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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Milton Kimpson, Circuit Court Judge

Case No.: 2019-CP-40-02129
Appellate Case No.: 2025-001564

Troyce Mack Appellant,

v.

Gregory Parker as Special Administrator for the Estate of David
Joseph Rudd, and Delta Plumbing, LLC.....Respondents.

RECORD ON APPEAL

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INDEX

Rulings on Plaintiff's Motions in Limine	3
Order on Post Trial Motions ,filed July 08, 2025	9
Verdict Form, filed March 14, 2025	14
Trial Transcript	17
Rulings and Discussion on Deposition Designations	17
Plaintiff's Opening.....	20
Troyce Mack	22
Direct.....	22
Cross Examination	49
ReDirect	63
Trooper Marlin ¹	66
Stephanie Borzendowski, PhD.....	67
Direct.....	67
Stephanie Mack.....	68
Direct.....	68
Cross Examination	73
Defendants' Motion for Directed Verdict.....	75
Megan Stevens	76
Direct.....	76
Cross Examination	77

¹ The testimony of Trooper Marlin was provided to the Court through page 25 of his deposition.

Rulings and Discussion on Respondents’ expert exhibit.....	78
Kendrick Richardson	84
Direct.....	84
Cross Examination	91
Woodrow Poplin	94
Direct.....	95
Plaintiff’s Closing	102
Defendants’ Closing.....	103
Jury Charges.....	105
Notes from Jury, Discussion with Court, Additional Jury Charges.....	108
Plaintiff’s Trial Exhibit 4	118
Plaintiff’s Motions in Limine, filed March 05, 2025.....	119
Plaintiff’s Memorandum in Support of its Motion in Limine to Preclude Evidence of Plaintiff’s Traffic Citation, filed March 05, 2025.....	121
Plaintiff’s Motion for a New Trial, filed March 21, 2025	126
Defendants’ Memorandum In Opposition to New Trial, filed March 25, 2025	131
Third Amended Complaint, filed January 20, 2025	136
Notice of Appeal	143
Certificate of Counsel	145

Brad Hewett

From: Karlen Senn <karlen@oshealaw.com>
Sent: Thursday, August 28, 2025 8:34 AM
To: Brad Hewett
Subject: Fwd: Ruling on Motions in Limine

External Sender - From: (Karlen Senn <karlen@oshealaw.com>)
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Sent from my iPhone, often clumsily typed

Begin forwarded message:

From: "Kimpson, Milton G. Law Clerk (Robert Reid)" <mkimpsonlc@sccourts.org>
Date: March 6, 2025 at 2:29:10 PM EST
To: Lonnie Doles <lrd@lylesfirm.com>, karlen@oshealaw.com
Cc: "Kimpson, Milton G. Secretary (Quincia Boyd)" <mkimpsonsc@sccourts.org>
Subject: **Ruling on Motions in Limine**

Good Afternoon,

Below is a message from Judge Kimpson:

I greatly appreciate the motions hearing yesterday afternoon. So that you may move forward with case preparation, these are my "bare bones" rulings. If I have omitted anything or you need clarification, please let us know as soon as possible. I will be in the office for the remainder of the afternoon and all day tomorrow. Further, I should be in by 8:30 AM Monday.

1. Defendant's Motion in Limine regarding Rudd's Criminal Record:
 - a. The following criminal offenses are excluded for any adverse purpose (except possible impeachment on a case by case basis) based upon unfair prejudice as well as the lack of sufficient nexus to the accident: all criminal domestic violence offenses and all possession of cocaine offenses;
 - b. The driving under suspension (DUS) criminal offenses are admissible against Mr. Rudd and the plumbing company (negligent entrustment cause of action) ONLY if they are based upon Mr. Rudd actually driving a vehicle while his license was suspended.
2. Defendant's Motion in Limine regarding Rudd's Driving Record:

a. Rudd's traffic convictions are excluded against Rudd except for impeachment purposes under SC Code Ann. 56-5-6160.

b. Rudd's traffic offenses are admissible against the plumbing company for the cause of action based on negligent hiring/entrustment EXCEPT any DUS traffic convictions that did not involve actual driving. DUS traffic convictions based on a failure to pay fines, taxes or any other delinquency are not admissible against the Company on the negligent hiring/entrustment issue based on a lack of nexus.

3. Defendant's General Motion in Limine. The Court grants this Motion subject to a condition concerning judicial notice of the 45-mph speed limit. The Court will take judicial notice of the 45-mph speed limit but will also give the instruction urged by Plaintiff that the 45-mph speed limit changed from a higher speed to the extent there is proof of the higher speed. The Court will reserve any rulings regarding punitive damages until trial.

4. Plaintiff's Motions in Limine:

a. Evidence that Plaintiff was convicted of the traffic offense of driving too fast for conditions is excluded under SC Code Ann. 56-5-6160 except for impeachment purposes.

b. Evidence of Plaintiff's citation for driving too fast for conditions is similarly excluded except for impeachment purposes.

c. To the extent Plaintiff's medical records are not properly admitted as evidence, any other use of these records will be decided during trial.

The Plaintiff and Defendant may choose to use any of this contested evidence as part of his respective case-in-chief, i.e., to the extent the Defendant Rudd chooses to testify about his cocaine conviction, he may do so.

Enjoy the rest of your day,

Rob Reid
Judicial Law Clerk to Judge Milton Kimpson
USC Law School Graduate
Clemson Graduate (Magna Cum Laude)
CALI Award Recipient
Phi Beta Kappa Society Member



From: Lonnie Doles <lrd@lylesfirm.com>
Sent: Wednesday, March 5, 2025 3:59 PM
To: Kimpson, Milton G. Law Clerk (Robert Reid) <mkimpsonlc@sccourts.org>
Cc: Kimpson, Milton G. Secretary (Quincia Boyd) <mkimpsonsc@sccourts.org>; karlen@oshealaw.com
Subject: Re: Trial 3/10: 2019CP4002129 - Mack v. Doe

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Hmm, unfortunately I'm out of ideas unless there is a gmail account I can send it to. If there are any other approved formats you may know of let me know and I can try them out!

From: Kimpson, Milton G. Law Clerk (Robert Reid) <mkimpsonlc@sccourts.org>
Date: Wednesday, March 5, 2025 at 3:54 PM
To: Lonnie Doles <lrd@lylesfirm.com>
Cc: Kimpson, Milton G. Secretary (Quincia Boyd) <mkimpsonsc@sccourts.org>, karlen@oshealaw.com <karlen@oshealaw.com>
Subject: RE: Trial 3/10: 2019CP4002129 - Mack v. Doe

Google Drive is unfortunately blocked too.

Rob Reid
Judicial Law Clerk to Judge Milton Kimpson
USC Law School Graduate
Clemson Graduate (Magna Cum Laude)
CALI Award Recipient
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From: Lonnie Doles <lrd@lylesfirm.com>
Sent: Wednesday, March 5, 2025 3:52 PM
To: Kimpson, Milton G. Law Clerk (Robert Reid) <mkimpsonlc@sccourts.org>
Cc: Kimpson, Milton G. Secretary (Quincia Boyd) <mkimpsonsc@sccourts.org>; karlen@oshealaw.com
Subject: Re: Trial 3/10: 2019CP4002129 - Mack v. Doe

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Lets see if google drive works, let me know if you're able to download, if not I'll try another format.

Google maps video

<https://drive.google.com/file/d/1udo4tbUv09wjssLhXjDV6A7gAln4PDTI/view?usp=sharing>

Police video

https://drive.google.com/file/d/1FgwiXXPKA9wRE-0bhZoy_a3rhFA8AaHa/view?usp=sharing

From: Kimpson, Milton G. Law Clerk (Robert Reid) <mkimpsonlc@sccourts.org>
Date: Wednesday, March 5, 2025 at 3:42 PM
To: Lonnie Doles <lrd@lylesfirm.com>
Cc: Kimpson, Milton G. Secretary (Quincia Boyd) <mkimpsonsc@sccourts.org>, karlen@oshealaw.com <karlen@oshealaw.com>
Subject: RE: Trial 3/10: 2019CP4002129 - Mack v. Doe

Mr. Doles,

Dropbox is a blocked website for us. The PDF's seem to work. Would you be able to send a different link?

Best,

Rob Reid
Judicial Law Clerk to Judge Milton Kimpson
USC Law School Graduate
Clemson Graduate (Magna Cum Laude)

CALI Award Recipient
Phi Beta Kappa Society Member



From: Lonnie Doles <lrd@lylesfirm.com>
Sent: Wednesday, March 5, 2025 3:10 PM
To: Kimpson, Milton G. Law Clerk (Robert Reid) <mkimpsonlc@sccourts.org>
Cc: Kimpson, Milton G. Secretary (Quincia Boyd) <mkimpsonsc@sccourts.org>; karlen@oshealaw.com
Subject: Trial 3/10: 2019CP4002129 - Mack v. Doe

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Mr. Reid:

Per Judge Kimpson's instruction, please see the attached link to the police video in the link below. I have also sent the cases I cited as attachments. Please let me know if you need anything in addition to what has been provided, thanks so much!

<https://www.dropbox.com/t/fCkGK59Cim54KIDq>

Regards,



Lonnie R. Doles, Jr.

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Troyce Mack,

Plaintiff,

vs.

Gregory Parker, As Special  
 Administrator of the Estate of David  
 Joseph Rudd and Delta Plumbing,  
 LLC,

Defendants.

---

/) IN THE COURT OF COMMON PLEAS

Civil Action No.: 2019-CP-40-02129

ORDER ON POSTTRIAL MOTIONS

**RECEIVED****Aug 06 2025****SC Court of Appeals**

This matter was tried before a jury in Richland County beginning March 10, 2025 and ending March 13, 2025. The Plaintiff, Troyce Mack (Mack or Plaintiff), alleged that the deceased Defendant David Rudd (hereinafter Rudd or Defendant), negligently caused an automobile accident which resulted in injury.<sup>1</sup> Plaintiff also alleged that Defendant Rudd was an employee of Defendant Delta Plumbing and that Delta Plumbing was liable based on a theory of respondent superior. At the conclusion of the evidence, the jury returned a verdict finding Plaintiff and Defendant Rudd each 50% negligent for the accident and returned a total damages award of \$16,545.34.<sup>2</sup> The jury did not find that Rudd was acting within the scope of employment for Delta Plumbing and thus did not find Delta Plumbing to be liable in the matter. The Court allowed the parties ten (10) days to submit posttrial motions. The Plaintiff timely filed a Motion for New Trial Absolution and Motion for New Trial on March 21, 2025. Defendant

---

<sup>1</sup> As indicated by the caption, Gregory Parker served as the Special Administrator of the Estate of David Joseph Rudd was represented by Gregory Parker. Mr. Rudd was deposed prior to his death and portions of his videotaped deposition were shown to the jury.

<sup>2</sup> This amount represents damages for medical expenses of \$9,220.54, lost wages of \$5,584.80 and damages of \$1,740.00 for "loss of lifestyle."

Rudd filed a reply on March 25, 2025. The Court convened a hearing on June 2, 2025 at which time counsel for both parties appeared.

I. **Plaintiff's Motion for New Trial Absolute Based on Inadequacy of Damage Award**

Plaintiff argues that the jury's award of damages in this case was so inadequate that he should be allowed a new trial under the standard that the 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." See *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007). Plaintiff points to the evidence that he had a broken clavicle and some disfigurement as a result of the accident, as well as pain and suffering from his injuries. Using a verdict form that required an itemization of damages, the jury awarded Plaintiff zero dollars for these elements of his claim. Plaintiff asserts that his evidence of these damages was "uncontroverted and unopposed."

The Court declines to award a new trial based on the asserted ground for relief. Mr. Mack testified about the accident and his injuries in a thorough direct examination. The jury evaluated his testimony and reviewed the evidence introduced in support of his claim, to include a picture of the disfigurement to the clavicle area of his body. His wife also testified about Mr. Mack's injuries. Contrary to Plaintiff's assertions, however, there was evidence which challenged Plaintiff's damages. The defense conducted an extensive cross examination and elicited testimony from Plaintiff and his wife that Plaintiff's medical treatment was relatively limited, he recovered from his injuries quickly and, despite any lingering pain, Plaintiff was able to travel to New York relatively soon after the accident for a family trip. Moreover, the testimony established that Plaintiff has been able to resume many of the recreational activities engaged in prior to the accident. Finally, Plaintiff offered no testimony from any medical personnel regarding his injuries.

In *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 610 S.E.2d 852 (Ct. App. 2005), the South Carolina Court of Appeals acknowledged the rule of law on new trials cited by Plaintiff but cautioned that "substantial deference should be given to a jury's determination of damages." This Court believes that the jury carefully evaluated the evidence before it and arrived at a

verdict that it believed was fair and just.<sup>3</sup> The Court will not invade the jury's province by granting a new trial because of the amount of the damage award.<sup>4</sup>

II. **Plaintiff's Motion for New Trial Based on Errors of Law.**

(a) **SC Code Ann. 56-5-6160**

Plaintiff argues that allowing the jury to hear that Plaintiff had been given a traffic ticket for "driving too fast for conditions" as a result of the accident and that he was subsequently convicted of this offense was an error of law that warrants a new trial. S.C. Code Ann. 56-5-6160 provides that "[n]o evidence of conviction of any person for any violation of this chapter shall be admissible in any court in any civil action." Nevertheless, in *Addyman v. Specialties of Greenville, Inc.*, 273 S.C. 342, 347, 257 S.E2d 149, 151 (1979), where the Plaintiff was denied the ability to cross-examine a non-party driver of the at-fault vehicle about his traffic offense, our Supreme Court stated the following:

Appellant's exceptions specify error only in the lower court's refusal to allow introduction of the driver's plea to impeach his earlier testimony and do not contend for its admission as substantive evidence. In our view the literal language of s 56-5-6160 does not bar the use of this evidence to impeach the credibility of a witness, whether or not such witness is a party to the action.

Here, in a pretrial ruling on Plaintiff's Motion in Limine concerning Plaintiff's traffic offense, the Court excluded evidence of Plaintiff's traffic offense except for impeachment purposes. During trial, the Defendant raised the traffic conviction on cross examination for impeachment purposes and not as substantive evidence. Subsequently, during its deliberations, the jury asked to be reminded of the traffic conviction and the jury was brought into the courtroom for this purpose. At another session prompted by a subsequent question from the jury, the Court instructed the jury, at Plaintiff's request, that it was not to consider the traffic offense for any purpose other than its impact on Plaintiff's credibility. Given that Plaintiff's traffic

---

<sup>3</sup> The jury was attentive throughout the presentation of evidence, arguments of counsel and jury instructions from the Court. The Court believes the jury fulfilled its responsibility to carefully weigh all of the evidence. There is simply no evidence that the jury was motivated by improper motive as suggested by Plaintiff or that it was confused in any way.

<sup>4</sup> Furthermore, the Court declines to order a new trial based on the Thirteenth Juror Doctrine. See *S.C. Highway Dep't v. Townsend*, 263 S.C. 253, 285, 217 S.E.2d 778, 781 (1975).

conviction was used only for the purpose of impeachment, the Court declines to grant a new trial on this ground.

(b) **Expert witness testimony.**

The Plaintiff next argues that it was improper for the Court to allow Defendant's expert accident reconstructionist to use a corrected computer-aided design (CAD) as a demonstrative during his testimony when the corrected version of the CAD had not been disclosed to Plaintiff but a few minutes prior to the witness's testimony. The Plaintiff objected to the expert's use of this corrected demonstrative but the Court overruled the objection and gave Plaintiff a short period of time to review the demonstrative before testimony was allowed to proceed. As pointed out by the Defendant, however, the expert witness referenced this CAD during his testimony only for the amount of footage between the 45-mph traffic control sign and the accident site and he did not rely upon the CAD to establish the point of impact or the resting places of vehicles after impact. The witness relied much more heavily on a police video, which was consented to by both parties, to show the jury the basis of his calculations. Moreover, any errors in the original demonstrative were actually identified by Plaintiff in a pretrial deposition so the corrected version should not have been a surprise to the Plaintiff. Finally in this regard, the expert was subject to a thorough cross-examination exposing these issues and other perceived deficiencies in his testimony. Given the circumstances, the Court stands by its decision to allow use of the corrected CAD and does not believe the late disclosure of this demonstrative unduly prejudiced the Plaintiff.

**BASED ON THE FOREGOING**, the Plaintiff's Motion for New Trial Absolution and Motion for New Trial are DENIED.

AND IT IS SO ORDERED.

---

Honorable Milton G. Kimpson

\_\_\_\_\_, 2025

Columbia, South Carolina



Richland Common Pleas

**Case Caption:** Troyce Mack vs John Doe , defendant, et al  
**Case Number:** 2019CP4002129  
**Type:** Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

Electronically signed on 2025-07-07 23:08:28 page 5 of 5

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Troyce Mack,

Plaintiff,

vs.

Gregory Parker, As Special Administrator of  
the Estate of David Joseph Rudd, and Delta  
Plumbing, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2019-CP-40-02129

**VERDICT FORM**

1. Was Defendant Rudd negligent?

☒ : YES – Go to Question 2  
\_\_\_\_ : NO – Stop deliberations

2. Was Defendant Rudd's negligence a proximate cause of the Plaintiff's injuries?

☒ : YES – Go to Question 3  
\_\_\_\_ : NO – Stop deliberations

3. Was the plaintiff negligent?

☒ : YES – Go to Question 4  
\_\_\_\_ : NO – Go to Question 6

4. Was the Plaintiff's negligence a proximate cause of the Plaintiff's injuries?

☒ : YES – Go to Question 5  
\_\_\_\_ : NO – Go to Question 6

5. Was the Plaintiff's negligence greater than fifty percent?

\_\_\_\_ : YES – Stop deliberations  
☒ : NO – Go to Question 6

6. Was Defendant Rudd within the course and scope of his employment or agency for Defendant Delta Plumbing, LLC at the time of the collision?

