did you ultimately decide to hire as a
13 lawyer?

14 A Joel. Mr. Joel. I'm sorry.

15 Q And why did you decide to hire Mr. Joel?

16 A Well, like I said what stood out the most to me at
17 the time -- I still wasn't walking that great and if you
18 can't visit us, we'll visit you, and it was a big ad and
19 personal injuries -- a big ad and it just -- I thought it
20 would probably a good attorney to hire. I mean, that's a
21 whole-page ad. He's got a nice picture there and then
22 he's got -- tells you everything.

23 THE COURT: Got what?

24 THE WITNESS: He's got the picture on there, on the
25 phone book.

1 THE COURT: Yes, ma'am.

2 THE WITNESS: And then it tells you everything, you
3 know, that they take care of and it says -- but the
4 biggest thing that does stand out when you're not doing
5 too good is they will come to you.

6 Q And there are similar ads in the phone book that's
7 been marked as Plaintiff's Exhibit 2C; is that correct?

8 MRS. BALLARD: Object to the leading again, Your
9 Honor. I'm sorry.

10 THE COURT: I'll allow it. Go ahead and answer it.
11 Are the ads similar?

12 THE WITNESS: Yes, sir, they're similar. That one is
13 a little bit different. Picture is a little bigger in the
14 other one and it's a little bit different, but they're
15 similar.

16 Q Okay. And what has been -- Well, what has been
17 marked as Plaintiff's Exhibit 2B there is also a full-page
18 ad with -- is there not?

19 A Now this is -- yes, there is, and this is the only
20 thing that I'm not sure of. I mean, well, it's the same
21 thing, but one is in black and white and one is in color.
22 I don't know which one that I seen -- the black and white
23 or the color.

24 Q And what's been marked as Plaintiff's Exhibit 2A
25 there is also an ad; is that correct?

1 A Yes. Yes, sir.

2 MR. WOODRUFF: I'd like to move to introduce
3 Plaintiff's Exhibit 2A through 2D into evidence.

4 MRS. BALLARD: Your Honor, I've stated my objection
5 to those earlier and that was overruled. I just reaffirm
6 my objection.

7 THE COURT: Very well. I'll allow them in.

8 (Whereupon, Plaintiff's Exhibit Nos. 2A - 2D were
9 admitted into evidence.)

10 Q All right. When you contacted Joel and Associates
11 what happened?

12 A Someone came out and signed me up.

13 Q And when you say they came out and they signed you
14 up. They gave me a form to sign and they talked to me
15 about the accident a little bit and he gave me a form to
16 sign.

17 Q And he give you a form to sign?

18 A He did and I asked him for Joel -- I wanted Joel as
19 my lawyer -- Mr. Joel. I'm sorry. I wanted Mr. Joel as
20 my lawyer and I asked him about that and he said that was
21 fine.

22 Q Well you can't say what he said?

23 A I'm sorry.

24 Q But?

25 A Okay. But it was -- that was fine.

1 A Can I say that?

2 Q Did you enter into a contract? Did you sign a
3 contract with Joel and Associates?

4 A I did. Yes.

5 Q Did it provide for the payment of 33 1/3 percent
6 attorney's fees?

7 A Yes.

8 Q And is this a copy of to the contract that was left
9 with you?

10 A I need my glasses. Yes, it is. I remember that
11 where he drew the line through that and put the 33 1/2
12 percent, Uh-huh.

13 Q It originally said 37 percent; is that correct?

14 A Yes.

15 Q And it was drawn through 33 1/3?

16 A Yes.

17 Q And the investigator did that; is that correct?

18 A Yes.

19 Q The person that signed you up?

20 A The person that signed me up.

21 Q Was that a lawyer?

22 A I don't think. No, he just worked for the company, I
23 guess. I don't know.

24 Q Okay.

25 A He was -- just to came out and said he came out to

1 Q Has your hospital bills been reconstructed?

2 A Yes. I don't have all of my bills. A lot is
3 missing.

4 Q I am going to hand you what's been binded or clipped
5 together as Julie Tuten medical bills.

6 A Uh-huh.

7 Q I am going to ask if you would examine those.

8 A Okay.

9 Q Do those look like your medical bills relating to the
10 2003 accident?

11 A I -- No, because the 2003 accident -- I mean, I think
12 the hospital was more than this.

13 Q All right.

14 A I might be wrong, but...

15 Q Well, I am going to ask that you look at it a little
16 bit closer and tell me if those appear to relate to the
17 2003---

18 MRS. BALLARD: Your Honor, I object.

19 THE WITNESS: Well, they do---

20 THE COURT: Hold on. Hold on.

21 THE WITNESS: They are from the 2003 accident. I do
22 see the ambulance here is 502.82 and MCG is 17,000. Maybe
23 that was for that and physician group was 7069; so maybe
24 that was for the hospital, but I don't know if you have
25 any after that where I went to the hospital to the

1 surgeons or not.

2 Q You don't believe this is a complete record?

3 MRS. BALLARD: Objection, Your Honor.

4 THE COURT: Mr. Woodruff, please.

5 MR. WOODRUFF: I'm sorry, Your Honor.

6 THE COURT: Don't ask leading questions.

7 Ma'am, is that a complete record of all your hospital
8 bills and medical expenses?

9 THE WITNESS: No, sir. I have been going for eight
10 years -- seven years, a little over seven years. That's
11 not a complete record.