\_\_\_\_ : YES – Go to Question 7  
☒ : NO – Go to Question 10

7. Was Defendant Rudd an employee of Defendant Delta Plumbing, LLC?

\_\_\_\_ : YES – Go to Question 9  
\_\_\_\_ : NO – Go to Question 8

RICHLAND COUNTY  
FILED  
2025 MAR 14 AM 9:00  
JEANETTE W. MCBRIDE  
C.C.P. G.S. § 17-21

8. Was Defendant Delta Plumbing, LLC negligent in their hiring or supervision of Defendant Rudd relating to the collision?

\_\_\_\_\_ : YES – Go to Question 9

\_\_\_\_\_ : NO – Go to Question 10

9. Using the combined negligence that proximately caused the Plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendants? [The percentage must add up to 100%. If the Answer to Number 3 is NO, the amount for Plaintiff will be 0%.]

Plaintiff \_\_\_\_\_ %

Defendant Rudd \_\_\_\_\_ %

Defendant Delta Plumbing \_\_\_\_\_ %

Total \_\_\_\_\_ %

10. Using the combined negligence that proximately caused the Plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant? [The percentage must add up to 100%. If the Answer to Number 3 is NO, the amount for Plaintiff will be 0%]

Plaintiff 50 %

Defendant Rudd 50 %

Total 100 %

11. Please state the amount of damages, if any, sustained by the Plaintiff

|                            |                     |
|----------------------------|---------------------|
| Medical Expenses:          | \$ <u>9,220.54</u>  |
| Pain and Suffering:        | \$ <u>Ø</u>         |
| Loss of Enjoyment of Life: | \$ <u>Ø</u>         |
| Alteration of Lifestyle:   | \$ <u>1,740.00</u>  |
| Lost Wages:                | \$ <u>5,584.80</u>  |
| Permanent Disfigurement:   | \$ <u>Ø</u>         |
| Mental Anguish:            | \$ <u>Ø</u>         |
| Total Damages:             | \$ <u>16,545.34</u> |

12. Did the Defendants act in a grossly negligent, willful, wanton, or reckless manner, by clear and convincing evidence?

\_\_\_\_: YES – Go to Question 13

X: NO – Stop Deliberations

13. The amount of punitive damages that are appropriate and that have been proven by the greater weight of the evidence are:

\_\_\_\_\_

I certify that these are the unanimous decisions of the jury.

\_\_\_\_\_  
Jury Foreperson

March 13, 2025

1 hire someone to drive their vehicle with a suspended  
2 license? We -- if they get hired, they don't drive a  
3 vehicle with a suspended license. Why would that be  
4 dangerous? Because they're not responsible when they  
5 are driving a vehicle with a suspended license.

6           This is not one I pointed out, but I do believe  
7 it makes an inference that he was driving under  
8 suspension at the time of the accident. There is no  
9 proof of that, but again, this is -- this is one that I  
10 can't defend as well as some of the others, okay?

11           THE JUDGE: But now, we're letting in certain  
12 information that he had a suspended license at some  
13 point?

14           MR. DOLES: Certainly, your Honor.

15           THE JUDGE: Any --

16           MS. SENN: And I'll start with this. I'm not  
17 trying to make a case that he was driving when he first  
18 got hired with a suspended license. The question was a  
19 hypothetical question. I view it -- you know, it goes  
20 more towards the company's negligence in what they do  
21 when they hire someone. Would you want to hire  
22 somebody who has a suspended license? The answer to  
23 that question should be no, obviously. But that -- to  
24 me, it goes to the negligence of the employer in  
25 vetting their employees.

1           MR. DOLES: Your Honor, I think I'm going to  
2 withdraw this objection. Looking at it again, you  
3 know, this was over the weekend when were all rushing,  
4 so -- and after a day, I think this is to fine to  
5 withdraw.

6           THE JUDGE: That's fine.

7           MR. DOLES: Okay. My next objection, that is  
8 Page 83, Lines 3 through 6, would Delta Plumbing want  
9 to want hire someone to drive a vehicle who had a  
10 driving history replete with traffic violations? I  
11 don't judge people from their past, so. Again, they'll  
12 get to see his driving record, but I still believe that  
13 is makes a negative inference as to even more issues  
14 than may be there.

15          THE JUDGE: But -- but -- but help me now. What  
16 I have let in from his driving record does, in fact,  
17 report traffic violation; is that right?

18          MR. DOLES: Judge, I'm going to make this easy,  
19 and I'm going to withdraw that objection.

20          THE JUDGE: Good enough.

21          MR. DOLES: Okay. Next starts on Page 80, which  
22 I actually think we've resolved these next four. And  
23 that was more of an issue with how to redact the  
24 driver's license, so he think we've already worked that  
25 out. So that's Page 80, 81, 83 and 84 are resolved,

1 once we can agree on that.

2 THE JUDGE: Any objection, Ms. Senn?

3 MS. SENN: No, sir.

4 MR. DOLES: Okay. Last page, thank goodness.

5 THE JUDGE: Yes, sir.

6 MR. DOLES: Page 92. I only object to this --  
7 the designation is 3 through 7 and then 13 through 22.  
8 I only object to 21 and 22. Again it -- it asks Delta  
9 Plumbing, and never pulled a SLED record, right?  
10 Correct. I guess I think it makes an inference as to a  
11 larger criminal history in relation to Mr. Rudd, so I  
12 think just 21 and 22 should be taken out.

13 THE JUDGE: What say you?

14 MS. SENN: Judge, I think the fact that they  
15 didn't pull a SLED record is evidence of their  
16 negligence. We're not going to go -- I'm not trying to  
17 get into to what is in that SLED record, but the fact  
18 that when they are hiring this employee they never  
19 pulled the record. They never tried to seek out this  
20 information that would have allowed them to make a good  
21 decision about whether to hire this guy.

22 THE JUDGE: I understand. Mr. Doles, I'm going  
23 to allow lines 21 and 22. I understand your points.

24 MR. DOLES: Certainly.

25 THE JUDGE: But of course, we're giving them a

1 But ladies and gentlemen, you can't create a hazard in  
2 the roadway and sit back to wait and then react.

3           Defense is going to try to blame Troyce for the  
4 wreck. They're going to try to tell you that Troyce  
5 was going 100 miles an hour, talking on his cell phone.  
6 They actually hired an expert who's going to say that  
7 he was going that fast. Now, let me put that in  
8 context with the other facts that you're going to hear  
9 in this case. They're trying to get you to believe  
10 that at 4:40 A.M., when he's two and a half miles away  
11 from work -- he's got until 5:00 to get there. He's  
12 got a brand-new baby at home. Most of you know what  
13 that means. He's not sleeping well -- that he is  
14 driving 100 miles an hour, chatting on the cell phone  
15 at 4:40 A.M. Under those conditions, that's not going  
16 to align with the facts that you're going to see.

17           Troyce only got a split second to react.  
18 Defense is going to play Monday-morning quarterback and  
19 try to critique his actions, and they're going to try  
20 to critique his actions that he took in an emergency  
21 situation, that the defendants created. To make  
22 matters worse, while Troyce is laying in a hospital bed  
23 in the hallway at Prisma Richland, waiting to be seen  
24 by a doctor, a trooper comes in and hands him a ticket  
25 for driving too fast for conditions. That trooper was

1 nowhere near the site of the wreck when it occurred.

2 He has no idea how fast Troyce was going, and in fact,  
3 he did nothing to determine Troyce's speed.

4           Troyce doesn't think he was speeding. The only  
5 person who's going to tell you that is somebody that  
6 was handpicked and hired by the defense. And you'll  
7 see that story he's going to try to sell you, it just  
8 doesn't add up. It defies common sense. And there's  
9 more.

10           They're going to try to say that David Rudd was  
11 not an employee of Delta Plumbing, and he's just a  
12 subcontractor, and therefore they shouldn't be  
13 responsible for the harms that his -- he causes.  
14 Again, let's put that in context of the evidence.  
15 You're going to see a video of David Rudd, where he  
16 says he was employed by Delta Plumbing. He was an  
17 employee. He was the head plumber. You're going to  
18 hear testimony that he was on his way to work, driving  
19 a truck owned by Delta Plumbing that's full of their  
20 tools in the back. You're going to hear testimony that  
21 David Rudd got paid every Friday, direct deposit into  
22 his account. Don't let them confuse you. Just because  
23 they're going to call him a subcontractor does not mean  
24 that that's true. The judge just told you that you  
25 are -- you are the judges of the facts. Just keep in

1 South Carolina.

2 Q. Is that right off Garners Ferry Road?

3 A. It is, yes.

4 Q. All right. And what you were doing --  
5 what was your job at Schneider Electric in 2018?

6 A. I was in the materials department -- I'm  
7 sorry -- working with the inventory. So I did a lot of  
8 counting material in the warehouse.

9 Q. And what were your hours? For your shift?

10 A. Yeah, so my hours were 5:00 in the morning  
11 to 3:00-3:30 in the evening -- afternoon.

12 Q. All right. And so for a typical day, what  
13 time would you leave your house in Sumter to get to  
14 work by 5:00?

15 A. I would leave around 4:00.

16 Q. All right. And do remember how much you  
17 made per hour when you were working at Schneider  
18 Electric in October of 2018?

19 A. Yes. 17.90.

20 Q. All right. And so on the morning of  
21 October 19th, 2018, what was your plan for that day?

22 A. My plan was, as usual, get up and go to  
23 work, take care of my family, and return back home  
24 safely. Yeah.

25 Q. And at this point, you had three sons;

1 that's right?

2 A. That's right.

3 Q. How old was the youngest son in October of  
4 2018?

5 A. My youngest, just a few weeks old.

6 Q. All right. And so your wife was primarily  
7 taking care of your kids at that point; is that right?

8 A. Yes.

9 Q. So and what time did you wake up in the  
10 morning on October 19th?

11 A. That morning, a little after 3:00, I would  
12 say. A little after 3:00, I woke up that morning.

13 Q. And you were pretty careful not to wake  
14 Stephanie up, right?

15 A. Oh, yes. Very careful.

16 Q. And that's because she didn't -- she was  
17 taking care of the kids, and she's tired, right?

18 A. That's correct.

19 Q. So you didn't make a big to-do, make a big  
20 breakfast, or do any of that? You just tried to slip  
21 on out the door?

22 A. That's correct.

23 Q. And so your cousin, Jaryd, spent the night  
24 with y'all the night before the wreck, right?

25 A. Yes.

1           Q.     What had y'all done that Thursday night  
2 before the crash?

3           A.     We were at a service, a church service  
4 Thursday night in Manning, South Carolina.

5           Q.     All right. So you said you left the house  
6 about 4:00 A.M. And what route did you take? What was  
7 the main route you took to get to Columbia from Sumter?

8           A.     I took the Highway 378, towards Sum---  
9 Columbia.

10          Q.     All right. And were you in a hurry that  
11 morning when you had to leave?

12          A.     No, ma'am. I didn't rush at all.

13          Q.     And what did Jaryd do while you were  
14 driving?

15          A.     He started awake with me. We had small  
16 conversation. And then eventually, he went to sleep.

17          Q.     All right. And describe the portion of  
18 Garners Ferry Road where this occurred?

19          A.     That area was a dark area, a very rural  
20 area. It's a four-lane highway. The median is a  
21 grassy median, and also there's not really many  
22 businesses in that area, not heavily populated at all.  
23 Like I said, it's dark, you know, no street lights or  
24 anything like that. And also this area is kind of like  
25 an incline slope, uphill in that particular area.

1           Q.     All right. And what kind of car were you  
2 driving that morning?

3           A.     I was driving a Toyota Corolla, 2004-5.  
4 2005.

5           Q.     Who gave you that car?

6           A.     My mom actually gave me that car.

7           Q.     All right. And you were familiar with  
8 that car, right?

9           A.     Yes.

10          Q.     You'd driven it every day for the past 13  
11 years or so?

12          A.     Yeah. I did.

13          Q.     All right. So what were you doing on the  
14 drive to work that morning after Jaryd fell asleep?

15          A.     So I was just driving as normal. I had  
16 music playing. I like to listen to 89.7 just to get --  
17 get my spirit right for work. We all know how the work  
18 day can get, so I like to prep myself before I get to  
19 work so I listen to some music.

20          Q.     All right. And at any point in any drive,  
21 were you talking on your cell phone?

22          A.     No, ma'am. Not at all.

23          Q.     And just before the crash, you were not on  
24 your cell phone, right?

25          A.     No, ma'am.

1           Q.     Where do you keep your cell phone in the  
2 car?

3           A.     I usually keep it in the middle.

4           Q.     Like in the console?

5           A.     In the console, yes.

6           Q.     All right. So tell the jury, in your own  
7 words, how this collision occurred.

8           A.     So, as I say, I was traveling up 378  
9 towards Columbia, and just going about my -- my daily  
10 morning, driving listening to -- to music. And I was  
11 driving in the left lane at the time, and I noticed  
12 that there was a vehicle in front of me. I saw the  
13 taillights, but of course, in the area, it was still  
14 dark. And I didn't notice the car was -- was stopped.  
15 I had no reason to believe that the car was stopped.  
16 All I could see is he had no hazards lights on, no  
17 signals to let me know that it was stopped or disabled,  
18 and so I didn't think twice about it. So I assumed  
19 that the car was stilling traveling. And before I  
20 realized that the car was actually stopped or disabled,  
21 it was too late, and I hit the car in the back.

22          Q.     All right. And what was the speed limit  
23 in the area where the wreck occurred?

24          A.     I remember the speed limit was 60 miles  
25 per hour, and it just dropped to 45.

1           Q.     All right. And do you know exactly how  
2 fast you were going?

3           A.     I -- I don't recall exactly what speed I  
4 was traveling, but it was close to the speed limit. So  
5 I don't know exactly what the speed was.

6           Q.     All right. And I'm going to show you what  
7 I'm marking as Plaintiff's Exhibit Number 1.

8           (PPlaintiff's Exhibit No. 1, Photograph of  
9 Highway is Marked for Identification.)

10          Q.     Do you recognize that document?

11          A.     Yes.

12          Q.     And what is that a picture of?

13          A.     It's a picture of the highway I was  
14 traveling that morning, 378, yeah, going towards  
15 Columbia. It looks like the Horrell Hill area where  
16 the accident occurred.

17          Q.     All right. And can you see that screen?

18          A.     Yes.

19          Q.     From where you're sitting? All right.  
20 And is that the -- so that's the area where the wreck  
21 occurred, and you're going towards Columbia. You're in  
22 the left lane; is that right?

23          A.     That's correct.

24          Q.     All right. And you see it looks like a  
25 traffic light up ahead; is that your --

1 Q. -- that -- that's true?

2 A. Yes,.

3 Q. Okay. And you can see the incline in this  
4 photo right, right? But this is taken about the middle  
5 of the hill, not at the -- not at the base; is that  
6 correct?

7 A. Yes.

8 Q. All right. And so as you see these two  
9 taillights, did you see anybody standing outside of the  
10 vehicle?

11 A. I don't recall seeing anybody standing  
12 outside.

13 Q. You didn't see anybody with a cell phone  
14 light or no indicators of any other light, other than  
15 the those taillights, right?

16 A. No, ma'am.

17 Q. And describe for the jury what you  
18 remember about your car's movement rate before impact?  
19 What did you do?

20 A. So right before the impact, when I  
21 realized that the car was actually stopped, I was still  
22 moving forward, but I didn't remember hitting the  
23 brakes. But it wasn't a long time. It was a actually  
24 even not enough time for me to really avoid the crash,  
25 so I -- I collided with the vehicle.

1           Q.     All right. And you did hit the brakes,  
2     though, right?

3           A.     Yes.

4           Q.     Do you remember whether your vehicle, your  
5     Corolla, left any skid marks on the roadway?

6           A.     I don't recall.

7           Q.     All right. And so after you made impact  
8     with the back of the truck, where did your vehicle go  
9     from there?

10          A.     It still moved forward, but it ended up in  
11     the right lane.

12          Q.     Was it all the way in the right lane, or  
13     was it straddling the center line, or do you remember  
14     the exact location of it?

15          A.     I don't remember the exact location, but  
16     it moved further to the right. I don't recall whether  
17     it was in the center of the right line, but it was --  
18     it was past the white lines -- the middle lines.

19          Q.     Did your airbag deploy?

20          A.     Yes. The front airbag did deploy.

21          Q.     All right. And immediately after the  
22     wreck, what did you do?

23          A.     Immediately after the wreck, it was -- it  
24     was a very emotional time for me. The scene was  
25     frantic, and she -- she said that the airbags were

1 deployed. And so I'm trying to figure out, you know,  
2 what I need to be doing. I -- I'm assessing the  
3 situation, making sure that I'm okay, making sure that  
4 my passenger's okay. And when I looked at my  
5 passenger, he was actually unresponsive, so my emotions  
6 were high. The adrenaline was flowing, and I also  
7 noticed that there was a small fire building, and so it  
8 was a crazy time for me, very emotional.

9 Q. And did you have any trouble getting out  
10 of your car?

11 A. I did. So when I saw the -- the small  
12 fire, that really kind of pushed me, you need to get  
13 out of this car. And I went to try to open my door --  
14 my driver's door -- and I noticed that it wouldn't  
15 open. It was jammed. And I remember jumping in the  
16 back seat, trying to see if I could get those doors  
17 open, and I couldn't get those doors open. Again, got  
18 back in the front seat, and I tried to get out again.  
19 I actually remember kicking the door open -- my door  
20 open to exit the car.

21 Q. All right. And at that point, Jaryd was  
22 still unconscious, right?

23 A. He was, yes.

24 Q. All right. So how soon after the  
25 collision were you able to get out of the vehicle?

1           (Plaintiff's Exhibit No. 2, Photograph of Toyota  
2 Corolla, is Marked for Identification.)

3           Q.     Tell the jury what we're looking at there?

4           A.     So I'm looking at the car that I was  
5 driving that morning, Toyota Corolla, and significant  
6 amount of damage to the front end of it.

7           Q.     All right. And have you had an  
8 opportunity to look at the EMS report from this  
9 incident?

10          A.     Yes.

11          Q.     All right. I'm going to show you what I'm  
12 marking as Plaintiff's Exhibit Number 3.

13          (Plaintiff's Exhibit No. 3, Richland County EMS  
14 Report, is Marked for Identification.)

15          Q.     Tell the jury what that is for me, please?

16          A.     It's the Richland County EMS report.

17          Q.     All right. And is your name on that  
18 report somewhere?

19          A.     Yes.

20          Q.     All right. And what time does that  
21 document say that EMS came out to the scene?

22          A.     It says received at 4:43.

23          Q.     All right. So 4:43 A.M. is when EMS  
24 received the call, right?

25          A.     Yes.

1 Q. What'd they diagnose you with?

2 A. They saw that my left clavicle was broken.

3 Q. All right. And do you remember talking to  
4 the state trooper while you were on the scene?

5 A. No, ma'am. I don't recall any  
6 conversation with the trooper on the scene.

7 Q. All right. Do you remember the location  
8 of the Mr. Rudd's truck after the impact?

9 A. I do. I remember his truck moving to the  
10 left.

11 Q. All right. So his truck moved to the  
12 left. Your car moved to the right?

13 A. That's correct.

14 Q. Is that right? All right. Do you know  
15 how far his truck traveled after the impact?

16 A. No, ma'am.

17 Q. All right. Do you have know how far your  
18 car traveled after the impact?

19 A. I do not.

20 Q. Do you remember any witnesses who came up  
21 on the scene, who had -- had driven over some debris in  
22 the roadway?

23 A. I don't remember. I don't recall any  
24 witnesses.

25 Q. All right. So you didn't have any

1 truck?

2 A. Yes, ma'am. I told the trooper that I  
3 didn't see any hazard lights.

4 Q. He still give you a ticket, right?

5 A. He did. He gave me a ticket.

6 Q. Do you think you were driving too fast for  
7 conditions?

8 A. I don't think I was driving too fast for  
9 conditions. I was driving close to the speed limit.

10 Q. All right. And so you said when you were  
11 at the hospital, the doctor gave you some pain  
12 medicine. Did he put your arm in any kind of  
13 immobilizer or anything like that?

14 A. Yes. So I left with a sling.

15 Q. And what was the purpose of the sling?

16 A. It was to take pressure off of the -- the  
17 broken clavicle.

18 Q. What was your pain level during that  
19 period of time, right after the wreck?

20 A. It was definitely a 10, very -- very high  
21 pain.

22 Q. And what kind of follow-up treatment did  
23 you have after leaving the hospital?

24 A. I followed up with Dr. Jones, where he  
25 looked at my broken clavicle.

1           A.       Well, that -- that was the biggest part.  
2 I wasn't able to pick up my kids, especially my newborn  
3 baby. And so I wasn't able to really bond with him as  
4 I wanted to, because of the limitations and because of  
5 the pain. And I also couldn't play with my older boys  
6 as well, and the hardest part about is that they didn't  
7 understand why I couldn't do it. And it was -- it took  
8 a toll on me emotionally as well. I couldn't do -- you  
9 know, spend that time with them and really pick them up  
10 and play with them. So that was difficult time for me.

11           Q.       And what about sleeping? Did this have  
12 any impact on -- on your ability to sleep through the  
13 night?

14           A.       Yes. It was very difficult to get  
15 comfortable, very difficult to sleep. I had to sleep  
16 in one position, and so -- but yeah. It made it  
17 difficult. Even sitting down for a long period of time  
18 made it difficult to do that.

19           Q.       All right. And you said that the doctor  
20 referred you to physical therapy. Do you remember the  
21 name of the facility that you went to physical therapy  
22 at?

23           A.       Yes. It was Carolina Physical Therapy in  
24 Sumter.

25           Q.       All right. And about how far was that

1 away from your house?

2 A. That was -- that's about 15 minutes from  
3 my house.

4 Q. And what was the point of physical  
5 therapy? What were you trying to get out of it?

6 A. I really wanted to regain strength in my  
7 left arm, left shoulder, strengthen my left hand also.  
8 I wanted to, you know, decrease the pain, and also I  
9 wanted to increase my range of motion, my reach,  
10 basically so I can recover and get back to work.

11 Q. Do you remember how many treatment visits  
12 you went to with Carolina Physical Therapy?

13 A. Yes. So I had 14 sessions, and I did that  
14 about, give or take, twice -- twice a week.

15 Q. All right. And describe for the jury the  
16 treatment that you had received while you were there?

17 A. Yes. So they did a lot of exercises with  
18 me, shoulder exercises, hand exercises. A lot of  
19 stretching. Also a lot of heat -- heat treatment that  
20 they put a heating pad over my shoulder, you know, just  
21 to release some of stress, some of the soreness and  
22 discomfort.

23 Q. And for all those 14 physical therapy  
24 sessions, were you able to drive yourself?

25 A. No, ma'am. I didn't do any of the

1 driving. Again, I had to rely on my wife to do most of  
2 driving, so she -- she would drive me to all my  
3 sessions. She would pack all the kids in the car to --  
4 to take me. And so that was a stressful time. I  
5 couldn't help her pick the baby up, the car seat, to  
6 get them into the car. I relied heavily on her, and --  
7 to -- to help me do a lot of the things that I needed  
8 to do. And so, yeah, it was tough.

9 Q. At some point, did you have to follow up  
10 with Dr. Jones, the orthopedist?

11 A. Yes, I followed up with him.

12 Q. And did he check the healing of your  
13 fracture?

14 A. He did, yeah. He checked the healing of  
15 the fracture, and it was displaced too.

16 Q. So tell the jury what the alignment of the  
17 bones was after -- or during the healing process?

18 A. So I can -- I can explain it kind of like  
19 -- like this. Before it was like this, my clavicle,  
20 but now it's like this.

21 Q. All right. And did the orthopedist ever  
22 discuss a surgery to fix that displaced fracture?

23 A. Yes, he did discuss with me surgery. And  
24 which I decided to not to -- to do the surgery. When  
25 he spoke to me about the surgery, he talked to me about

1 some of the risks that were involved with having that  
2 surgery. And when he was telling me about the risk, I  
3 decided not to -- to have the surgery. So the risks  
4 that he was saying about the surgery is that there  
5 would be some nerve damage, also possible long -- of  
6 course it would be a long recovery. And one of the  
7 other things that he said, that it would be -- one of  
8 the risks would be death. And that kind of scared me a  
9 lot, so I elected not to have the surgery.

10 Q. And up to that point, you've never had  
11 surgery before?

12 A. No, never. Never had surgery.

13 Q. All right. So he said -- you said a long  
14 recovery. What would that mean, in terms of you being  
15 able to go back to work?

16 A. So that would mean it would delay a time  
17 for going back to work, and I didn't want to do that,  
18 because this incident had already caused financial  
19 strain on me and my family. And so going back to work  
20 would -- would help get us back to track sooner rather  
21 than later.

22 Q. All right. And I'm going to show you what  
23 I'm marking as Plaintiff's Exhibit Number 4.

24 (Plaintiff's Exhibit No. 4, Photograph of  
25 Clavicle, is Marked for Identification.)

1           Q.     Can you tell the jury what we're looking  
2 at there?

3           A.     Yes.    So I'm looking at a picture of my  
4 left clavicle, and I'm looking at the displaced bone  
5 that's sticking out.

6           Q.     All right.   And did that bump ever heal  
7 completely?

8           A.     No, ma'am.   It did not.

9           Q.     All right.   Does this -- does this picture  
10 that we're looking at right now accurately represent  
11 what that injury looks like today?

12          A.     Yes.    It still looks like that today.

13          Q.     Is it visible under some clothes you wear?

14          A.     Yes.    Under certain clothes -- clothes.  
15 sorry -- it's still visible, and so I'm -- I'm  
16 conscious of that, and very self-conscious.   And so I  
17 try to not to let it show.

18          Q.     All right.   So you've described some of  
19 the stresses you were under, the financial stresses.  
20 And this occurred -- you know, the wreck occurred  
21 October 19th, so you had Christmas and Thanksgiving  
22 coming up, right?

23          A.     Yes.

24          Q.     All right.   So describe for the jury what  
25 was going on in your life during this time while you

1 were trying heal?

2           A.       A lot. A lot was going on during this  
3 time. As -- as you said, Christmas is coming back up.  
4 Thanksgiving, also New Year's coming. A lot -- a lot  
5 was going on. A very busy time. And so one of the  
6 things that I remember is we'd just had a baby. Baby  
7 was just a few weeks old. I remember just in the  
8 hospital with him, a premature baby, and during that  
9 time, he was in the NICU for a few -- few days.

10           And three days after the baby was born, we get  
11 to call that -- from my mother-in-law. And my  
12 mother-in-law spoke to me and told me that not -- not  
13 to tell my wife right now, but that her sister was just  
14 killed in a car accident caused by a drunk driver.  
15 That was three days after our baby was born, and he  
16 we're celebrating -- celebrating the baby, and then all  
17 of a sudden now, we're mourning at the same time, the  
18 loss of her sister. And I have to figure out how to  
19 tell her because she's -- she's going through a lot in  
20 -- in her mind, you know, just having a baby, and now  
21 this. And so I have to figure out how can I tell her  
22 before she gets on social media and somebody else says  
23 it. And so I have to give her hard news about this. I  
24 pulled her to the side, and I told her about that. And  
25 it was a very hard time for us. And then a few -- a

1 few weeks later, this happens, and just a lot going on.  
2 Seems like we can't win for losing.

3 Q. All right. And with respect to your kids  
4 and their scheduling, what did they have going on  
5 around this time after the wreck and then a few weeks  
6 after the wreck?

7 A. Yeah. So they -- they're involved in  
8 their school and different things of that sort. They  
9 have extracurricular activities, and so, you know, we  
10 take them to whatever they have going on at school.  
11 And so they -- they have a lot going on at school. And  
12 also with the holidays, you know, we're -- we're going  
13 to see family. We're gathering. We're doing all the  
14 things that everybody do at the holidays. But it  
15 became increasingly hard for me, because I'm -- we're  
16 dealing with all this, and I'm dealing with the pain.  
17 I'm dealing with not being to able to, you know, still  
18 have fun with my kids and pick them up and do -- do  
19 things that I would like to do as a father.

20 And so that time was very emotional. Very hard  
21 and heavy for me, and -- and also because I wasn't able  
22 to work, you know, I would say Christmas wasn't that  
23 good that year. But I still had to perform as a  
24 father, and I did that as best I could, even while  
25 stressing, worried about different things. I still

1 pushed through, and I still did it, still did it then.

2 Q. All right. So you had to meet those  
3 obligations, even though you were in pain, right?

4 A. Yes, I did.

5 Q. And just like you had to attend physical  
6 therapy, even though it was difficult with everybody's  
7 schedule, right?

8 A. That's right.

9 Q. All right. And so you've alluded to this,  
10 but at this point in time, money was tight in your  
11 household, right?

12 A. Yes. Yeah, money definitely tight. I  
13 wouldn't say that we were well off, but it was already  
14 -- already tight, and then this happens. And it pushes  
15 us back a little bit, you know, because I'm not able to  
16 work. And so we had just moved to Sumter, and we  
17 bought a house back in 2017, and so, you know, we're  
18 falling behind on the mortgage, and now we're not able  
19 to pay the light bill, different things like that. So  
20 I was under a lot of stress, and of course, at the time  
21 I'm the bread winner. My wife was not working. She's  
22 home taking care of the kids. I'm going to work, and  
23 I'm -- I'm taking care of the family, but then that's  
24 taken away from me as well.

25 Q. All right. And let's go back to your

1 physical therapy sessions. You said you attended 14  
2 sessions. And you go back -- did you go to physical  
3 therapy after you went back to work?

4 A. I do -- I did. I'm sorry. For a few  
5 sessions, I went -- I continued to go to physical  
6 therapy while I returned to work.

7 Q. And was that a challenge?

8 A. It was. It was a challenge. Because I --  
9 I still -- it's about an hour away from work, so I  
10 would have to leave work early to get to physical  
11 therapy. And that means, I would have to, you know,  
12 ask for time off. We call it -- sometimes we use flex  
13 hours to get off early, to go to work -- to go to  
14 appointments that I would have to go to, it was -- it  
15 was hard to do -- do both at the same time.

16 Q. All right. And at this point, your family  
17 was down to one vehicle; is that right?

18 A. Yes.

19 Q. All right. So how would that work? Who  
20 would drive you? Or would you take the car?

21 A. No. So I wouldn't take the car, because  
22 we have -- we have one vehicle, so my wife would have  
23 to wake up with me early in the morning and get the  
24 kids ready, and then we would have -- she would have to  
25 drive me to work. And then she would have to leave my

1 work and go back home and then get them ready for  
2 school. And then she would have to take them to  
3 school, pick them back up from school, and then come  
4 back and pick me up from work. And then we'd travel  
5 back together home.

6 Q. And she would still drive you to physical  
7 therapy?

8 A. And she would still drive me to physical  
9 therapy. That's correct.

10 Q. All right. Did physical therapy improve  
11 your pain level?

12 A. It did. It did. It improved my pain  
13 level.

14 Q. And what about your strength and your  
15 range of motion?

16 A. Yes. It improved all those things. I was  
17 able to now reach better. The motion -- my range was  
18 better. All the treatments and the exercises and the  
19 heating pads and different things, it -- it really  
20 helped, and I appreciate that.

21 Q. Since the wreck, have you -- or since you  
22 completed physical therapy, do you still have any  
23 lingering issues with your collar bone?

24 A. Yes, I do. I still have some discomfort  
25 at times. I notice when -- when I'm lifting or when

1 I'm stretching, different things like that. Picking up  
2 my kids, 'cause I have two babies at home -- two very  
3 active babies. And so I'm lifting them a lot, and  
4 picking them up and carrying them a lot. Then  
5 sometimes I feel, you know, that there's something  
6 there, there's an issue, or soreness there. Also, I  
7 have issues with when I'm using -- when I'm driving  
8 long distances and wearing my seat belt. It irritates  
9 that area. As a matter of fact, every time I use the  
10 seat belt, it irritates that area. I -- I would have  
11 to put like, a padding. Most of time I use a towel to  
12 put over that area when I'm wearing my seat belt. And  
13 so, yeah. So I still feel some effects from it today.  
14 And also when there's a change in weather, I now notice  
15 that it brings a soreness, so.

16 Q. All right. And I think you testified that  
17 you missed 312 hours of work. Do you know how much --  
18 how many weeks that was of work?

19 A. Yes, it was six weeks.

20 Q. All right. And so when you returned to --  
21 to work you had to drive by the scene of the crash,  
22 right?

23 A. Yes, every day.

24 Q. How did that make you feel?

25 A. So every day passing by that scene, it

1 makes -- it makes me feel, you know, kind of on edge.  
2 I relive that scene every day. The memory comes to me  
3 every time I pass the area. I see the marks in the  
4 road. I see the -- the burns spots in the road, and it  
5 just triggers my thoughts and brings a level of anxiety  
6 every time I pass that area going and coming from --  
7 from work.

8 Q. All right. And explain to the jury how  
9 long after the wreck you had significant pain from your  
10 collar bone?

11 A. So after the wreck, I would say about six  
12 -- six months, I would say.

13 Q. All right. And are you telling the jury  
14 that every day for those six months, your pain level  
15 was high?

16 A. No. No, no, no. Not at all. It would  
17 just happen. Like different -- whatever. If I'm  
18 doing something different, I -- I would feel the pain.  
19 Like I said, sometimes when I'm driving, sometimes when  
20 I'm lifting, sometimes when the weather changes, you  
21 know, that soreness comes, you know, that pain comes.

22 Q. All right. And you've described for the  
23 jury some of the anxiety you felt and frustrations you  
24 felt. Can you tell the jury about how long this --  
25 your injury had an impact on your mental health?

1           A.       It -- it had a significant impact on my  
2   mental health. I would say about six -- six months  
3   significantly, but every day. Still yet today, I'm  
4   still impacted by it. I still have to relive that  
5   moment, you know. And so even though -- I would say  
6   after the wreck, or after the collision, that  
7   significantly it impacted me for six months.

8           My mind -- my mind still -- still goes back to  
9   that -- that -- that time. My mental still thinks  
10   about, you know, how my -- my sister-in-law was  
11   tragically killed. My mind thinks about, you know, how  
12   I could have been, you know, gone. My wife could have  
13   been a widow. My children could have been -- could  
14   have been without their father. So I think about that,  
15   and because, you know, I'm the driver for the family,  
16   you know, every -- every day, every time I drive, every  
17   time I get behind the wheel, I -- I'm vigilant. I'm on  
18   edge. I want to make sure that this doesn't happen  
19   again. And so yeah, my mental is really -- you know,  
20   it's still there.

21          Q.       All right. And earlier, we talked about  
22   you seeing the truck in front of you. Do you remember  
23   how far away the truck was from you what you realized  
24   it was stopped?

25          A.       I -- I don't recall the exact measurements

1 court?

2 A. No, ma'am.

3 Q. Have you ever testified before?

4 A. Never.

5 Q. Have you ever been to a courthouse before?

6 A. Not in the city.

7 Q. All right. And why did you go forward  
8 with this lawsuit?

9 A. So I went forward with the lawsuit, like I  
10 said, I don't -- I don't think that I was at fault in  
11 the collision. And I didn't think I should pay the  
12 burden of this whole ordeal I -- I was going through.  
13 A whole lot already, and I didn't think this should be  
14 a part of that burden. And -- and so I was seeking  
15 justice, seeking help. We were going through a lot as  
16 a family, and I just didn't think I should take this.

17 Q. All right. And earlier you testified that  
18 you did receive a ticket, right?

19 A. Yeah, I did receive a ticket. Yes.

20 Q. All right. And what did you do with the  
21 ticket?

22 A. I paid the ticket. I paid the fine.

23 Q. And why did you do that?

24 A. Well, like I -- like I said, it's a lot  
25 going on. I was, you know, in the hospital when the

1 trooper came, and he gave me the ticket. And, you  
2 know, I like to do things right, you know. I like to  
3 -- I like to not have things hanging over my head, and  
4 the time was approaching where the deadline to pay the  
5 fine was approaching, and with everything that was  
6 going on, you know, my family and different things of  
7 that sort, I didn't want that, you know, to be  
8 something I had to deal with. I didn't want to get in  
9 trouble for that, and so I -- I paid the fine.