12 MR. WOODRUFF: Your Honor, we would move to introduce
13 this as Plaintiff's Exhibit No. 27.

14 MRS. BALLARD: Your Honor, we object. Mrs. Tuten has
15 been unable to authenticate these records. She said they
16 don't appear to be complete.

17 THE COURT: Well, I am going to allow them in. You
18 can certainly cross examine them. The jury can give it
19 whatever weight, if any, they decide to give it.

20 MRS. BALLARD: Twenty-seven?

21 THE WITNESS: What I mean when I say that---

22 THE COURT: Hold on, ma'am, just a second.

23 THE WITNESS: I'm sorry.

24 THE COURT: You got it marked?

25 MR. WOODRUFF: No, sir.

1 THE COURT: And?

2 MRS. BALLARD: The witness has not been qualified as
3 an expert.

4 MR. WOODRUFF: I'll withdraw the question, Your
5 Honor.

6 Q Are you familiar how legal malpractice is defined in
7 South Carolina?

8 A Yes, I am.

9 Q How is it defined?

10 A It's -- Legal malpractice is defined as a failure to
11 use that measure of care, skill, diligence, and loyalty
12 which lawyers of ordinary skill and capacity commonly
13 possess and exercise.

14 Q Are you familiar with the ethical standards
15 applicable to lawyers handling litigation matters in South
16 Carolina?

17 A I am.

18 MR. WOODRUFF: Your Honor, at this point I would
19 submit Professor John Freeman as an expert in the field of
20 lawyers' ethics and professional duties in handling
21 litigation for clients, handling referral fees and
22 referral arrangements, handling client communications.
23 Four is duties owed by lawyers who advertise for clients.
24 Five is duties owed by lawyers when withdrawing from
25 representation. Six is duties owed by lawyers who act or

1 purport to act as employees of law firms established as
2 business entities.

3 THE COURT: Mrs. Ballard, do you wish to cross
4 examine Mr. Freeman on his qualifications?

5 MRS. BALLARD: No, Your Honor. We stipulate to his
6 qualificationses.

7 THE COURT: All right. Professor Freeman will be
8 allowed to testify as an expert in these areas.

9 Ladies and gentlemen of the jury, I'll tell you about
10 expert testimony when I charge you at the conclusion of
11 the case.

12 MR. WOODRUFF: Thank you, Your Honor.

13 Q Professor Freeman, what was your assignment in this
14 case?

15 A I was asked to review materials and conduct an
16 investigation as an expert in the field and evaluate the
17 extent to which Heather Glover and Mr. Joel have breached
18 their professional obligations, committed breaches of
19 fiduciary duty, possibly engaged in fraudulent activity,
20 and the accountability of each both in terms of the
21 standard of care in South Carolina and I've also conducted
22 research as to violation of ethical rules.

23 Q Have you prepared yourself to testify as a witness
24 here today?

25 A That was what I was asked to do, yes.

1 Q All right.

2 A To prepare myself I conducted an investigation.

3 Q What is the standard of care for lawyers such as
4 Ms. Glover in handling litigations in South Carolina?

5 A The standard of care is to use reasonable care which
6 means competence -- not being careless, but actually
7 taking care of business. Skill. That means focus and if
8 you're hired in a case of trying a case to use reasonable
9 care in prosecuting that case. Care, skill, diligence --
10 which means nose to the grindstone in following through
11 and getting the job done and not walking away from it and
12 loyalty which means you look at things with the interest
13 of the client in mind.

14 So, you have an obligation to exercise that measure
15 of care, skill, diligence, and loyalty which reasonable
16 lawyers commonly possess and exercise in South Carolina.
17 That's the standard.

18 Q Professor Freeman, did in your opinion Ms. Glover
19 live up to her obligation as a lawyer?

20 A No.

21 Q Why?

22 A She -- First of all, she's been disbarred. As part
23 of my preparation I read various testimony from Mr. Joel.
24 Mr. Joel says she got disbarred because she abandoned
25 clients among other things. Seated over there at that

1 table is one of the clients that Ms. Glover abandoned,
2 just walked away from -- filed a lawsuit which is sort of
3 hitting the ball over the net, but you got to keep -- you
4 got to stay out on the court and you got to keep after it
5 and she never served -- As far as I am aware there is no
6 evidence she ever served that lawsuit. There is no
7 evidence that the man who ran his car off the road and
8 hurt Ms. Tuten ever was in court.

9 So, what Ms. Glover did is she got involved in the
10 case as an assistant or underling to Mr. Joel, had
11 responsibility for handling the case, failed miserably by
12 letting the case go to the point where it's thrown out of
13 court causing the client to lose her day in court and
14 losing her opportunity to obtain compensation for the
15 serious injuries that she suffered. So, that was -- that
16 was absolutely terrible.

17 It's called client abandonment. It's just about as
18 bad as it gets simply because people go to lawyers because
19 they need help and if you're there making a living trying
20 to help people and when they need it the most you turn
21 your back on them and walk away to Colorado, that's pretty
22 sickening and you deserve to lose your license and you
23 deserve to get hammered and that is a terrible breach of
24 duty on her part.