10 Q. Do you believe that you were driving too  
11 fast for conditions?

12 A. No, ma'am.

13 Q. All right. I'm going to show you what  
14 I've marked as Plaintiff's Exhibit Number 5.

15 (Plaintiff's Exhibit No. 5, Medical Bill  
16 Summary, is Marked for Identification.)

17 Q. Do you recognize that document?

18 A. Yes. So it's a medical bill summary.

19 Q. All right. So that's the summary of the  
20 medical expenses that you've incurred as a result of  
21 your injuries?

22 A. That's correct.

23 Q. All right. And today, are you here asking  
24 the jury to account for what you've gone through with  
25 their verdict?

1           A.       Yes.   I am.

2           MS. SENN:   And Judge, at this time, I would like  
3 to move Plaintiff's Exhibits 1 through 5 into evidence.

4           THE JUDGE:   Any --

5           MR. DOLES:   No objection.

6           THE JUDGE:   Plaintiff's Exhibits 1 through 5 are  
7 admitted without objection.

8           (PPlaintiff's Exhibits 1 through 5 are Moved into  
9 Evidence.)

10          MS. SENN:   Thank you so much, Mr. Mack.   Please  
11 answer any questions that the defense may have.

12          MR. MACK:   Thank you.

13          THE JUDGE:   Mr. Doles, cross examination?

14          MR. DOLES:   Yes, your Honor.

15                       CROSS EXAMINATION

16   By MR. DOLES:

17          Q.       Mr. Mack, again, I'm Lonnie Doles.   I  
18 might be bouncing around subjects, if -- if there's  
19 anything unclear, just please let me know, and I can  
20 restate a question for you.   I want to go back to the  
21 phone calls you made immediately after the accident.  
22 What was your testimony of the chronology of who you  
23 called after the accident?   Who did -- who did you call  
24 first after the accident?

25          A.       So I called my wife first.   She didn't

1 accident.

2 Q. So -- so how do you explain that, when  
3 your prior testimony was you immediately called your  
4 wife first after the accident?

5 A. Yeah, well she didn't answer, so I'm  
6 assuming that the call didn't go through.

7 Q. This shows the call to your mother was  
8 4:44. It lasted six minutes. The one that didn't go  
9 through was at 4:50, in which you had testified you  
10 immediately called your wife, and that went to voice  
11 mail. I am asking about the six minutes before you  
12 called your wife. 'Cause you had previously testified  
13 you were not on the phone or hadn't made any prior  
14 calls to leaving a voice mail with your wife.

15 A. All right. So -- so I'm assuming I had it  
16 mixed -- mixed up, according to the records. The  
17 records, I guess, doesn't lie. So I prior -- I guess I  
18 said that I called my wife, but I that definitely -- I  
19 called my mom first.

20 Q. And that is different from the testimony  
21 that you previously gave me in your deposition,  
22 correct?

23 A. Yes.

24 Q. And so when you called your wife, and it  
25 went to voice mail, were you still in the car?

1 A. No, sir. No sir.

2 Q. Okay. So at 4:44 when you called your  
3 mother, according to your testimony now --

4 A. Yes.

5 Q. -- that was of the accident?

6 A. When I called my mother?

7 Q. Yes.

8 A. No, sir. I was -- well, it was -- was  
9 after the accident, still in the car.

10 Q. Still in the car?

11 A. Yes.

12 Q. And so you stayed in the car for the six  
13 minutes of that call before getting out of the car?

14 A. I would say that I was in the car for the  
15 entire six minutes.

16 Q. So when you --

17 A. But I don't -- I don't recall how long I  
18 was in the car.

19 Q. -- so when you stepped out of the car, if  
20 you weren't in the car for the whole six minutes, would  
21 it be fair to say you stepped out of the car on your  
22 phone?

23 A. Yes, sir.

24 Q. Okay. Okay. Let's go next -- and I think  
25 it was your testimony that you do not believe that you

1 were driving too fast for conditions at the time of the  
2 accident?

3 A. Yes, sir.

4 Q. And again, your testimony, you opened the  
5 door, that you went and paid the ticket. Did you --  
6 well, will let me show you --

7 THE JUDGE: Thank you.

8 MS. SENN: Objection. Your Honor, may we  
9 approach?

10 THE JUDGE: Yes, of course. If counsel will  
11 come forward?

12 (Bench conference held off the record.)

13 BY MR. DOLES:

14 Q. Okay, Mr. Mack, do not pay attention to  
15 what I handed you there, but tell me a little bit about  
16 -- about that ticket you received for driving a vehicle  
17 a greater speed than was reasonable under conditions?  
18 Did you go to court for that?

19 A. Yes, sir.

20 Q. And was that magistrate court? Small  
21 court, like a city court?

22 A. Yes. Yes.

23 Q. And there, did you testify?

24 A. No, sir.

25 Q. Okay. And did you go in, and did you

1 plead guilty to the charge, or did you just pay the  
2 ticket?

3 A. No, sir, I didn't pled guilty. I just  
4 paid the ticket.

5 Q. Okay. And again, what was your reasoning,  
6 if you don't believe that you're at fault at all, for  
7 paying the ticket?

8 A. Well, as I said earlier, I -- I didn't  
9 know there was any other option besides paying the  
10 ticket, so -- because I didn't want to get in trouble  
11 about, you know, not paying the ticket, I just went  
12 ahead and paid the fine.

13 Q. And it was your testimony earlier that you  
14 don't know the speed that you were driving, but you  
15 believe it was close to the speed limit?

16 A. Yes, sir.

17 Q. Okay. And again, what was the speed limit  
18 at the site of the accident?

19 A. At the site of the accident, it was  
20 dropped down to 45 miles per hour.

21 Q. From 60?

22 A. From 60, yes, sir.

23 Q. Okay. And you've -- you've answered that  
24 question before at the deposition I took with you,  
25 correct?

1 A. Yes.

2 Q. Okay. And that deposition, I'll represent  
3 to you, occurred September 30th of 2020, correct?

4 A. Yes.

5 Q. What I'm handing is you is Page 30 of your  
6 deposition. If you could please --

7 MS. SENN: Objection, your Honor. May we  
8 approach?

9 THE JUDGE: Yes.

10 (Bench conference held off the record.)

11 By MR. DOLES:

12 Q. Okay, Mr. Mack. Again, you recall -- oh,  
13 sorry. Are you okay to move on, Madam Court Reporter?

14 THE COURT REPORTER: In just a second.

15 MS. SENN: Judge, I just want to put my  
16 objection on the record.

17 THE JUDGE: Yes, ma'am.

18 By MR. DOLES:

19 Q. Okay, Mr. Mack. What I'm handing you is  
20 Page 30 of your September 30th, 2020 deposition. If  
21 could please read the question you're asked, and your  
22 answer, on Lines 22 through 25, please?

23 A. Yes, Line 22?

24 Q. Yes.

25 A. Okay. Yes. Do you recall what speed you

1 were going prior -- immediately prior to the accident  
2 occurring?

3 A. No, sir, I don't recall the speed.

4 Q. Thank you. So at your deposition, you  
5 didn't clarify that, oh, but I was going close to the  
6 speed limit. You just said, I don't recall the speed  
7 that you were going at the time?

8 A. Yes, sir.

9 Q. Okay. What I'm handing you now is your  
10 deposition Page 31. If you could please read the  
11 questions on Lines 1 and 2, and then your answer on  
12 Line 3?

13 A. On that stretch of Garners Ferry, what is  
14 the speed? Answer, it's 60.

15 Q. So at the time of your deposition at  
16 least, it was your recollection that the speed where  
17 the incident occurred, the speed limit was 60 miles an  
18 hour; is that fair to say?

19 A. Yes. I'm sorry. Could -- could I see  
20 that one more time?

21 Q. Sure. Certainly.

22 Q. Okay.

23 A. Okay. Yes, sir, on that stretch of  
24 Garners Ferry.

25 Q. Anything you'd like to clarify in that

1           A.     I remember it was just straight.

2           Q.     And did you apply your brakes prior to the  
3 collision?

4           A.     Yes, sir. I applied my brakes before I  
5 hit it.

6           Q.     And you couldn't recall how far away you  
7 were from the truck when you first saw it, correct?

8           A.     Yes, sir.

9           Q.     How many seconds, approximately, do you  
10 think you saw the car between you saw it and the  
11 accident?

12          A.     I -- I don't -- I don't know. I can't  
13 accurately say what -- what that is. You know, looking  
14 back now, I know, you know, 10 seconds is a long time.  
15 And during the time of my deposition, you know, I just  
16 assumed that 10 seconds was a reasonable time, but  
17 everything -- like I said, everything happened so fast.  
18 And I'm not -- I wasn't really expecting to be in an  
19 accident or, you know, for that to happen that morning,  
20 so I -- I couldn't accurately judge.

21          Q.     And since you brought it up, it was your  
22 deposition testimony that you guessed about maybe 10  
23 seconds, correct?

24          A.     Yes.

25          Q.     Okay. And you took your deposition, again

1 back in 2020, more than four years prior to where we  
2 are at trial today --

3 A. Yes, sir.

4 Q. -- and then much closer to the accident at  
5 the time, right?

6 A. Yes, sir.

7 Q. Okay. Why didn't you move -- oh, let me  
8 ask first -- at the time of the accident, was there any  
9 other traffic in the right-hand lane?

10 A. I don't -- I don't recall any traffic in  
11 the right lane.

12 Q. Why didn't you move into the right-hand  
13 lane if you saw the vehicle 10 seconds prior?

14 A. Well, I -- I -- I didn't have enough time.  
15 I didn't have enough to -- to react and to move to the  
16 right lane, because when I realized that the truck was  
17 stopped, or disabled, there just wasn't enough time for  
18 me do that.

19 Q. Ten seconds wasn't enough time?

20 A. Well, you know, as I said, you know, I --  
21 I wasn't prepared to measure whether it was 10 seconds  
22 or not. That's a lot -- a lot was happening.

23 Q. But again, that was your sworn testimony  
24 at your deposition?

25 A. Yes, sir. I understand.

1 case. No talking about the case. Thank you so much.

2 (Jury exits at 11:36 A.M.)

3 MS. SENN: Judge, if you could give me just a  
4 minute. I'd want to check on something real quick. Is  
5 that okay?

6 THE JUDGE: Of course. And actually, while the  
7 jury is gone, I'm going to take a break myself. So I  
8 will be right back.

9 (The Judge exits at 11:36 A.M., and reenters at  
10 11:43 A.M.)

11 MS. SENN: I'm just going to withdraw my  
12 objection. So I wanted to state -- I was under the  
13 assumption that that was words, and those are just  
14 photos, and I -- or a photo -- and I would -- I would  
15 be okay with that.

16 THE JUDGE: All right. So let me -- let me make  
17 sure I understand. You're withdrawing your objection  
18 as to what just occurred before we broke?

19 MS. SENN: That's right.

20 THE JUDGE: And not the use of that printout?  
21 Computer printout?

22 MS. SENN: I am -- I'm still objecting that. I  
23 still would like to have a separate conversation about  
24 that. I still think that that is inadmissible under  
25 56-5-6160, Judge.

1 THE JUDGE: And we'll -- we'll talk about that.

2 MS. SENN: Sure.

3 THE JUDGE: I just wanted to -- he's not --  
4 before -- whenever we have a break, we'll discuss that  
5 to the extent that he still plans to use that, but  
6 you're just withdrawing your objection as to the line  
7 of questioning?

8 MS. SENN: As to the impeachment evidence that  
9 he just showed me, yes.

10 THE JUDGE: Good enough. Good enough. Thank  
11 you. Now, before we -- because, of course, I will -- I  
12 certainly want to give you ample opportunity for  
13 redirect -- what's the next witness, and how long will  
14 that witness take?

15 MS. SENN: My next witness was going to be  
16 Trooper Marlin, and I think my video is about 20 --  
17 either 23 or 29 minutes.

18 THE JUDGE: Okay. What I'd like to do is go  
19 forward with that video before breaking for lunch.  
20 That might put us right at 1:00, and then we'll try to  
21 get back to finish up for the afternoon. Does anybody  
22 have any objection to that procedure?

23 MR. DOLES: No, your Honor.

24 MS. SENN: I don't think so.

25 THE JUDGE: Okay. Good enough. We're going to

1 try to use as much time as we can. Good enough. Thank  
2 you. If you'd like --

3 THE BAILIFF: Should I bring them in?

4 THE JUDGE: Yes, sir.

5 (Jury enters at 11:54 A.M.)

6 THE BAILIFF: The jury is seated, your Honor.

7 THE JUDGE: Thank you. Thank you all. We are  
8 going to try to break for lunch somewhere about 1:00,  
9 maybe a few minutes after. I hope everyone will be  
10 okay until that time. And I believe we're ready to  
11 begin. Mr. Doles?

12 By MR. DOLES:

13 Q. Certainly. Thank you, your Honor. Sorry,  
14 it's hard to see your Honor. What I'm handing you now,  
15 do you recognize this photograph?

16 A. Yes, sir.

17 Q. And is that a photograph of you and your  
18 wife?

19 A. Yes, sir, it is.

20 Q. And what was that posted on your Facebook  
21 wall, I guess?

22 A. Yes, sir.

23 Q. And what's the date of that photograph?

24 A. It's December 16th, 2018.

25 Q. Is that photograph from that general

1 amount of time? What I'm asking is was that photograph  
2 taken in December of 2018?

3 A. Yes, sir.

4 Q. Okay. And where -- where does that depict  
5 you?

6 A. It is in New York.

7 Q. So during that time that you were out of  
8 work you were able to go up to you New York City?

9 A. Yes, sir.

10 Q. Okay. Thank you. And I'll take that.  
11 I'd like to move this into evidence.

12 THE JUDGE: How many is it?

13 Mr. DOLES: I believe just one for the  
14 defendant.

15 THE JUDGE: Any -- any objection for Defendant's  
16 1?

17 MS. SENN: Not at this time.

18 (Defendant's Exhibit No. 1, Family Photograph,  
19 is Marked and Moved into Evidence.)

20 Q. Did you finish your full recommended  
21 course of physical therapy after the accident?

22 A. No, sir.

23 Q. And what was the reason for that?

24 A. Well, I wanted to -- needed to get back to  
25 work, get back to my normal self as quickly as

1 possible, and I found it difficult to do both work and  
2 physical therapy at the same time.

3 Q. Okay. The damages you allege you  
4 sustained as a result of this accident, do those  
5 currently affect your -- do they currently affect your  
6 ability to do your job?

7 A. I'm sorry. Could you repeat that?

8 Q. No problem. Do the injuries you're  
9 alleging from this accident, do they affect your  
10 ability to say your job as of today? I'm not talk---

11 A. As of today, yes, sir.

12 Q. Yes. Okay. And any loss of strength, as  
13 of today, as a result of the alleged injuries?

14 A. No, sir.

15 Q. Okay. And no permanent bodily limitations  
16 as a result of the injury? I'm not talking about --  
17 you know, I'm not trying to say that you have a  
18 disablement there, but any limitations on your body --

19 A. No, sir.

20 Q. -- due to the injury? Okay. Generally,  
21 do drivers have a duty to keep a look out on the  
22 roadway?

23 A. Yes, sir.

24 Q. Okay. Do you feel like you -- or do you  
25 take any responsibility in causing this collision?

1           A.     No, sir. I don't take any responsibility.

2           Q.     Okay. And do you feel like if you were  
3 traveling slower, you could have avoided the accident?

4           A.     Yes, sir.

5           Q.     Okay. That's all I have for you. Thank  
6 you very much.

7           THE JUDGE: Redirect?

8           MS. SENN: Yes briefly, your Honor.

9                   REDIRECT EXAMINATION

10          BY MS. SENN:

11           Q.     Troyce, tell the jury your date of birth?

12           A.     Yes. April 21st, 1989.

13           Q.     All right. And how old were you at the  
14 time of the wreck?

15           A.     How old was I?

16           Q.     Math's not my thing either.

17           A.     Math is not -- no.

18           Q.     All right. Well, we can -- we can figure  
19 it out. So you were born in April of -- you said 1989  
20 -- and then wreck occurred in October of 2018, right?

21           A.     Yes.

22           Q.     All right. And as you're driving down  
23 Sumter Highway, did you expect a truck to be stopped in  
24 the roadway?

25           A.     No, ma'am. I wasn't expecting that.

1           Q.     All right. And do you believe that you  
2 have suffered permanent physical injuries as a result  
3 of your clavicle being displaced?

4           A.     Yes.

5           Q.     All right. And earlier, you testified  
6 that in November and December you had difficulty  
7 meeting your obligations, right?

8           A.     Yes, sir. Yes, ma'am. I'm sorry.

9           Q.     But you still had to do those things that  
10 we've talked about, right?

11          A.     Yes, I did push through, and I did those  
12 things that were already set in place.

13          Q.     And I think you mentioned like, school  
14 performances for your kids?

15          A.     Yes, ma'am.

16          Q.     And things at church, things of that  
17 nature?

18          A.     Yes, ma'am.

19          Q.     So you just had to go to those things, and  
20 you were in pain, right?

21          A.     Yes.

22          Q.     All right. And the photo that Mr. Doles  
23 showed you from December of 2018 -- I know you're not  
24 good at math, but that was more than six weeks after  
25 the crash, right?

1 THE BAILIFF: Jury is seated, your Honor.

2 THE JUDGE: Thank you. Thank you, sir. Thank  
3 you all for being back, and we're going to resume.

4 (Videotaped deposition of Trooper Marlin is  
5 resumed.)

6 MS. SENN: So there's one other little portion  
7 we need to play. I'll get that set up.

8 THE JUDGE: Yes, ma'am. Take your time.

9 (Videotaped deposition of Trooper Marlin is  
10 played.)

11 MS. SENN: Judge, that's all I have for this  
12 witness. If you want to go ahead and take a lunch  
13 break right now, that's fine.

14 THE JUDGE: I think that's appropriate. Ladies  
15 and gentlemen of the jury, we have finished the  
16 testimony for this morning. I'd like to see if we can  
17 take a hour lunch break. I have it's -- let's just say  
18 it's 12:45. Can -- let's try to be back at 1:45, if at  
19 all possible. And what we will do, and you tell me if  
20 we have -- Madam Foreperson, you tell me if we have the  
21 problems with anybody getting back, and we'll try to  
22 extend the time if necessary, but today, let's just try  
23 to get back at 1:45.

24 (Jury exits at 12:45 P.M.)

25 THE JUDGE: So the parties, we're going to come

1 A. It's drawn on the computer.

2 Q. And that's not drawn to scale, is it?

3 A. No.

4 Q. All right. And you didn't get out there and  
5 measure the skid marks, right?

6 A. I did not.

7 Q. Or measure the distance between the hash  
8 marks in the roadway or anything like that?

9 A. No.

10 Q. Did you take an approximate weight of these  
11 vehicles?

12 A. No.

13 Q. Okay. Did you any -- do any investigation to  
14 determine the speed of my client or the point of  
15 impact?

16 A. No, I didn't.

17 Q. All right. And I'm going to scroll down here  
18 and try to not make you dizzy. In the bottom, left box  
19 it has, Contributing factors?

20 A. 32, Object in the roadway, and then, Too fast  
21 for conditions.

22 Q. All right. So you listed the contributing  
23 factor -- the primary contributing factor -- as 32,  
24 which is an object or an obstruction in the roadway,  
25 right?

1 perceptual system is able to detect how rapidly you're  
2 closing in on a vehicle.

3 Q. All right. And in your opinion, what  
4 visual clues was Mr. Mack relying on to judge whether  
5 the defendant's truck was moving?

6 A. Based on the information we have  
7 available, that would be the taillights on Mr. Rudd's  
8 truck and again, the -- the spacing between them.

9 Q. All right. And when Troyce -- Mr. Mack --  
10 first saw the truck, was it reasonable for him to  
11 perceive that the vehicle was in motion?

12 A. Based on the sort of the geometry of the  
13 roadway in that area and his approach to the area at  
14 impact, yes the information that would be available to  
15 him would have more likely led him to conclude that the  
16 vehicle was in motion. Or at a minimum, he would not  
17 have had, in my opinion, sufficient visual information  
18 to conclude that it was definitively stopped.

19 Q. All right. If a leading vehicle on a  
20 highway is stopped and doesn't have hazard lights on,  
21 when would it be reasonable for a driver to perceive  
22 that the lead vehicle is stopped?

23 A. So that will depend on a couple of  
24 factors. So obviously, one of the critical ones is  
25 going to be the size of the gap between the taillights,

1 hospital, how did Troyce appear?

2 A. He looked worn out. He looked hurt. He  
3 looked dirty. But I knew he was in a lot of pain. I  
4 could tell that. He just wasn't himself, of course, so  
5 I was kind of afraid then watching him in that  
6 condition.

7 Q. All right. And did you overhear any  
8 conversations at the hospital between the trooper and  
9 Troyce?

10 A. Faintly. I did hear when he was talking  
11 about, you know, giving him the ticket.

12 Q. All right. And did you overhear any part  
13 of Troyce telling the trooper that the defendant didn't  
14 have his hazards lights on?

15 A. No, I did not.

16 Q. All right. And so about how long did  
17 Troyce stay at the hospital?

18 A. A couple of hours. It wasn't that long.

19 Q. Okay. And after he got home from the  
20 hospital, what did you notice about his -- the physical  
21 the impact of this on him?

22 A. He was unable to really care for himself.  
23 Of course, he's never experienced any type of injury as  
24 such, so any type of movement, any sudden movement,  
25 will cause him to be in such pain, such agony that he's

1 unable to move. So I had to, in a sense, treat him  
2 like a newborn baby, try to carefully help him get  
3 undressed, help him get dressed, help him wash, all of  
4 these things. And so, yeah, he was in a pretty beat-up  
5 condition.

6 Q. So you said you had to help him wash and  
7 help him get dressed. What other limitations did he  
8 have physically after the wreck?

9 A. He was unable to assist with our daily  
10 household duties. Everything fell on me, so it was an  
11 even heavier weight for myself to carry, because I had  
12 to do triple -- double, triple the work at this point.  
13 And so, of course, you know, it's household duties,  
14 even some yard duties, just -- driving, all the things.

15 Q. All right. And describe for the jury the  
16 stress that Troyce was under after the wreck?

17 MR. DOLES: Object, your Honor. Again, she's  
18 not psychic. She can't testify as to the plaintiff's  
19 feelings on this matter, despite the husband and wife  
20 relationship.

21 MS. SENN: Judge, I think she can testify to  
22 what's she experienced. She's lived with Troyce.

23 THE JUDGE: I'm going to allow the question, as  
24 long as you clarify her observations of the effect on  
25 her husband.

1 MS. SENN: All right. I can rephrase that then.

2 THE JUDGE: Yes, ma'am.

3 By MS. SENN:

4 Q. What did you observe about the effect of  
5 the wreck on Troyce's stress level?

6 A. He was more -- yeah, he's not a person to  
7 carry on stress, but I could tell that he had begun to carry  
8 this weight of stress, because a stressful person is  
9 like who he is. And so by that, I could tell that --  
10 his actions, as far as how he would be around the  
11 house. He would be more withdrawn, and I could tell --  
12 even in his silence, I could tell that his mind would  
13 be restless. And so even like, in his sleep, he would  
14 be tossing and turning throughout the night. Sometimes  
15 he'd moan in his sleep. I was not sure if it was going  
16 to be because of the replay of the accident or however  
17 the case may be, but I just know that that's just not  
18 his actions even in his sleep.

19 And so he -- I could tell he was carrying like,  
20 a -- he looked heavy. It was like he carried invisible  
21 weight. And so -- and I know that's not like him, so  
22 -- and all I could do was just be patient, pray for him  
23 and be his constant companion.

24 Q. And then, did you go with him to any of  
25 his orthopedic doctor visits?

1           A.     Yes, I did.

2           Q.     All right. And then did you discuss with  
3 Troyce the possibility of him having surgery to repair  
4 his broken clavicle?

5           A.     Yes.

6           Q.     And tell the jury what y'all discussed  
7 about that.

8           A.     It was just pretty much what the doctor  
9 was stating. You know, the option of trying to repair  
10 that injury, the surgery too, was an option. And  
11 because of the risks, he decided not to go with it.  
12 And so that's pretty much what we just discussed about  
13 its.

14          Q.     All right. And did you agree with his  
15 decision not to have that surgery?

16          A.     Yes, whatever he felt was best for  
17 himself, is what I agreed with.

18          Q.     All right. And how long was it before  
19 your lives returned to baseline after the wreck?

20          A.     Go back to normal?

21          Q.     Right.

22          A.     Probably honestly the following year.  
23 Because we had fallen so far behind in things, and even  
24 when we're back on our feet per se, we had to do a lot  
25 of catching up and to just get back into a little -- a

1 little place of comfort. It -- it -- it took quite  
2 some time.

3 Q. Did Troyce's collar bone ever completely  
4 heal?

5 A. No.

6 Q. All right. Describe for the jury what it  
7 looks like today?

8 A. It -- it looks like it's protruding out of  
9 his -- from his skin.

10 Q. And does that still have any impact on him  
11 today, that you can see?

12 A. Yes. I can still -- sometimes when he  
13 lifts something, I guess in his mind, I can do it. Of  
14 course he can do it, but you know, he is quickly  
15 reminded that that -- that area is still kind of  
16 tender, if he moves in a certain way or shifts his body  
17 in a certain way.

18 Q. All right. And so earlier we saw a photo  
19 of you and Troyce when y'all were in New York. Will  
20 you tell the jury what y'all were doing in New York?

21 A. So I come from a family of singers, and  
22 my brother, he had gotten a great opportunity to go  
23 sing at Carnegie Hall. And so that was something big  
24 in our family, and so my husband's sister, she said,  
25 well, if you guys want to go, we know it's tight. I'll

1 pay for your flights to go. So we said, okay. Cool.  
2 Then my mom said, you know, she would pay for our  
3 tickets. And I was like, well, where are we going to  
4 stay, you know, and -- and she also gave us -- decided  
5 to go as well. And so thankfully, my brother does live  
6 in New York City, and so we were able to stay with him,  
7 him and my aunt and my uncle. And that's just our  
8 reason why we were in New York City.

9 Q. So during this time that we see this  
10 picture of you and Troyce, he was still experiencing  
11 intermittent pain, wasn't he?

12 A. Yes.

13 Q. And he still had not gone back to work,  
14 right?

15 A. Yes.

16 Q. I have nothing further. Thank you so much  
17 for being here. Please answer any questions that the  
18 defense has.

19 THE JUDGE: Cross examination?

20 MR. DOLES: Certainly, your Honor.

21 CROSS EXAMINATION

22 BY MR. DOLES:

23 Q. Just want to make sure I'm hearing that  
24 right, your last bit of testimony. So when y'all were  
25 up in New York, he still hadn't returned to work at

1 that time, correct?

2 A. Yes.

3 Q. Okay. At this time, is he able to -- or,  
4 well, let me ask you what things, if any, are there  
5 that your husband can't do now that he was able to do  
6 prior to the accident?

7 A. Now, today?

8 Q. Yes.

9 A. I don't recall what he can't. He can  
10 still do some things, but I know he'll feel an extra  
11 pain that he wouldn't have experienced before that  
12 fracture, or that broken bone.

13 Q. But is he still able to do recreational  
14 activities?

15 A. Yes.

16 Q. Such as hiking?

17 A. Yes.

18 Q. Has he played paint ball since the  
19 accident?

20 A. Yes.

21 Q. All right. Rollerskating?

22 A. Yes.

23 Q. Okay. No, I think I'm all done. Thank you  
24 so much for your time.

25 THE JUDGE: Any redirect?

1 stopped or parked on the edge of the curb or street --  
2 again, I believe this -- he -- he was not parking.

3 THE JUDGE: Uh-huh.

4 MR. DOLES: This was a disabled vehicle. He was  
5 struck along the roadway. He made his best reasonable  
6 efforts. I don't think he violated that section. SC  
7 Code 56-5-2510, no person shall stop, park or leave  
8 standing a vehicle, whether attended or unattended,  
9 upon a roadway outside a business a residential  
10 district when it's practical to stop or relieve the  
11 vehicle off the roadway.

12 Again, this is -- Oh. Pardon me. As part of  
13 that section B notes, this section that's in section  
14 56-5-250 and 56-5-2506 do not apply to the driver of  
15 the vehicle which is disabled, making it impossible to  
16 be avoid stopping a temporary vehicle being in the  
17 roadway.

18 So I believe there's an exception to that,  
19 because clearly the vehicle was disabled.

20 THE JUDGE: Uh-huh.

21 MR. DOLES: I know it doesn't come in front of a  
22 jury, but, you know, we've seen traffic reports, we've  
23 seen Mr. Rudd saying it was disabled and Mr. Marlin  
24 saying it was disabled.

25 THE JUDGE: For all of these, isn't -- isn't it

1 those benefits to independent contractors?

2 A. No, sir.

3 Q. Do you, when referring to your employees,  
4 despite them being subcontractors -- or pardon me.  
5 Despite them being contr--- subcontractors, do you ever  
6 refer to them as employees?

7 A. Yes, sir. It's just a common word, and  
8 I've caught myself several times. I'll say employee,  
9 but they were subcontractors. Now our business is  
10 structured with only employees.

11 Q. Okay. And so going back to the normal use  
12 noting company trucks are supposed to be with -- just  
13 for business purposes?

14 A. Yes, sir.

15 Q. What was the reason that you lent Mr.  
16 Rudd the truck in the instance before the accident?

17 A. Well, David's personal vehicle had been  
18 broken down, and he had gotten word that his mother was  
19 not doing well at all. She was not really expected to  
20 make it through the night. So he came to me and my  
21 husband and asked us if he could please borrow the  
22 truck to go and see his mother. I put myself in his  
23 situation, and I lent him the truck as a friend to go  
24 and see his mom.

25 Q. And at that time, there was -- Mr. Rudd

1 one that drove everywhere.

2 Q. Isn't it true that now Delta Plumbing  
3 wants to shift all responsibility for this wreck onto  
4 Mr. Rudd's estate?

5 A. I -- I have never said that. I don't feel  
6 that Delta Plumbing is responsible for anything in this  
7 wreck. He was not on company time. He wasn't going to  
8 a job. He was on his personal time. And I had lent  
9 him the truck as a friend.

10 Q. So you agree with me that you're not  
11 taking any responsibility for Delta Plumbing in causing  
12 this wreck?

13 A. No, ma'am.

14 Q. So if the jury agrees with Mr. Mack, you  
15 only want Mr. Rudd held responsible?

16 A. I don't think either one of us should be  
17 held responsible.

18 Q. All right. But if the jury is to agree  
19 with Mr. Mack and agree with our side, you only to want  
20 the jury to hold Mr. Rudd's estate --

21 MR. DOLES: Objection. Asked and answered.  
22 Trying to force an answer when she gave a proper one.

23 THE JUDGE: Ms. Senn, do you have a response to  
24 that objection?

25 MS. SENN: Sir, may we have a conference?

1           THE JUDGE: No, I certainly want to take a look  
2 at it.

3           MS. SENN: I sent you the case, Judge, so you  
4 can have it up there as well. I copied Mr. Doles.

5           THE JUDGE: Thank you. Thank you. So Ms. Senn,  
6 again, what do you believe is wrong with this?

7           MS. SENN: Well, Judge, I was just informed by  
8 Mr. Doles that this is an updated version, and I was  
9 not provided with a copy of this until just now.

10          THE JUDGE: Uh-huh.

11          MS. SENN: And so under Sample Vs Mitchell,  
12 that's S -- 329-SC-105. Judge, the Courts don't allow  
13 trial by ambush, which is what's happening here. I  
14 haven't had an opportunity to conduct any discovery on  
15 this new drawing that I have just been provided me.  
16 This is a six-year-old case, Judge. This has been  
17 pending for six years. And so I'm just being provided  
18 it two minutes before he's testifying. If you'll read  
19 that Sample Vs. Mitchell case, it says that prejudice  
20 is presumed when the discovery rights of one party are  
21 violated.

22          THE JUDGE: What's the difference in what you  
23 were just provided -- well, first of all, what am I  
24 looking at, the updated version or the old version?

25          MR. DOLES: The updated version, your Honor.

1 Prior to trial I had asked Mr. Richardson to give me an  
2 idea of how far it was between the 45 mile and hour  
3 sign and where the incident occurred, so you'll see  
4 that yellow bar at the top. That's what I had asked in  
5 creating that. Yeah, he had sent that to us last week,  
6 and slightly updated it, with corrections, so.

7 THE JUDGE: And you didn't provide it to Ms.  
8 Senn until today?

9 MR. DOLES: Until today.

10 THE JUDGE: But that's the only difference?

11 MR. DOLES: No, he updated the positioning of  
12 the -- yes, the updated truck.

13 THE JUDGE: And is the updated -- is the  
14 position of the truck -- first of all, when this -- I'm  
15 assuming you used this at the expert's deposition?

16 MS. SENN: That's correct. Well, I used the one  
17 that -- the older version of that.

18 THE JUDGE: Did you point out the difference in  
19 the older version and then what we believe the position  
20 of truck was?

21 MS. SENN: The position -- the expert testified  
22 at his deposition that he couldn't tell the position of  
23 the truck from the dash cam footage. That's on, I  
24 think, Page 27 of his deposition, that he couldn't tell  
25 the position of the truck. And yet, he had it listed

1 in his diagram, which again, is in direct conflict with  
2 the testimony from Trooper Marlin, saying the truck  
3 went 10 or 15 feet, not 100 feet.

4 MR. DOLES: And again, I believe it was couldn't  
5 tell the exact. But again, Trooper Marlin's then  
6 testimony regarding where it was located near that  
7 bright light is -- and again, if we're going back to  
8 that, Trooper Marlin didn't take any measurements  
9 himself, as you know, he's not qualified as an accident  
10 reconstruction expert.

11 THE JUDGE: Ms. Senn?

12 MS. SENN: Judge, just a final word here. In  
13 the deposition, Mr. Richardson did -- he did agree with  
14 me that the CAD report -- that the drawing he had used  
15 was inaccurate, and it did not accurately reflect the  
16 scene.

17 THE JUDGE: Ms. Senn, by any chance, do you have  
18 the Sample case?

19 MS. SENN: The site for that, Judge is SC-105.  
20 I have that pulled up, if you want me to download it  
21 and send it to you?

22 THE JUDGE: If you would, please?

23 MS. SENN: Sure.

24 THE JUDGE: All right. Anything more before I  
25 rule from either party? I'm going to allow this

1 diagram, Ms. Senn. I suspect -- and I would imagine  
2 that you will cross examine, and bring out all of the  
3 inconsistencies, and the reason -- and even the fact  
4 that you got it this morning. Mr. Doles, please  
5 continue. So the objection is overruled. Anything  
6 more before we bring the jury in?

7 MR. DOLES: No, your Honor.

8 THE JUDGE: It's my understanding all we got is  
9 that diagram? That's the only demonstrative evidence?  
10 There's nothing else?

11 MS. SENN: There's more, Judge.

12 THE JUDGE: Ma'am?

13 MS. SENN: I believe there's more, but I'll let  
14 Mr. Doles tell you what he's planning to introduce.

15 MR. DOLES: There is -- there are calculations,  
16 but I do not need to -- that will be the only  
17 demonstrative testimony.

18 THE JUDGE: That's fine. And --

19 MS. SENN: Judge, there is a portion -- I'm  
20 sorry.

21 THE JUDGE: No, no. Yes, ma'am. Go ahead.

22 MS. SENN: There is a portion in that case that  
23 I sent you, the Clark VS. Cantrell, where it does say  
24 that the Court should give an instruction to the jury  
25 regarding how to view this evidence. If you don't mind

1 giving that instruction, it would -- I would appreciate  
2 it.

3 THE JUDGE: Ms. Senn, help me now. What -- what  
4 -- what portion of the case are you?

5 MS. SENN: It starts with we encourage the Court  
6 to give a cautionary instruction that the animation  
7 represent only a recreation of the proponent's version  
8 of events. That whole paragraph, it should in no way  
9 be viewed as absolute truth.