25 She was not loyal. She was not a proper fiduciary

1 meaning a person who takes care of other people's interest
2 and it's cut and dried and that's probably one reason why
3 she's not here showing her face in this courtroom today.

4 Q Professor Freeman, do you have an opinion on whether
5 her failings caused injury to Ms. Tuten?

6 A I do.

7 Q And did it?

8 A Obviously and let me explain why I say that. You've
9 heard from Ms. Tuten about her injuries. She goes through
10 the windshield. She's in the hospital for six days.
11 She's got her mother looking after her for an extended
12 period of time. She is still suffering from that
13 accident. She goes on permanent disability.

14 Her medical bills which are in evidence I think
15 are -- total up to somewhere around 25,000 and her
16 testimony was that that's there but there is more than
17 that. Well, you see 25,000 in front of you.

18 Had she had a day in court where she is not at fault
19 with the accident and this is caused by somebody else -- I
20 think everybody who's gotten behind the wheel knows that
21 you're supposed to keep the car on the road and not go
22 down embankments and hurt people and so forth. Cut and
23 dried. That case was worth money and she lost her
24 opportunity to find out how much money and to get fair
25 compensation and that leaves us here trying to make a

1 calculation of how much money that case is worth and I
2 have done an investigation as to that.

3 Q All right. So, basically, what you're saying is
4 Julie Tuten lost her day in court; is that correct?

5 A Absolutely.

6 Q And how do you put a price tag on her right to have
7 that day in court?

8 A Try to figure out how much reasonably she would have
9 gotten; what is a reasonably fair number assuming that she
10 had actually proceeded to trial against a man who pretty
11 clearly was responsible for the accident. He was the
12 driver. He drove it off the road and then in order to
13 make that calculation you take various things into
14 account.

15 Q Have you attempted to put a valuation on that?

16 A Yes.

17 Q And what have you done and what have you concluded?

18 A What I've done is taken a look at her medicals which
19 are in the round number of 25,000. Oftentimes cases are
20 negotiated in terms of multiples of medicals. Five times.
21 You try to get, say, five times two and then somebody on
22 the other side is trying to beat you down from that and so
23 forth, but if you just take -- if you just take two times
24 the medicals what she actually unquestionably has paid
25 cash that's there, that gets you to 50,000, but that

1 doesn't take into account the fact that she's had a
2 devastating life-changing result -- not just that she's
3 been in the hospital and had medical care, but she's now
4 disabled, unable to work, and actually on disability, and
5 you take that into account. I think it's reasonable to
6 treble that number. Multiply it by three.

7 If you take -- The actual medical themselves I would
8 double. That gets you to 50. Three times that would get
9 you to 150. I think that is a very fair number and in
10 analyzing that I have looked at that various ways and I
11 think that that is very reasonable.

12 Q And so it is your opinion that the underlying case --
13 the case that Ms. Tuten had against Clifford Still ---

14 MRS. BALLARD: Objection, Your Honor.

15 THE COURT: What is the objection?

16 MRS. BALLARD: He is leading the witness.

17 THE COURT: Rephrase the question.

18 Q What do you feel was the value again of the
19 underlying case?

20 A One-fifty.. Two times the actual times three. I
21 think that's very fair and I think a reasonable lawyer
22 would have gotten it.

23 Q What else have you done related to this case?

24 A Well, I've looked at the pleadings in the case. I
25 have looked at the discovery responses that came from

1 Mr. Joel. I have looked at Mr. Joel's testimony under
2 oath in this case. I have looked at Ms. Tuten's testimony
3 under oath in this case. I have looked at Mr. Joel's
4 testimony in other cases and reviewed other documents
5 trying to help me understand what happened -- Secretary of
6 State documents -- trying to understand what happened and
7 what the ultimate impact of all of this has been on Julie
8 Tuten.

9 Q Is it your professional opinion that ---

10 MRS. BALLARD: Objection, Your Honor. He, again, is
11 leading the witness.

12 THE COURT: What is your professional opinion?

13 MRS. BALLARD: Thank you, Your Honor.

14 MR. WOODRUFF: Thank you.

15 THE COURT: Ask it in a non-leading manner.

16 Q Was there a relationship between Heather Glover and
17 Julie Tuten?

18 A Was there a relationship? Yea, at one time there
19 was.

20 Q And what happened to that relationship?

21 A Heather Glover was working for the Joel Law Firm.
22 Heather Glover decided -- or Mr. Joel decided to close
23 down his Columbia office and the records reflect tell me
24 that he had 77 clients -- 76 other people and Julie Tuten
25 in that Columbia office when he decides for his own

1 reasons having signed these people up as their lawyer that
2 he's closing down that office and he then leaves a person
3 -- the lawyer who was running that office, Heather
4 Glover -- in charge of everything with the understanding
5 that Heather Glover is going to handle these cases and
6 share fees with him on a referral fee basis and the key
7 thing to remember about that is where there is a referral
8 fee basis between lawyers who are not in the same firm --
9 when Heather splits, she's not in the Joel firm and
10 Mr. Joel is getting that fee -- he has joint
11 responsibility for those cases. It's not 100 percent
12 Heather Glover. It's fifty-fifty in terms of
13 responsibility because it's joint, and he's taking money
14 or lines himself up to take money out of those cases.