10 THE JUDGE: And I'm sorry. I am -- I'm trying  
11 to -- Page 10?

12 MS. SENN: I believe it's at Page 385, Judge.  
13 Well, that might be the --

14 THE JUDGE: I will be happy to do that. What I  
15 will say -- and Mr. Doles, since you're taking this to  
16 use as demonstrative evidence -- this is just -- this  
17 is a diagram, correct?

18 MR. DOLES: A diagram, yes, sir.

19 THE JUDGE: Okay. And Ms. Senn, what I will  
20 say, is I'll tell the jury that defense is about to use  
21 a diagram that represents a recreation of the defense's  
22 version of events. It should be no way be viewed as  
23 the absolute truth, and all the facts are to reside --  
24 or not reside -- rest with the jury to draw. Is that  
25 sufficient?

1 MS. SENN: That -- that's sufficient, Judge.

2 I'm still going to object on the record, to make sure  
3 that it's noted.

4 THE JUDGE: I completely understand. Give me  
5 one second. All right. Ms. Senn, would you like some  
6 additional time to speak with --

7 MS. SENN: If you don't mind just giving me a  
8 minute or two --

9 THE JUDGE: That's not a problem.

10 MR. DOLES: And your Honor, while presenting the  
11 evidence here, I know there's -- I can't really connect  
12 to that screen. Would you still prefer for my computer  
13 to be down there, just so you can see it when I'm  
14 presenting? I just might be back and forth between  
15 there to the podium, but I'd like for you to be able to  
16 see it. Are you okay if -- maybe I address them?

17 THE JUDGE: That's fine. Now, but do you still  
18 need to have your -- to look at your laptop here?

19 MR. DOLES: No, I was just seeing if you'd like  
20 for it to be there because --

21 THE JUDGE: I would like it, but do you mind  
22 putting it here on this desk?

23 MR. DOLES: On the desk there? That's fine. I  
24 would have to be jumping around unfortunately.

25 THE JUDGE: That's fine. No, putting it down

1 not going to come in here and, you know, everywhere I  
2 have a chance, I'm going to give him less speed instead  
3 of more speed. If I get a range, I'm going to look at  
4 the low end. But -- I don't look at the whole range,  
5 but I'm definitely going to look at the low end.  
6 'Cause I don't want to come tell y'all, he did this,  
7 when it's not -- when it -- when I'm pushing my luck on  
8 making all those decisions. I'd rather -- I'd rather  
9 give him the advantage than -- than unfairly give him a  
10 disadvantage, so.

11 Q. So let's get -- before we get to your  
12 opinions, I'm going to hand you a diagram. Do you  
13 recognize that?

14 A. I do.

15 Q. Is this a diagram you created?

16 A. It is.

17 Q. And what does this diagram depict, in  
18 general?

19 A. Just a overhead view of the collision  
20 scene. There's a 45 mile an hour sign on the  
21 right-hand side of -- of the diagram, and -- and  
22 speaking with you least week, you asked how far past  
23 that.

24 Q. And before we get into that --

25 A. Okay.

1           Q.       -- according to your calculations, is that  
2 a fair and accurate depiction of your opinions and the  
3 layout of the accident scene?

4           A.       Correct. That's what I'm intending it to  
5 be. Absolutely. Now, as I was saying earlier, the --  
6 I was looking -- I'm looking at the dashed lines. So  
7 cars may be moved up a dash, they may be moved back a  
8 dash, but I'm using the dashed lines to get the  
9 distances. So there are signs out there, but I wasn't  
10 -- I never had really light on the signs. I really  
11 just looked at how far they went, is the critical  
12 issue.

13          Q.       Well, I'm going to, your Honor, move to  
14 publish this to the jury.

15          MS. SENN: Your Honor, as we discussed, I'm  
16 going to object to that.

17          THE JUDGE: And, we are specifically talking  
18 about demonstrative?

19          MR. DOLES: The demonstrative.

20          THE JUDGE: And is it -- and Ms. Senn, would you  
21 articulate for the record -- I know you've talked about  
22 it -- just very briefly, just articulate for the  
23 record?

24          MS. SENN: Yes, Judge. I think under Cart Vs.  
25 Cantrell the diagram is unreliable, and it's confusing

1 to the jury.

2 THE JUDGE: Mr. Doles, any response?

3 MR. DOLES: No, your Honor. He testified as to  
4 the accuracy. This is a diagram in regard to the  
5 animation, in regard to the other cases, so it should  
6 be put in, and it will be helpful to the jury in  
7 determining Mr. Richardson's opinions.

8 THE JUDGE: I am going to overrule the  
9 objection. However, I do need to tell the jury this  
10 particular document is a demonstrative exhibit that has  
11 been prepared by the defendant. It's only a  
12 re-creation of the defendant's version of the -- of  
13 events that evening. It is not to be viewed as  
14 absolute truth. Please be reminded that you are the  
15 facts finders in this case. As such, you may reject  
16 this diagram. You may accept it. But it is your  
17 decision to do so as the facts finders. Yes, sir. You  
18 may proceed.

19 MS. SENN: Judge? I want to add one more thing.  
20 I also want to object on the record that this diagram  
21 was to just produced to me today. And so that's part  
22 of my objection as well.

23 THE JUDGE: I understand. Yes, ma'am. And  
24 again, I've overruled that as well, given that -- well,  
25 as we spoke earlier.

1           A.       I originally had it down as 68 feet, and  
2 then increased that to 108. Realized I had missed one  
3 of the dashes in there, so I had to back up another 40.  
4 There's 30 for the gap, and 10 for length of the white  
5 line. So it ends up being 108.4.

6           Q.       What's the relevance of that distance?

7           A.       Well, in the 108.4 feet, the Toyota hit  
8 his brakes and just clamps them down and leaves the  
9 marks. Could have come to a complete stop at 51 miles  
10 an hour. It's a 45 speed limit zone. So if he'd have  
11 been going 51, he would have slid up, stopped right as  
12 he touched the back of the pickup truck. It wouldn't  
13 have been a wreck. It would have been a touch.  
14 Instead, he hit the pickup truck hard enough to knock  
15 it up the road another 100 feet, so clearly, he was  
16 going a lot faster than 51.

17          Q.       Is this opinion made to a reasonable  
18 degree of accident reconstruction certainty and most  
19 probable?

20          A.       It is.

21          Q.       We'll start with Mr. Mack, the plaintiff.  
22 What happened to his vehicle post-impact?

23          A.       Well, it got smashed up in impact. Kicked  
24 out of the point of impact, you know, spinning around,  
25 coming out sideways across the right line, made it out

1 partially to the shoulder. And because it's at an  
2 angle now, from -- from hitting off center and  
3 rotating, he kind of arced back around and came to rest  
4 -- to rest back in the road. So he went, you know, 130  
5 feet or so, to where he came to rest.

6 Of course, he's also damaged and all that.  
7 Car's crushed down. I think the tire for the left --  
8 the left front, I think, might be blown. You can see  
9 it in some of the photographs. Engine damage. The  
10 whole front end of the car is just shoved downward. So  
11 all those things happened during that phase.

12 Q. So what is your opinion as to the speed of  
13 Mr. Mack was traveling at the time of impact?

14 A. Okay. So I can -- I did calculations of  
15 how fast was Mr. Mack was going after the impact, based  
16 on that path he followed. And I did it two ways. I  
17 did it one, just kind of straight down the middle, and  
18 then I did it one as conservative as I could, so as low  
19 a value as I could. And doing that, I've got his speed  
20 leaving impact, the high of 44.8, It's almost 45 miles  
21 an hour, and a low of 32.

22 To get the 32, I reduced the yaw angle. I  
23 didn't have the tires completely canted from the  
24 impact, yaw, those kind of things, just to -- again,  
25 give him the benefit of the doubt. So he's going to be

1 32 to 45 -- 44.8.

2 I did the same thing on the pickup truck. I  
3 said, all right. I can only see it 100 feet. It -- it  
4 isn't there at the end of that 100 feet, so it went  
5 further. But we got that fluid trail on the road, and  
6 so we know it went at least that far. And I did the  
7 same thing. I took a high and low on him. I gave him  
8 kind of an aggressive, or -- or middle line, stopping  
9 speaking, and then a really conservative one. So after  
10 impact, the pickup truck was going between 32 and 35  
11 miles an hour. It weighs a lot more, so you have a  
12 smaller range.

13 And then, from there, I can look at what were  
14 the speeds right before. The pickup truck's not  
15 moving, so the Toyota's got to hit it hard enough to  
16 where it speeds it up, and they both come out -- come  
17 out moving. So when I do that, of course, the  
18 pre-impact speed of the pickup truck is zero. He's  
19 just sitting there. And the Toyota's ranging 84 and  
20 up. So 84 and up -- let's see. Let me make sure I'm  
21 looking at the right one on here real quick -- yeah,  
22 it's 84 to 100 miles an hours coming into that impact.

23 Q. And that's pre-collision speed?

24 A. Right as he's touching the back of the  
25 truck, before they -- they really exchanged any forces.

1 And then I added the braking prior to that, the 108  
2 feet, and so it puts the -- you know, the low end speed  
3 of that Toyota is going to be 93 and upwards. So we've  
4 got him, you know, 90 or above when he starts leaving  
5 tire marks. Twice the speed limit.

6 Q. And that opinion is to a reasonable degree  
7 of accident reconstruction certainty, and most  
8 probable?

9 A. That is correct.

10 Q. Could this collision have been avoided in  
11 any way?

12 A. Sure.

13 MS. SENN: Objection, your Honor. Leading the  
14 witness.

15 THE JUDGE: Mr. Doles, please rephrase.

16 MR. DOLES: Sure.

17 By MR. DOLES:

18 Q. If the plaintiff had been -- had been  
19 going the speed limit, what would have happened?

20 A. He would stopped before he got to the  
21 truck. You know, he had 108 feet of skid marks. He  
22 could stop at 51. So if he's going 45, he never hits  
23 the truck.

24 Q. What about 55?

25 A. He would've hit it going a few miles an

1 vehicle after the wreck, right?

2 A. Correct. My understanding, when I got  
3 involved, is neither vehicle was available.

4 Q. What year were you hired to give an  
5 opinion on this case?

6 A. I -- I don't know. I know Bryan went to  
7 the scene in '22, and typically that's one of the early  
8 things we do. So that's probably within a month, or  
9 maybe even -- maybe between -- you know, a week or two  
10 to two months of getting retained is typical.

11 Q. All right. You weren't asked to  
12 reconstruct the speed of Mr. Rudd's vehicle at the tie  
13 of the deer strike, were you?

14 A. No. I've done nothing regarding the deer  
15 strike, other than to know it happened.

16 Q. You can't tell the jury how fast Mr. Rudd  
17 was going at the time he struck the deer, can you?

18 A. No. No, I've never looked at it. I'm  
19 just looking at the -- the cause of the lawsuit, which  
20 is the second impact between two people, or two  
21 vehicles, instead of a rammed deer.

22 Q. All right. And you can't tell the jury  
23 whether Mr. Rudd's vehicle was in the roadway or where  
24 it was in the roadway at the time of deer strike,  
25 right?

1 then I put vehicle positions onto that diagram so those  
2 could be seen also.

3 Q. All right. And you updated that CAD  
4 report based on your deposition testimony because there  
5 were inaccuracies in it, right?

6 A. Right. You know, we talked about in my  
7 deposition, I missed one of the dashed lines, so it  
8 actually made the pre-impact dash marks 40 feet longer.  
9 Which I appreciate you pointing out, but it's -- it's  
10 detrimental to your case, because it makes your  
11 client's speed even higher.

12 Q. All right. But you agree with me that the  
13 CAD report that you provided to me during your  
14 deposition was inaccurate, based on the dash cam  
15 footage that we've seen?

16 A. It was accurate with the exception of  
17 adding that 40 feet. And during the deposition, I  
18 agreed with -- with Ms. Senn that it should have been  
19 added, and ran the calculations for you to give you  
20 some insights on those, and we talked about them in my  
21 deposition.

22 Q. Now your CAD, the new one that we just  
23 looked at, that wasn't provided to me until today, was  
24 it?

25 A. Not -- that's my understanding, from

1 hearing y'all talk, but I gave it -- I sent it to Mr.  
2 Doles sometime last week.

3 Q. And when were you deposed in this case, do  
4 you remember?

5 A. It was about two years ago, wasn't it?

6 Q. I think it was about April of 2023, right?

7 A. Something like that, yeah.

8 Q. So you waited until a week ago to update  
9 your report?

10 A. Right. I'm not going to incur costs till  
11 the client -- until there's a reason to prepare for  
12 something. So generally, you know, most cases I work  
13 on get resolved long before trial, so. Yeah, I just  
14 don't -- I'm not somebody who goes around trying run up  
15 their costs. I got more work than I want, frankly, so.

16 Q. Speaking of costs, isn't it true that you  
17 are being paid thousands of dollars to testify in this  
18 case?

19 A. I'm being paid to do the analysis and  
20 present it here. Yes.

21 Q. All right. Thank you. I have nothing  
22 further.

23 A. My pleasure. Thank you.

24 THE JUDGE: Any redirect?

25 MR. DOLES: No redirect, your Honor.

1           MS. SENN: Yes, Judge. We will have one  
2 rebuttal witnesses.

3           THE JUDGE: Okay. Good enough. Ladies and  
4 gentlemen of the jury, let's take about 10 minutes --  
5 10 minute break, if you will retire to your room?  
6 Please don't discuss the case. I will come back in 10  
7 minutes, and we'll go from there.

8           (Jury exits at 3:21 P.M.)

9           THE JUDGE: You all tell me when you're ready.

10          MS. SENN: I'm ready, Judge.

11          MR. DOLES: Ready.

12          THE JUDGE: Okay. Mr. Bailiff, if the jury has  
13 -- I think everybody's gone to the restroom? We'll  
14 bring them back.

15          (Jury enters at 3:40 P.M.)

16          THE BAILIFF: All jurors are seated, your Honor.

17          THE JUDGE: Thank you. If you'd like to call  
18 your rebuttal witness, Ms. Senn.

19          MS. SENN: Yes, Judge. I'd like to call Mr.  
20 Woodrow Poplin to the stand.

21          THE CLERK: Do you swear or affirm that the  
22 testimony you give in this case to be the truth, the  
23 whole truth and nothing but the truth, so help you God?

24          MR. POPLIN: Yes, I do.

25          THE CLERK: Thank you. Please have a seat on

1 jury what data you are looking at in reconstructing an  
2 accident?

3 A. Well, you're looking at whatever data you  
4 have relative to the accident. Different accidents  
5 have different data. Sometimes you have electronic  
6 downloads. Sometimes you have photographs taken at the  
7 scene of the accident. Sometimes, like this, you have  
8 video. I'm inspecting vehicles, maybe dismantling  
9 vehicles to some extent, to look at components. I am  
10 measuring accident sites reviewing depositions, looking  
11 at statements. Looking at whatever documentation you  
12 have available for the particular accident that you're  
13 considering.

14 Q. All right. And at some point, were you  
15 hired by the plaintiff, Mr. Mack, in this case?

16 A. Yes.

17 Q. Do you remember when you were hired?

18 A. I don't remember.

19 Q. I'm not trying to trick you, but does 2023  
20 sound right?

21 A. Yes.

22 Q. All right.

23 A. Definitely '23.

24 Q. And is the information that we have  
25 regarding the wreck sufficient to make a speed

1 determination for Mr. Mack?

2 A. Not in my opinion, no.

3 Q. And tell the jury why?

4 A. Well, this particular situation, we have  
5 two collisions, and we had -- we have definitely three  
6 vehicles, potentially four vehicles, pickups involved  
7 in this thing. We have a pickup that stopped in the  
8 roadway after hitting a deer. That's one sequence. We  
9 have another accident following that, which is Mr. Mack  
10 running into the back of the . Subsequent to that, we  
11 have at least one vehicle that traveled, reportedly,  
12 out of control across this accident scene. So we have  
13 a number of vehicles that could potentially be leaving  
14 marks associated with this accident. We also have the  
15 fact that you can have marks on the roadway that are  
16 not related to the accident.

17 As you drive done the highway, you see tire  
18 marks. Just because you have tire marks there, doesn't  
19 mandate that they belong to this accident. So we've  
20 got a video that shows very little. You have to use  
21 your imagination to see anything but the most basic  
22 concepts of skid marks. You certainly cannot measure  
23 them to the precision of a tenth of a foot. You can't  
24 necessarily attribute them to one vehicle or another.  
25 The pickup stopped. Maybe it skidded to a halt. Maybe

1 it left tire marks. It then moved forward a little  
2 distance. Mr. Mack came along and ran into the back of  
3 the pickup. He would track right along those skid  
4 marks, but they wouldn't have to be his. Unless you  
5 had good documentation, you don't know whether those  
6 skid marks belong to him or not.

7           When I look at skid marks in an accident, I'm  
8 interested in what is the tread pattern? Does it have  
9 three raised -- excuse me -- five raised areas and four  
10 grooves? Do the tires on the vehicle have five raised  
11 areas and four grooves? What is the track width? The  
12 track width of a vehicle is the distance from the  
13 center of the left side tires to the center of the  
14 right side tires. Does the spacing between these tire  
15 marks match the tread width of vehicle? Or is it  
16 potentially a little less. You can have a vehicle  
17 that's yawing, but if it's more, and it can't belong to  
18 that vehicle.

19           Do you have evidence that these marks terminate  
20 in a collision? If you have a vehicle that's skidding  
21 into a collision, at the end of those marks, you'll see  
22 a disruption in the skid. It may go left, it may go  
23 right, it may get bolder. It will be something besides  
24 be a nice, smooth skid. And that's a signature of a  
25 collision. So that tells you that this set of marks

1 was made by a vehicle involved in a accident, or a  
2 vehicle that time some type of mechanical failure, as  
3 opposed to just skid marks on a roadway that don't have  
4 anything strange on the end of them.

5 Q. All right. And are you familiar with the  
6 opinions of defense expert Ken Richardson?

7 A. Yes.

8 Q. Do you agree with those opinions in this  
9 case?

10 A. No.

11 Q. Have you come to an opinion about whether  
12 we have information that even determine the speed of  
13 Mr. Mack in this case, to a reasonable degree of  
14 accident reconstruction certainty?