15 So, Heather is -- after the split comes in May or
16 June of '06 on one hand is working for Heather but on the
17 other hand she's still working for Mr. Joel and Mr. Joel
18 is still in it because he stands to get one-third of the
19 fee and you know the phrase, you know, take the bitter
20 with the sweet? If you want the sweet which is a share of
21 the fee, then you become accountable, too, for something
22 if it goes south -- if it goes wrong, which this went
23 horribly wrong.

24 Q And were you quoting from a rule of professional
25 responsibility?

1 A Yes, I was.

2 Q Do you know what rule of professional responsibility
3 you were quoting from?

4 A 1.5(e.)

5 Q Do you know exactly what that says?

6 A Yes. I can get it. Here is what it says: A
7 division of fee between lawyers who are not -- who are not
8 in the same firm may be made only if -- only -- and here
9 you've got Mr. Joel and Heather Glover. When she splits
10 she's not in the same firm but they are going to split
11 fees. One, the division is in proportion to the services
12 performed by each lawyer or each lawyer assumes joint
13 responsibility for the representation.

14 That's the key language in the rule, and, see, they
15 were not sharing in proportion to work done because
16 Mr. Joel wasn't doing any work, but he was wanting the
17 fee. That made him responsible for -- he had to, quote,
18 assume joint responsibility for the representation. So,
19 if Heather hurts Ms. Tuten, Heather Glover hurts Mr. Joel
20 because he may end up having accountability for that.

21 Q Professor Freeman, you have in front of you three
22 phonebooks with various legal ads in them?

23 A Correct.

24 Q I would ask you to look at that advertisement -- that
25 yellow page advertisement.

1 A Yes.

2 Q Does that yellow page advertisement impose any
3 responsibility on David Joel?

4 A Yes. I believe it does.

5 Q And what is the responsibility it imposes on David
6 Joel?

7 A The responsibility is to me if you encourage somebody
8 to rely upon you, then follow through. Okay? You want to
9 get their money, you want to get the phonecall, you want
10 to get the contract, you want to get the business, that's
11 fine. You're allowed to do that. Okay? But tell the
12 truth and then when they come to you and they're in need,
13 look after them. Care for them. Don't let them down and
14 don't blame somebody else and when you cut and run.

15 Q And Professor Freeman, have you studied the practices
16 of Joel and Associates enough to know whether or not that
17 advertising is, in fact, truthful?

18 MRS. BALLARD: Objection, Your Honor. That's beyond
19 the scope of his expertise.

20 THE COURT: Well, the jury is the ultimate fact
21 finder as to the credibility of the witnesses. Ask the
22 question -- I'll sustain your objection.

23 MRS. BALLARD: Thank you, Your Honor.

24 Q What is your -- Have you formed a basis or an opinion
25 as to the accuracy of the advertising?

1 A Yes, I have.

2 Q What is that opinion?

3 MRS. BALLARD: Objection, Your Honor.

4 THE COURT: Same. Sustained.

5 MRS. BALLARD: Thank you, Your Honor.

6 THE COURT: You can ask him what the thing says and
7 if he has investigated and if what it says represents what
8 he does.

9 Q What does advertising say, Professor Freeman?

10 A For example, there is a slogan here, All the help the
11 law allows, and Mr. Joel's name and his face, his picture
12 is on here. The jury will have this. You can see this is
13 what is used to bring people to -- to bring people in.

14 Q To the best of your knowledge is Mr. Joel licensed in
15 the State of South Carolina?

16 A No. He's not. He flunked the bar exam and never
17 came back.

18 Q Does that advertising indicate that there are trials
19 and settlements?

20 A Settlements and trials it says which I have -- in my
21 investigation I have gathered information about the trials
22 aspect of this.

23 Q Does Mr. Joel's firm actually conduct trials?

24 A The firm itself as far as I can tell doesn't try
25 cases. If the firm has to have a case that goes to trial

1 it will send it to another firm and then work the same
2 Heather-Glover type referral arrangement whereby a portion
3 of the fee that the other firm gets for actually being the
4 lawyer is given back to the Joel firm. Essentially, the
5 Joel firm brings cases in, settles them if it can, and
6 then if it can't, somebody else -- not Joel, somebody
7 else, some other law firm -- is going to handle it for
8 you. That's not disclosed in these ads and I have a
9 problem with that.

10 Q Is a lawyer under an ethical obligation to be
11 truthful in the advertising?

12 A Yes.

13 Q Does that advertising meet the ethical standard in
14 the State of South Carolina?

15 A I believe it's deceptive.

16 Q Who do you believe controlled the South Carolina
17 office of Joel and Associates?

18 A Mr. -- As long as there was a South Carolina office
19 for Joel and Associates I believe it was controlled by
20 Mr. Joel. That's what my investigation shows.