15 A. Yes, I have, and we do not.

16 Q. What information would be necessary in  
17 order to for you to make a speed determination of Mr.  
18 Mack's vehicle?

19 A. Well, you would have to be certain that  
20 these skids belong to Mr. Mack's vehicle and not to the  
21 pickup, or not to some other vehicle at some other  
22 time. When I look at -- if you look at the video, the  
23 opening scene shows a set of skid marks out on the  
24 highway. The officer hadn't gotten to the accident  
25 site yet. Those skid marks are obviously unrelated. A

1 few seconds later, you see another skid -- skid marks.  
2 Those skid marks are obviously unrelated. Just because  
3 he shows at the accident site and sees skid marks  
4 doesn't mean that Mr. Mack's vehicle had to have made  
5 them. They could have been made by the pickup. They  
6 could have been made by one of -- the vehicle that lost  
7 control. That could have been made by a vehicle at  
8 some other point in time. Unless you can have enough  
9 evidence to say these skid marks belong to Mr. Mack's  
10 vehicle as it skidded into the pickup -- you can make  
11 calculations. That doesn't make them right.

12 Q. Do you know whether Mr. Richardson ever  
13 went out to the scene and took measurements of those  
14 skid marks?

15 A. I do.

16 Q. Did he do that?

17 A. No, he got involved long after whatever  
18 skid marks were there were gone. As did I.

19 Q. What about Trooper Marlin? Did he ever  
20 measure the skid marks on the road?

21 A. No.

22 Q. And to the best of your knowledge, did  
23 anybody on the scene take any measurements of skid  
24 marks on the road?

25 A. No. And that wouldn't be important if we

1 going up a mountain side or anything with significant  
2 incline, but you know, as a engineer, I would expect  
3 someone to get the numbers right.

4 Q. And what did you notice about Mr.  
5 Richardson's distance evaluation using those dash lines  
6 in the roadway?

7 A. Well, again, as I pointed out in my  
8 deposition, he counted wrong. That's -- that's your  
9 main source of documentation, and all you're doing is  
10 going on the video and counting the number of stripes  
11 that passes by, and he counted wrong. Well, those  
12 stripes, from beginning one to the other, are 40 feet  
13 apart, and you know, that's rough. It could be 40 and  
14 a half. It could be 41. Could be 39 and a half. But  
15 in general, South Carolina does a pretty good job of  
16 keeping them 40 feet center to center, or beginning to  
17 end -- beginning to beginning. So I use that technique  
18 a lot.

19 I don't report values down to the tenth of a  
20 foot. An tenth of a foot is an inch and a quarter.  
21 Looking at that video, I can't distinguish that kind of  
22 measurement.

23 Q. All right. What did you notice with  
24 regard to the raised -- the pavement marks or the  
25 reflectors on the road in Mr. Richardson's opinion?

1 significant collision. And if I look at the collision  
2 damage, there are techniques you can use to evaluate  
3 the collision damage and -- and what speed would have  
4 been necessary to cause that. I made some basic  
5 calculations, and in my opinion, you needed a closing  
6 speed that is -- a speed of Mr. Mack's vehicle  
7 somewhere around 40, 45 miles an hour or so to cause  
8 the collision damage. And that type of collision's  
9 probably going to propel the pickup forward 10 or 15  
10 feet or so, according to the officer's description of  
11 how far it traveled. We're looking at a collision  
12 occurring, you know, somewhere close to the speed  
13 limit. I believe it's approaching a 45 mile an hour  
14 zone, but it's probably coming down out of a 55 to 60  
15 mile an hour zone. But that's as far as we can go,  
16 because we don't know whether those skids belong to him  
17 or not.

18 Q. All right.

19 A. And we don't know what -- where the  
20 collision area is, and how far they might have traveled  
21 post-impact other than the testimony of the officer.

22 Q. Thank you, Mr. Poplin. And are all the  
23 opinions that you've testified to today, are they to a  
24 reasonable degree of engineering certainty?

25 A. Yes.

1 Those are Delta Plumbing's tools.

2 And I -- I don't know who's ever heard of a  
3 company that's had somebody working for them for 10  
4 years, where they assigned them jobs, and they take 60  
5 percent of what he makes. 60 percent. They're earning  
6 60 percent of what he makes, and they're saying he's  
7 not an employee.

8 And then finally, they reserve the right to  
9 terminate the employment. She tried to back off that  
10 yesterday, but it's in their documents. They reserve  
11 the right to terminate his employment. That's strong  
12 evidence in favor that he is an employee, not a  
13 subcontractor.

14 The next thing you will have to decide is  
15 whether Mr. Rudd was acting in the course and scope of  
16 his employment. That basically means was he doing  
17 something in furtherance of his company's efforts?  
18 He's driving to work. He's in a truck owned by Delta  
19 Plumbing. It's full of their tools. He said he's on  
20 the way to work. He sure ain't going fishing, and he  
21 ain't going to church. He's on the way to work. Look  
22 at all the tools in the back of his car. To say that  
23 he's not in furtherance of his employer at this point  
24 is ridiculous. What they're trying to do is say they  
25 don't want to be held responsible for Mr. Rudd. He's

1 phone back there, so I'm not going to hold up time, but  
2 y'all know how long 10 seconds is. You said -- but  
3 when he saw the vehicle to when the impact occurred,  
4 there's a span of 10 seconds. Even if he had  
5 difficulty determining if the vehicle was moving or  
6 not, if you're rapidly approaching another vehicle in  
7 the highway, how hard is it to move into the next lane?

8           There's evidence of distraction, why that didn't  
9 happen. They admitted in their opening statement -- in  
10 Mr. Mack's testimony that he received a citation and  
11 paid a ticket for driving a vehicle at a greater speeds  
12 than is reasonable under conditions. You know, it's  
13 interesting. He -- he paid that. He didn't fight it.  
14 But you know, he came here today and said, well, I  
15 didn't have the wherewithal, or we were too busy, or it  
16 was a crazy time in my life. But then, he still had  
17 time to go on vacation in New York to see a concert.  
18 That just doesn't make sense to me, why he would pay  
19 that ticket and not fight it.

20           And to tell me that in the span of time that he  
21 had and he didn't notice the car was moving slowly or  
22 not moving at all, strains belief. Whether you believe  
23 Mr. Rudd had his hazards on or not, it's uncontroverted  
24 that the running lights were on in that truck. Again,  
25 a quick changing to the next lane would have avoided

1 this whole accident. Plaintiff's telling us that he  
2 didn't notice the car was moving until the accident was  
3 unavoidable. Is that believable in the span of 10  
4 seconds? Or would a more believable explanation be  
5 that he was either distracted or traveling too fast for  
6 conditions, which he pled to -- well, paid the ticket  
7 for.

8 And you -- you heard plaintiff's counsel say  
9 that, you know, my clients are avoiding responsibility  
10 for this accident. But Mr. Mack, despite paying that  
11 ticket, despite the evidence here, he said he bore no  
12 responsibility for this accident. So just keep that in  
13 mind.

14 And the citation that the ticket was based off.  
15 It's going to be in your jury charges. A person shall  
16 not drive a vehicle on a highway at a speed greater  
17 than is reasonable -- there's been a lot of talk about  
18 reasonability today -- and prudent under the condition  
19 and having regard to the actual and potential hazards  
20 then exist. Speed must be so controlled to avoid  
21 colliding with a person, vehicle, or other conveyance  
22 on or entering the highway, in compliance with legal  
23 requirements and the duty of a person to use due care,  
24 another term you've heard a lot.

25 Again, I'll admit it -- a lot of defense

1 connected with medical treatment; five, out of pocket  
2 expenses; six, pain and suffering; and seven, loss of  
3 enjoyment of life.

4           Loss of the capacity to enjoy life resulting  
5 from a personal injury is a proper element of damages.  
6 If you find evidence of loss of enjoyment of life, you  
7 may award damages for this loss. Damages for loss of  
8 enjoyment of life commensurate -- or compensate for the  
9 limitations resulting from the defendant's negligence  
10 on the injured person's ability to participate in and  
11 derive pleasure from the normal activities of daily  
12 life, or for the individual's inability to pursue his  
13 talents, recreational interests, hobbies, or  
14 avocations. Loss of enjoyment of life damages  
15 compensate the plaintiff not only for the subjective  
16 knowledge that one can no longer enjoy all of life's  
17 pursuits, but also for the objective loss of the  
18 ability to engage in these activities.

19           Pain and suffering is a material element of  
20 damages on which a recovery may be based. The  
21 plaintiff is entitled to compensation for his pain and  
22 suffering directly resulting from the wrongful acts of  
23 the defendant. An award for pain and suffering --  
24 suffering compensates the injured person for the  
25 physical discomfort and emotional response to the

1 sensation of pain caused by the injury itself. In  
2 making an estimate of damages to be awarded for pain  
3 and suffering, you may consider the nature and extent  
4 of injuries and the suffering occasioned by them and  
5 its duration or perspective duration, the age, health,  
6 habits, and condition of the injured party before the  
7 injury as compared with his continue afterward, and the  
8 plaintiff's use of a sedative or other drugs to relieve  
9 pain and their effect. Pain and suffering have no  
10 market price. They are not capable of exact  
11 measurement, and there is no fixed rule or standard  
12 whereby damages for them can be measured. The amount  
13 of damages to be awarded for pain and suffering must be  
14 left to the judgment, of you, the jury. Additionally,  
15 you may include such damages for pain and suffering as  
16 is reasonably certain will -- will, of necessity,  
17 result in the future from the injury. Future pain and  
18 suffering on the part of the plaintiff in consequence  
19 of the injury constitutes a proper element of damages  
20 which may be allowed, providing there is a requisite  
21 certainty that such pain and suffering will result.

22           An injured party may recover from mental anguish  
23 brought about by bodily injury and suffering. Where a  
24 party's negligence is directly responsible for physical  
25 injury to another, the injured party may recover both

1 for actual physical injuries sustained and for mental  
2 and emotional suffering, which flow as a natural  
3 consequence of the wrongful act.

4           When connected with a physical injury, the term  
5 mental anguish includes both the resulted mental  
6 sensation of pain and also the accompanying feelings of  
7 distress, fright, and anxiety. That is, mental anguish  
8 covers not only the pain associated with the injury,  
9 but the mental reaction to that pain and to the  
10 possible consequence of the injury. Mental anguish  
11 includes mental sensation of pain, fright, nervousness,  
12 grief, anxiety, worry, humiliation, or embarrassment.  
13 You may award damages for mental anguish where the  
14 evidence shows, for example, that the plaintiff  
15 suffered shock, fright, or emotional upset as a result  
16 of the defendant's negligence. A person who suffers  
17 personal injuries because of the negligence or  
18 recklessness of another may recover the reasonable  
19 value of all necessary reasonable expenses incurred as  
20 a result of the injuries. This includes all such  
21 expenses incurred up to time of trial, and those  
22 expenses to be incurred in the future. Accordingly, a  
23 plaintiff may recover reasonable and necessary amounts  
24 incurred for past and future medical care, including  
25 but not limited to, hospital, physician, and nursing

1 leave the courtroom. The -- the parking is out on  
2 mine. They don't let you reup it in the same space, or  
3 the police going to come out.

4 THE JUDGE: I understand. That's not a problem.  
5 Ms. Senn, anything?

6 MS. SENN: I don't have anything further.

7 THE JUDGE: I'll leave my final comments until  
8 this afternoon. Thank you all so much.

9 (The judge exits at 1:00 P.M.)

10 (The judge returns at 2:25 P.M.)

11 THE JUDGE: So the jury has a question, and the  
12 foreperson says the jury would like to know what the  
13 ticket Mr. Mack received was for. How do you all  
14 propose we answer that?

15 MS. SENN: The evidence has already been put in.  
16 We're not going to add any more evidence. I've never  
17 added additional evidence after the jury's got the  
18 case.

19 THE JUDGE: Well, I do think it's in.

20 MS. SENN: Right.

21 THE JUDGE: The issue is do we remind them?

22 MR. DOLES: I believe it's part of the jury  
23 charges, the actual citation is that -- or I mean, I  
24 guess the code, the statute that the citation was based  
25 off was included in that already. So perhaps pointing

1 name for it?

2 MR. DOLES: I've got the charge code, when you  
3 -- that's from SCCourts.org, CBR codes, it is  
4 traffic-slash-driving vehicle at greater speed than is  
5 reasonable under conditions. And the affixed -- the  
6 statute it's tied to is 56-5-1520. Just confirm,  
7 'cause I think both A and F are in the charges.

8 THE JUDGE: Okay. Why don't we do this? The  
9 actual -- Section 56-5-1520 general rules as to maximum  
10 speed are this. Lower speed limits may be required --  
11 so why don't I just say he got a ticket for driving too  
12 fast for conditions. That's in 56-1520-A, and that's  
13 given in the jury instructions. Is that --

14 MR. DOLES: It's in their charges, yes, your  
15 Honor, on the bottom of Page 12, top of Page 13.

16 THE JUDGE: All right. So I will call them in  
17 and say Mr. Mack did receive a ticket for driving too  
18 fast for conditions, and it's listed in your jury  
19 instructions, Section 56-5-1520-A. Everybody --  
20 everybody agree with that, or if anybody has a  
21 strenuous objection?

22 MS. SENN: Is it too late, just to object again  
23 for the ticket even coming into evidence?

24 THE JUDGE: Unfortunately, the bell has been  
25 rung.

1           MR. DOLES: No objection to how that's worded,  
2 your Honor.

3           THE JUDGE: But what I do -- all right. Well,  
4 if you'll call the jury in?

5           THE BAILIFF: Okay.

6           (The jury enters at 2:36 P.M.)

7           THE BAILIFF: Jurors are seated, your Honor.

8           THE JUDGE: Thank you. Madam Foreperson, I  
9 appreciate the clarity of your handwriting. I received  
10 a question, and I've discussed it with the lawyers. We  
11 are able to answer this question. It says the jury  
12 would like to know what ticket Mr. Mack received --  
13 what the ticket Mr. Mack received was for. He received  
14 a ticket for what is commonly known as driving too fast  
15 for conditions, and that is a code section listed in  
16 your jury instructions, 56-5-1520 subsection A. If you  
17 will return to go back jury room, and please continue  
18 deliberating?

19           (The jury exits at 2:37 P.M.)

20           THE JUDGE: Anything further right now?

21           MR. DOLES: No, your Honor.

22           Ms. SENN: No, your Honor.

23           THE JUDGE: Okay. We will see y'all when they  
24 on site.

25           (The Judge exits at 2:38 P.M.)

1           (The Judge enters at 2:49 P.M.)

2           THE JUDGE: Please be seated. Please be seated  
3 Yes, ma'am?

4           Ms. SENN: Judge, I'm sorry that I did not --

5           THE JUDGE: I'm sorry -- yes, ma'am?

6           MS. SENN: I'm sorry that I didn't think about  
7 It quickly enough, my brain is probably a little tired  
8 from this week. But I have a concern, based on -- I  
9 went back and looked at your ruling about the evidence  
10 of this ticket, and it was for impeachment only. And  
11 so I think at this point a curative instruction is  
12 appropriate to inform the jury that the evidence and  
13 the conviction -- or that the conviction is not  
14 evidence of wrong doing, and it was allowed only for  
15 impeachment. Because I don't want the jury back there  
16 deliberating the ticket under these circumstances. I  
17 don't think that's appropriate, when there's evidence  
18 of -- of the speed that's already in the record.

19           This is -- this is why I didn't want the tickets  
20 in, because it -- it's a complicated case, and it  
21 obviously is affecting the jury.

22           THE JUDGE: I understand. What say you,  
23 defense?

24           MR. DOLES: Your Honor, while I certainly get  
25 her side, I -- I disagree and object to that. One,

1 it's part of the testimony. All they asked in their  
2 clarifying question was what ticket was it that he  
3 received. And yes, under your motion, but I mean, that  
4 was supposed to be used for impeachment purposes, but  
5 because plaintiff's counsel opened the door as to it  
6 first, I believe it became part of the cross  
7 examination, your Honor.

8 THE JUDGE: Well, I guess, Ms. Senn, as you  
9 talked -- you talked earlier, certainly you said it in  
10 opening, but opening is not evidence. Do you recall  
11 asking him to testify about the ticket?

12 Ms. SENN: I know I asked him if he got a  
13 ticket, and he said he paid it. And that's why I  
14 didn't think it was appropriate for him to be impeached  
15 on the record via obstructed evidence.

16 THE JUDGE: I'm thinking out loud.

17 MS. SENN: But I mean, it's clear to me that the  
18 jury is back there deliberating improperly, and so I  
19 think we need a jury instruction, if they want evidence  
20 of the ticket, that is only admissible -- that it is  
21 not admissible as to the negligence of plaintiff, only  
22 as to the impeachment.

23 THE JUDGE: But I'm trying to -- that's why I'm  
24 thinking out loud. I realize it was used to impeach  
25 him, but isn't the jury free to use whatever evidence

1 that comes out for whatever purposes?

2 MS. SENN: But Judge, the statute specifically  
3 prohibits this -- this ticket from coming in. So my  
4 position is the ticket never should have come in, and I  
5 had to bring it up in opening so that I didn't get  
6 sandbagged. So I mean, I've been put in a pretty bad  
7 situation here by your ruling, and now I'm trying to  
8 protect the record and give curative instruction so  
9 that the jury goes back and actually deliberates on  
10 this case and we don't come back here and have to try  
11 it again.

12 MR. DOLES: Your Honor, to be fair, that's under  
13 the statute that she's citing. Technically, no tickets  
14 are supposed to come in, but certain ones came -- came  
15 around that. I think it's all part of the  
16 circumstantial -- however you want to call it -- and  
17 part of that is the question I asked him regarding  
18 whether he was traveling at a reasonable speed.  
19 They're -- they're allowed to know that ticket he  
20 received.

21 MS. SENN: And again, I don't mind if they know  
22 what ticket. I just think they need instructions on  
23 how to use the evidence.