21 Q You mentioned that Ms. Glover committed legal
22 malpractice in handling Ms. Tuten's case?

23 A Yes.

24 Q Do you have an opinion as to whether Mr. Joel is
25 accountable for that malpractice?

1 A Yes, I do.

2 Q Can you explain it?

3 A Yes. My opinion is that he is accountable and I'll
4 explain it this way. It goes back to taking the bitter
5 with the sweet. When you sign up with another lawyer and
6 you both have got this case and that other lawyer is going
7 to be doing the heavy lifting and doing the work in the
8 case but you're going to take a fee, you don't have a free
9 ride. You don't have a free lunch. You don't get that
10 fee in exchange for nothing. At a minimum you have to
11 assume responsibility for what happens in that case. You
12 want the money? Fine. If something goes bad or there is
13 malpractice, guess what? You've got a problem because you
14 become accountable under our rules and that is -- that is
15 absolutely key.

16 Q Professor Freeman, have you taken into account
17 Mr. Joel's argument that since he is not licensed in South
18 Carolina he has no accountability for what happened?

19 A I have taken that into account, but that's a
20 ridiculous argument.

21 MRS. BALLARD: Your Honor, I object. Mr. Joel has
22 not made that argument.

23 MR. WOODRUFF: Your Honor, I believe that ---

24 THE COURT: Overruled.

25 MRS. BALLARD: Thank you, Your Honor.

1 MR. WOODRUFF: Thank you.

2 Professor Freeman, have you taken into account
3 Mr. Joel's arguments that Mr. Joel has no accountability
4 personally for what happens since he was practicing law in
5 the form of some other entity?

6 A I have evaluated such defense, yea.

7 Q What is your opinion as to Mr. Joel's personal
8 accountability for Ms. Glover's failings as a lawyer?

9 A He is in it up to his ears and...

10 Q Why do you hold that opinion?

11 A Well, how about the fact Heather Glover's picture
12 isn't in the yellow pages? It is Mr. Joel's picture and
13 he encourages you to come to him and he encourages you to
14 rely upon him and the letter that's sent out by Heather
15 Glover -- May I see the one that went out in May just so I
16 can refer to it directly?

17 Q And I'm going to show you -- and that's Defendant's
18 exhibit A?

19 A It says, The state bar does require I send you this
20 letter advising you of the situation and also advising you
21 that Mr. Joel will receive one-third of all attorney's
22 fees generated on your case even though he will no longer
23 be open. It doesn't say Mr. Joel, PA; Mr. Joel, LLC; Mr.
24 Joel and Associates; Mr. Joel, Attorney at Law, PC. It
25 said Mr. Joel and a reasonable person who is led to

1 believe that Mr. Joel actually cares about you and
2 Mr. Joel has got your case seeing that Mr. Joel is going
3 to get a fee would tend to believe that Mr. Joel is in
4 there with you and is there with Heather and staying in
5 even though he may be closing the office. And it's
6 Mr. Joel, not any corporate gimmick.

7 Q Professor Freeman, are you familiar with the concept
8 of breach of fiduciary duty perpetrated by lawyers on
9 their clients?

10 A Yes.

11 Q What does that mean?

12 A That means that you are faithless; that you -- people
13 are trusting you. People are counting on you. People are
14 looking to you to protect them and you turn your back on
15 them.

16 Q Do you think there's been a breach of fiduciary duty
17 in this case?

18 A Clearly.

19 Q By who?

20 A Mr. Joel and Heather Glover. Mr. Joel in his
21 testimony says he didn't owe Julie Tuten anything and yet
22 when she gets a letter he wants one-third of the fee.

23 Q Professor Freeman, are you familiar with the concept
24 of fraud perpetrated by lawyers on their clients?

25 A Yes.

1 Q In your evaluation of this case have you found any
2 evidence suggesting fraud on the part of either Mr. Joel
3 or Ms. Tuten?

4 A Yes.

5 Q I'm sorry; Ms. Glover?

6 A Ms. Glover.

7 Q What evidence of fraud have you found?

8 A This: First of all, I don't like these ads at all
9 because I think that you're tricked into thinking that
10 you're actually going to a bonafide law firm where people
11 are going to care about you and actually handle your case,
12 but that's not so. So, that's a big problem I got, but,
13 secondly, when you get the case you have a duty to
14 disclose facts accurately and honestly to the client and
15 if the client calls you for information you have an
16 obligation to give it to them and if you cease
17 representation you have an obligations to look after their
18 interest. You just can't walk away.

19 Mrs. Tuten doesn't have her files because they walked
20 away, but not giving information when there is a duty to
21 give information -- accurate information -- is fraudulent.
22 If the truth is that Mr. Joel isn't in the case anymore,
23 then it's fraudulent to say he is, and if Mr. Joel is
24 correct that I wasn't in the case, then it's fraudulent to
25 say that Mr. Joel is in the case, and if Mr. Joel is going

1 to get out of the case, you ought to tell people the truth
2 because he's the guy who started this in the first place.
3 So, there's lot of deception here. This woman has been
4 left in the lurch without any documentation and it's a
5 disaster.

6 Q In your evaluation of this case have you found any
7 evidence suggesting that either Mr. Joel or Ms. Glover
8 engaged in unfair or deceptive practices or acts involving
9 the injury to Ms. Tuten?

10 A Yes.

11 Q Would you please explain your findings?

12 A I think the advertising is bogus. I think that the
13 business plan is bogus bringing in people when you do not
14 ever -- advertising that we do trials and settlements when
15 you don't do trials and then to just shut down a law
16 office and to be so uncaring towards the people -- the 77
17 clients that you've got -- is a mass disaster and it is
18 unfair. There is deception here and I just think it's a
19 tragedy.

20 Q Professor, you expressed various opinions here today
21 as an expert witness. Do you hold those opinions to a
22 degree of reasonable professional certainty as an expert
23 in the field?

24 A Yes, I do.

25 Q Thank you for your time, Professor Freeman. Please

1 (Whereupon, the last question was read back.)

2 THE COURT: Mrs. Ballard, have you seen Exhibit 16?

3 MRS. BALLARD: Yes, sir. I produced it to them in
4 discovery.

5 THE COURT: So, do you have any objection to it?

6 MRS. BALLARD: Yes, sir, I object to its relevance.

7 THE COURT: What is the relevance?

8 MR. WOODRUFF: The relevance is to show the
9 advertising that Joel and Associates was doing throughout
10 the State of South Carolina by advertising in what is in
11 excess of 1.5 million telephone books.

12 THE COURT: I'll allow it.

13 MRS. BALLARD: May I ask what number it is?

14 MR. WOODRUFF: Sixteen.

15 MRS. BALLARD: Thank you.

16 THE COURT: And my ruling was based on one of the
17 elements of unfair trade practice showing potential for
18 repetition of an alleged unfair trade practice.

19 (Whereupon, Plaintiff's Exhibit No. 16 was admitted
20 into evidence.)

21 THE COURT: Move along. You can go into that. You
22 can ask the question.

23 Q Did somebody prepare a listing of the cases that
24 Heather Glover took with her when she left?

25 A I don't recall.

1 Q You don't recall? I am going to show you what's been
2 marked as Plaintiff's Exhibit 17 which is a listing of 77
3 names; is that correct?

4 A I'll take your word for it. Seventy-seven.

5 Q Well, somebody has totaled it up to 77, haven't they?

6 A Okay.

7 Q Do you recognize the handwriting on that?

8 A That's Heather's.

9 Q That's Heather's handwriting?

10 A Yes.

11 Q Okay. And would those be the cases she took with
12 her?

13 A All these cases were in the office. I've seen this
14 list before.

15 Q You've seen that list before?

16 A Briefly Desa showed it to me. Mrs. Ballard showed it
17 to me.

18 Q And when did she show it to you?

19 A Yesterday.

20 Q Okay. And do you believe that's an accurate list of
21 the cases that were open in the office that have not been
22 settled when the office closed?

23 A Correct.

24 Q Okay.

25 A Most of these were still open but most of them had

1 Freeman valued in case at is exactly \$150,000.

2 Quite frankly I wish -- Of course, every lawyer
3 wishes that he could get up here and argue, oh, you need
4 to come back with a verdict of more than \$150,000. I'll
5 be honest with you. I can't do that. I can't tell you to
6 come back with a verdict of more than \$150,000 as much as
7 I would like to, but what Mrs. Ballard is going to do is
8 she's got to get up here and argue that the case should
9 not be worth \$150,000. She's only got one thing that she
10 can hang her hat on as to why this case would be worth
11 less than \$150,000 and the only one thing that she can
12 hang her hat on is the fact that Julie Tuten acknowledged
13 that, yes, she saw Clifford still drinking the night of
14 the accident and that she was also drinking.

15 David Joel got up here this morning and on this
16 witness stand right here he argued to you, oh, the case
17 isn't worth anything. If it had been my case -- which
18 actually it was his case -- I wouldn't have taken it. It
19 would be barred under assumption of the risk. Assumption
20 of the risk may exist in Georgia. I don't know if it
21 exists in Georgia or not because I'm not going to go take
22 the Georgia bar exam. I know what the law is in the State
23 of South Carolina. Assumption of the risk is not the law
24 in the State of South Carolina. Judge Early, I believe,
25 is going to charge you in his charge that assumption of

1 the risk is not the law in the State of South Carolina.

2 The only -- your only task is to come back with a
3 verdict. There's only been one person who has testified
4 as to the value of the case and that was the expert
5 witness that testified that the case is worth exactly
6 \$150,000. When I say the case I'm talking about the
7 underlying case. It's not worth more. It's not worth
8 less.

9 You know, Mr. Joel and Mrs. Ballard -- they had the
10 opportunity to get an expert to come to court with them
11 and I guess we can take 15 seconds and we can listen for
12 that expert. Do you hear it? There's not an expert.
13 Mr. Joel didn't get an expert and I submit to you the
14 reason he didn't get an expert is because there is not a
15 lawyer in South Carolina and probably not a lawyer in
16 Georgia that's going to come up here and sit in this
17 witness stand and say that malpractice and negligence
18 didn't occur. There is no dispute over what the value of
19 the case is. The value of the case is \$150,000.

20 Again, I wish I could say it's worth more, but it's
21 not. Desa Ballard is going to try to convince you that
22 it's worth less. I submit to you it's not. There's been
23 one expert that's testified as to the value of the case.
24 That is the value of the case. That's what I am asking
25 you to do go back to your jury room write down that your

1 verdict is \$150,000. Please don't be swayed by any
2 arguments that Mrs. Ballard wants to make and I know that
3 Mrs. Ballard is an outstanding lawyer and I like Desa
4 Ballard. I have referred clients to Desa Ballard. She's
5 a great lawyer and she's good, but the bottom line is it
6 doesn't matter how good she is. There's only been one
7 expert that's testified as to the value of the case.

8 I probably will have an opportunity to speak to you
9 again after Mrs. Ballard talks very, very briefly. I am
10 going to ask you before I sit down and you go back to your
11 jury room please write down that the verdict is \$150,000
12 and probably I will ask you that again in a few minutes,
13 but I appreciate your patience. I appreciate you being
14 elected foreman or volunteering and I appreciate y'all
15 spending the last day and a half with us. Thank you.

16 THE COURT: Mrs. Ballard?

17 CLOSING STATEMENT

18 MRS. BALLARD: I told you all yesterday that I would
19 get an opportunity to address you again. I also told you
20 that it was our position that Heather Glover had taken
21 over that case and finished that case and relieved
22 Mr. Joel of responsibility for it, but the Judge has ruled
23 that I can't make that argument to you. The Judge has
24 ruled that you have to treat Ms. Glover and Mr. Joel as
25 one; so I can't ask you to allocate damages between the

1 two of them.

2 However, Mr. Woodruff is wrong when he tells you that
3 only one expert has been in this courtroom to testify as
4 to the value of the underlying case. Here is what you've
5 got. You have Professor Freeman who spent -- I timed
6 it -- 45 minutes telling you what an excellent lawyer he
7 is and he is in the field of securities, in the field of
8 contracts, in the field of agency and partnership. He
9 never once told you that he had tried or even handled one
10 personal injury case. He never mentioned that because he
11 hasn't; so you have two people who have testified about
12 the value of this case -- Mr. John Freeman who has no
13 experience whatsoever and Mr. Joel who has made his living
14 for 30 years doing personal injury cases on a contingency
15 basis and he knows because he makes his living determining
16 what's a good case and what's a bad case and he told you
17 that he thought Julie Tuten's case wasn't worth anything;
18 so Mr. Woodruff is wrong when he tells you that you've
19 only got one expert.

20 You've got one who makes his living determining
21 whether cases have any value. That's Mr. Joel. He's done
22 it for 30 years. You have an expert who has never tried a
23 personal injury case, didn't even tell you he had tried
24 any personal injury cases, didn't even try to fool you
25 about that, and he just picked a figure out of the air

1 based on the medical records; so what you've got is you
2 got one credible expert who knows what he's doing in a
3 personal injury case telling you that the case had no
4 value and the other one saying when, well, it's probably
5 three times the medical; so it's \$150,000.

6 I submit that's fairly simple to determine and the
7 Judge is going to instruct you that in determining the
8 underlying value of the case you have to look at the
9 original case. That would have been Ms. Tuten's case
10 against Mr. Still; so you're going to be looking at her
11 negligence and Mr. Still's negligence and the Judge is
12 going to instruct you that if you determine that she was
13 50 percent negligent or more in causing her own injuries
14 that she could not have recovered anything against
15 Mr. Still; so if you determine that her negligence
16 contributed 50 percent or more to her injuries, she gets
17 nada. If she gets nada, you don't award a verdict against
18 Ms. Glover or against Mr. Joel.

19 Now if you disagree with Mr. Joel and you agree with
20 Professor Freeman keep in mind that Ms. Tuten would not
21 have gotten the full \$150,000. She agreed to pay
22 one-third of that money to her lawyers; so the most under
23 all the testimony that you've heard today that you could
24 possibly award would be \$100,000, but we would submit that
25 the lawyer who knows what he's doing in personal injury

1 cases -- he makes his living doing that -- tells you that
2 based on the fact she was drunk when she got in the car
3 she wasn't going to recover anything.

4 That's a decision that you have to make and the Judge
5 will instruct you on what the law is. It's called
6 comparative negligence. It compares Ms. Tuten's
7 negligence to Mr. Still's negligence and they would have
8 had to determine that.

9 Now, we acknowledge Heather Glover made a mistake and
10 we're sorry that Heather Glover made a mistake and the
11 Judge has ruled that Mr. Joel is as responsible for that
12 as Ms. Glover. We disagreed with that, but that's what
13 the Judge has ruled; so your job as Mr. Woodruff said as
14 the Judge will tell you is to determine whether she
15 suffered any damages as a result of what happened by
16 Ms. Glover. We submit that she couldn't have recovered
17 anything to start with. Mr. Joel who makes his living
18 doing this testified to that. Mr. Freeman who's never sat
19 foot in the courtroom to try a personal injury case just
20 tripled the medical and made up a number.

21 I wish I could argue to you that you could return a
22 verdict only against Heather Glover, but the Judge has
23 taken that opportunity away and ruled that they are kind
24 of together and that's his job is to rule what the law is.
25 Your job is to rule what the facts are and so your

1 determination is whether Ms. Tuten had a case worth
2 anything when she got in the car drunk that night with
3 someone who was already drinking. We would request that
4 you return a verdict for zero damages because she couldn't
5 have won the case to begin with. Thank you very much.

6 I think we've moved as quickly as we could to get you
7 out of here fairly quickly. At least I try to and I
8 really do appreciate your attention. I know nobody wants
9 to be here; so I hope that you all can deliberate and get
10 out of here and get home. Thank you so much.

11 CLOSING STATEMENT

12 MR. WOODRUFF: The argument that Julie Tuten is
13 somehow at fault in this accident is in my opinion
14 ludicrous. You have a one-car accident and she's the
15 passenger. How was she at fault? That just doesn't
16 happen. That's ludicrous.

17 Two, Mrs. Ballard is arguing, oh, well, yea, the
18 figure may be 150,000, but even if it is 150,000 you need
19 to take away 50,000 because that's what Joel -- Mr. Joel
20 and Heather Glover would have received. That needs to
21 fall on deaf ears, and Desa Ballard stood up here and
22 acknowledged to you the Judge has already ruled that
23 Mr. Joel is as responsible as Ms. Glover. She said that.
24 She said that and the Judge has said that and then
25 Mrs. Ballard said we are sorry Ms. Glover did this. Did

1 this. Did this to Julie.

2 You know, what didn't you hear? What you didn't hear
3 is you didn't hear from an expert for Mr. Joel or from
4 Ms. Heather Glover. There's only been one valuation --
5 \$150,000 -- so you haven't heard any expert. I submit to
6 you they couldn't get an expert. You know, the amazing
7 thing -- the amazing thing that was just said to you is by
8 Mrs. Ballard. Mrs. Ballard said we're sorry that Heather
9 Glover did this to Julie. Where is the apology from
10 Mr. Joel? Did you hear that?

11 Anyway, I am going to ask that when you retire to go
12 back to your jury room and you come back with a verdict of
13 \$150,000. Thank you for your patience.

14 JURY CHARGE

15 THE COURT: Mr. Foreman, ladies and gentlemen, the
16 charge, obviously, has been reduced substantially because
17 of the rulings, but there are a few things that we charge
18 in every civil case. Let me just go back -- Can you hear?

19 THE JUROR: Yes, sir.

20 THE COURT: We'll go back over those and then we'll
21 go straight to where we are in this particular case. Let
22 me remind you once again during the trial of this case
23 that you and I have had various functions to perform. As
24 I told you when we started the law makes me -- not me, but
25 my position -- the judge of the law in the case. So when

1 defendant was negligent -- I have ruled as a matter of law
2 that he was -- and that his negligence proximately caused
3 injuries -- and I have ruled that that is the case -- and
4 the third thing they have to prove by the preponderance or
5 greater weight of the evidence is damages. In other
6 words, the plaintiff must show that he or she most
7 probably would have been successful in the underlying suit
8 if the attorney had not committed alleged malpractice.

9 The way that works is this. I found as a matter of
10 law that the suit -- the underlying suit in the wreck case
11 was not filed within proper time period -- what we call
12 the statute of limitations. It was filed outside of the
13 statute or not served -- filed and served which precluded
14 Ms. Tuten from trying that case in a courtroom or trying
15 to get it settled; so your job is to determine whether the
16 plaintiff has proven by the greater weight or
17 preponderance of the evidence that she would have been
18 successful and had she been so what she would have
19 received. Okay?

20 That underlying case is a wreck case. We try them
21 day-in and day-out. It's a form of a negligence case and
22 in a wreck case the plaintiff must prove that the
23 defendant violated some statutory rule or was not
24 exercising ordinary due care in the operation of a
25 vehicle, that she sustained injuries, and the injuries

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No.: 2009-CP-02-2460
Appellate Case No. 2012-211915

RECEIVED

JUL 29 2013

SC Court of Appeals

Julie Tuten,

Respondent,

v.

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover

Defendants,

of whom

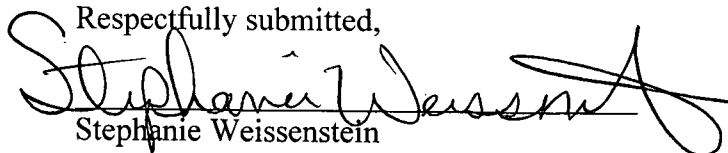
David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal and subsequently
filed Supplemental Record on Appeal collectively contain all material proposed to be
included by any of the parties and not any other material.

Respectfully submitted,



Stephanie Weissenstein

Ballard Watson Weissenstein

Post Office Box 6338

West Columbia, South Carolina 29171

Telephone 803.796.9299

Facsimile 803.796.1066

E-mail: stephanie@desaballard.com

ATTORNEYS FOR APPELLANT

July 29, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No.: 2009-CP-02-2460
Appellate Case No. 2012-211915

Julie Tuten,

Respondent,

v.

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover

Defendants,

of whom

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are


Appellants.

CERTIFICATE OF SERVICE

Terrie Stafford, an employee with the Law Offices of Ballard Watson Weissenstein, do hereby certify that on July 29, 2013, I served a copy of the **Supplemental Record on Appeal, Appellants' Final Brief and Final Reply Brief** in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage

affixed, addressed as follows:

Tom G. Woodruff, Jr., Esquire
Woodruff Law Offices, LLC
P.O. Box 2783
Aiken, South Carolina 29802


Terrie Stafford, Paralegal

July 29, 2013
West Columbia, South Carolina