24 THE JUDGE: Yes, ma'am. I -- I am going to do  
25 that. Yes, sir?

1 but the medical bills summary is already admitted. I  
2 think it's -- it's --

3 THE JUDGE: Oh, you've already got that --

4 MS. SENN: That's -- the jury has that.

5 The Judge: Okay.

6 Ms. SENN: So I'm assuming that's not what they  
7 want to see, since they have that summary back there.

8 THE JUDGE: I can tell you the medical billings  
9 summary is back there, but the other damages, we don't  
10 -- we won't be allowing that, as it's demonstrative.  
11 Okay?

12 Ms. SENN: Okay.

13 MR. DOLES: Don't know where this jury's going  
14 to all these different questions.

15 Ms. SENN: We need to take their note pads and  
16 starve them out. Are we going to bring them back here  
17 and give them the instruction now?

18 THE JUDGE: Yes. Unless you all want to --  
19 let's bring them back.

20 (The jury enters at 3:03 P.M.)

21 THE BAILIFF: All the jury trial's seated.

22 THE JUDGE: Thank you. I want to revisit the  
23 traffic ticket. Evidence of that traffic conviction  
24 cannot be used as evidence of wrongdoing, but was  
25 allowed by the Court only for impeachment purposes,

1 meaning related to witness credibility.

2           We have going to -- have gotten another note  
3 and, Ms. Foreperson -- Madam Foreperson, even I can  
4 read it, so I tell you, I appreciate the clarity. The  
5 jury would like to see damage estimate break down as  
6 presented by the plaintiff's attorney. What a lawyer  
7 says during a closing argument is not evidence, so I  
8 have had to make the decision that I cannot send that  
9 information back. I apologize for that. But I'm not  
10 able to do that at this point.

11           THE FOREPERSON: Okay.

12           THE JUDGE: If you would retire to the jury room  
13 and continue deliberations? And thank you for your  
14 time and attention to this matter.

15           (The jury exits at 3:05 P.M.)

16           THE JUDGE: Is everybody back?

17           MS. SENN: Yes, Judge.

18           MR. DOLES: Yes, your Honor.

19           THE JUDGE: Mr. Bailiff, you can bring in the  
20 jury.

21           (The jury enters at 4:01 P.M.)

22           THE BAILIFF: All the jurors are seated, your  
23 Honor.

24           THE JUDGE: Thank you. Madam Foreperson, I  
25 understand we have a verdict?

1 THE FOREPERSON: Yes, sir, we do.

2 THE JUDGE: You will give it to the bailiff,  
3 please? Thank you. Madam Clerk?

4 THE CLERK: Yes, your Honor?

5 THE JUDGE: You may publish the verdict.

6 The Clerk: Thank you. State of South Carolina  
7 County of Richland in the Court of Common Pleas, for  
8 the Fifth Judicial Circuit. Troyce Mack, plaintiff,  
9 Vs. Gregory Parker as Special Administrator of the  
10 Estate of David Joseph Rudd, and Delta Plumbing LLC,  
11 defendants, civil action number 2019-CP-40-0212934.  
12 Question 1, was the defendant Rudd negligent? Yes. Go  
13 to Question 2. Was the defendant Rudd's negligence the  
14 proximate cause of the plaintiff's injuries? Yes. Go  
15 to Question 3. Was the plaintiff negligent? Yes. Go  
16 to Question 4. Was the plaintiff's negligence the  
17 proximate cause of the plaintiff's injuries? Yes. Go  
18 to Question 5. Was the plaintiff's -- was the  
19 plaintiff's negligence greater than 50 percent? No.  
20 Go to Question 6. Was defendant Rudd within the course  
21 and scope of his employment or agency for defendant  
22 Delta Plumbing, LLC at the time of the collision? No.  
23 Go to Question 10. Using the combined negligence that  
24 proximately caused the plaintiff's injuries as 100  
25 percent, what percentage of that negligence is

1 attributable to the plaintiff and what percent to the  
2 defendant? The percentage must add up to 100 percent.  
3 If the answer to Number 3 is no, the amount for  
4 plaintiff will be zero percent. Plaintiff, 50 percent,  
5 defendant Rudd 50 percent, total 100 percent. Please  
6 state the amount of damages, if any, sustained by the  
7 plaintiff. Medical expenses, \$9,220.54. Pain and  
8 suffering, zero. Loss of enjoyment of life, zero.  
9 Alteration of lifestyle, \$1,740.00. Lost wages,  
10 \$5,584.80. Permanent disfigurement, zero. Mental  
11 anguish, zero. Total damages \$16,545.34. Did the  
12 defendant act in adversely negligent, willful, wanton,  
13 or reckless manner by clear and convincing evidence?  
14 No. Stop deliberations.

15 I certify that these are the decisions of the  
16 jury, signed Juror Number 202, Kathy Martin as  
17 forelady, on March 13th, 2025. Madam Forelady, is this  
18 your verdict and the verdict of the entire jury?

19 THE FOREPERSON: Yes, it is.

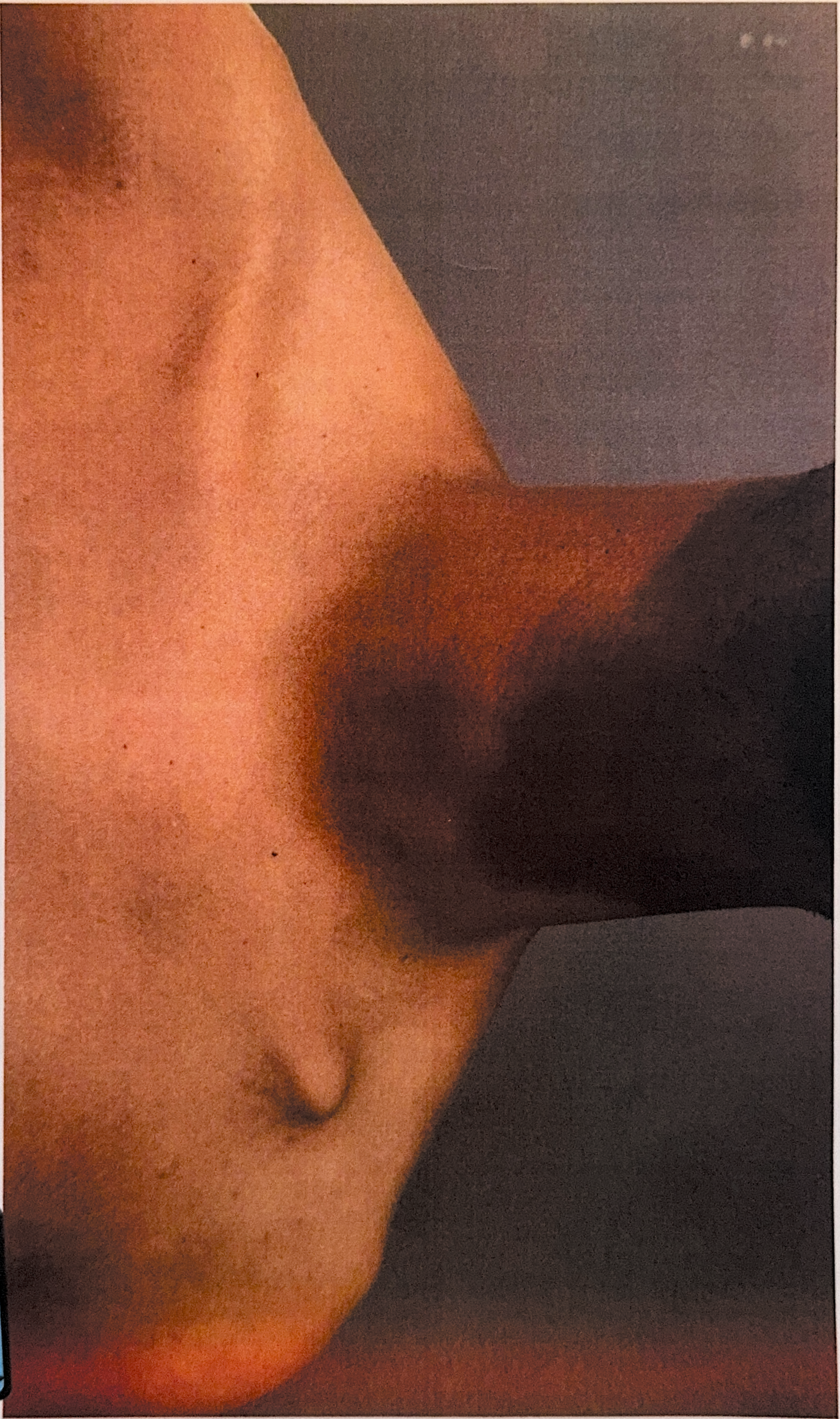
20 THE CLERK: Thank you.

21 The Judge: Does either counsel want to the poll  
22 the jury?

23 MR. DOLES: No, your honor.

24 THE JUDGE: Ms. Senn?

25 MS.SENN: No, your Honor.



Plaintiff's Exhibit **4**  
Date: **MAR 11 2025**  
Abby Kiker Court Reporter

|                                             |   |                                      |
|---------------------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS         |
|                                             | ) |                                      |
| COUNTY OF RICHLAND                          | ) | Civil Action No.: 2019-CP-40-02129   |
|                                             | ) |                                      |
| Troyce Mack,                                | ) |                                      |
|                                             | ) |                                      |
| Plaintiff,                                  | ) | <b>PLAINTIFF'S MOTIONS IN LIMINE</b> |
|                                             | ) |                                      |
| vs.                                         | ) |                                      |
|                                             | ) |                                      |
| Gregory Parker, As Special Administrator of | ) |                                      |
| the Estate of David Joseph Rudd, and Delta  | ) |                                      |
| Plumbing, LLC,                              | ) |                                      |
|                                             | ) |                                      |
| Defendants.                                 | ) |                                      |
|                                             | ) |                                      |
|                                             | ) |                                      |

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**1. Evidence of Plaintiff's traffic citation for Driving Too Fast For Conditions is inadmissible.**

Pursuant to the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure, Counsel for the Plaintiff moves *in Limine* to prohibit the Defendant from arguing or alluding to Plaintiff's citation for Driving Too Fast for Conditions. The law in South Carolina is clear that evidence of a traffic citation and convictions under the South Carolina motor vehicle code is inadmissible in a civil trial. The issue of the Plaintiff's conviction for driving too fast for conditions, including the introduction of documentary or testimonial evidence, statements, or comments regarding citation, are improper under S.C. Code. Ann. 56-5-6160, which states:

"No evidence of conviction of any person for any violation of this chapter shall be admissible in any court in any civil action."

Therefore, during Defendant's opening cross-examination of Plaintiff, direct examination of any witness, and closing, defense counsel should be prohibited from alluding to the citation Plaintiff received for Driving Too Fast for Conditions.

**2. Defendants should be precluded from publishing Plaintiff's medical records, or impeaching him using his medical records.**

Medical records contain multiple layers of hearsay. The entire contents of the Plaintiff's medical records are not automatically admissible in evidence even if they are properly authenticated as business records. In addition, Plaintiff cannot be impeached by his own medical records, of which he is not the author. Cross-examining the Plaintiff with his own records necessarily requires pitting the Plaintiff against the author of his medical record.

Plaintiff has requested that the Court prevent opposing counsel from publishing information within medical records that constitute hearsay, as well as any records that have not been properly authenticated. Further, Plaintiff requests that the defense is barred from attempting to impeach Plaintiff with his own medical records, as this would result in improper witness pitting.

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March 5, 2025

|                                             |   |                                           |
|---------------------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS              |
|                                             | ) |                                           |
| COUNTY OF RICHLAND                          | ) | Civil Action No.: 2019-CP-40-02129        |
|                                             | ) |                                           |
| Troyce Mack,                                | ) |                                           |
|                                             | ) |                                           |
|                                             | ) |                                           |
| Plaintiff,                                  | ) | <b>PLAINTIFF’S MEMORANDUM IN</b>          |
|                                             | ) | <b>SUPPORT OF ITS MOTION IN LIMINE TO</b> |
| vs.                                         | ) | <b>PRECLUDE EVIDENCE OF PLAINTIFF’S</b>   |
|                                             | ) | <b>TRAFFIC CITATION</b>                   |
| Gregory Parker, As Special Administrator of | ) |                                           |
| the Estate of David Joseph Rudd, and Delta  | ) |                                           |
| Plumbing, LLC,                              | ) |                                           |
|                                             | ) |                                           |
| Defendants.                                 | ) |                                           |
|                                             | ) |                                           |

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Pursuant to the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure, Counsel for the Plaintiff moves *in Limine* to prohibit the Defendant from arguing or alluding to Plaintiff’s citation for Driving Too Fast for Conditions.

### **Background**

This case arises out of a motor vehicle collision that occurred on October 19, 2018 at approximately 4:40 AM. David Joseph Rudd, while working as an employee, agent, contractor, and/or servant of Defendant Delta Plumbing, LLC, was driving a dark green GMC Sierra pick-up truck belonging to Delta Plumbing LLC, while traveling west on U.S. Highway 76/378 outside of Columbia, South Carolina. Defendant Rudd hit a deer while traveling in the left lane of the highway. Defendant Rudd testified in his deposition that he got out of his vehicle to assess the damage while his truck was in left in the roadway. He got back in his truck and moved it forward, before deciding again to exit the truck. Plaintiff contends that Mr. Rudd’s truck did not have flashing hazard lights activated, which is supported by the first two recorded statements Mr. Rudd gave regarding the incident. Mr. Rudd testified he had been out of the vehicle and left it on the

roadway for 2 or 3 minutes before Plaintiff struck the rear of the truck. Plaintiff was injured as a result of the collision and was transported via EMS to Prisma Hospital.

While at the hospital receiving medical treatment, Plaintiff received a citation for violating S.C. Code Ann. 56-5-1520, which states:

“(A) A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. “

Ultimately, Plaintiff paid the fine for the traffic citation and filed the instant lawsuit against Defendants alleging negligence by Defendant Rudd, and negligent hiring, training and supervision by Defendant Delta Plumbing.

### **Discussion:**

#### **1. Defendants may not argue or reference Plaintiff’s conviction for Driving Too Fast For Conditions**

The law in South Carolina is clear that evidence of a traffic citation and convictions under the South Carolina motor vehicle and traffic regulation code is inadmissible in a civil trial. The issue of the Plaintiff’s conviction for driving too fast for conditions, including the introduction of documentary or testimonial evidence, statements, or comments regarding citation, are improper under S.C. Code. Ann. 56-5-6160, which states:

“No evidence of conviction of any person for any violation of this chapter shall be admissible in any court in any civil action.”

South Carolina case law only permits testimony regarding a driver’s conviction for violating a motor vehicle statute for the limited purpose of impeaching a witness. In Addyman v. Specialties of Greenville, Inc., the Court opined “In our view the literal language of s 56-5-6160 does not bar the use of this evidence to impeach the credibility of a witness, whether or not such witness is a party to the action.” Addyman v. Specialties of Greenville, Inc., 273 S.C. 342, 347,

257 S.E.2d 149, 151 (1979). During his deposition, Plaintiff admitted that he was not sure what speed he was going prior to the collision. Plaintiff further admitted that he received a citation and paid the fine.

|                               |  |                    |
|-------------------------------|--|--------------------|
| TROYCE MACK                   |  | September 30, 2020 |
| MACK vs RUDD & DELTA PLUMBING |  | 19                 |

|    |   |                                                  |
|----|---|--------------------------------------------------|
| 1  | Q | Okay. And how about specifically as to           |
| 2  |   | this case that we're here for today? You were    |
| 3  |   | issued a traffic citation for this one, correct? |
| 4  | A | Yes, sir.                                        |
| 5  | Q | And that was for travelling too fast for         |
| 6  |   | conditions, correct?                             |
| 7  | A | Yes, sir.                                        |
| 8  | Q | Did you appear in court for that? Did you        |
| 9  |   | pay the fine? Did you plead not guilty? Can you  |
| 10 |   | recall?                                          |
| 11 | A | Yes, sir, I appeared in court and I paid         |
| 12 |   | the fine.                                        |

At this point, Plaintiff's testimony can't be impeached by evidence of a conviction and allowing evidence of a conviction in at trial would serve no permissible purpose. .

## **2. Defendants may not argue or reference Plaintiff's citation for Driving Too Fast For Conditions**

The idea that a citation is admissible when a conviction is not, is an absurdity. Allowing defense counsel to backdoor evidence of a citation rather than a conviction still implicates the direct prohibition listed in 56-5-6160. Evidence of a traffic violation serves no useful purpose to a jury who is to determine the facts in a disputed liability case. A citation is nothing more than a law enforcement officer's accusation that someone violated the motor vehicle safety statute. The citation that Plaintiff received is an opinion of the investigating officer, Trooper Marlin, because

he did not witness the violation. The accusation that Plaintiff was traveling at a speed greater than reasonable under the circumstances is a lay opinion of Trooper Marlin, and is inadmissible.

It is undisputed that the patrol officer who investigated the collision did not witness the collision and arrived on-scene after the ambulance had left. Clearly, Trooper Marlin was not in a position at the time of the crash to perceive Plaintiff's speed prior to the crash. Allowing testimony from Trooper Marlin regarding evidence of the speed of Plaintiff would violate S.C.R.E. 701. Under Rule 701 of the South Carolina Rules of Evidence, lay opinion is "limited to those opinions ... rationally based on the perception of the witness." Hamrick v. State specifically addresses this issue and in that case, the Court held that a law enforcement officer who arrived 48 minutes after a crash was not permitted to give lay opinion regarding point of impact after a crash 426 S.C. 638, 648–50, 828 S.E.2d 596, 601–02 (2019). Here, as in Hamrick, permitting evidence of Plaintiff's speed through Trooper Marlin, or any law witness who did not perceive the crash is improper.

Trooper Marlin is not qualified to offer expert opinion regarding Plaintiff's speed, therefore any opinion that he offers is lay opinion. Because Trooper Marlin was not in a position to perceive the speed of the Plaintiff, his lay opinion regarding giving Plaintiff a citation, or his belief that Plaintiff violated 56-5-2120 are improper and inadmissible.

**3. The probative value of admitting evidence of Plaintiff's citation is substantially outweighed by the risk of unfair prejudice.**

Additionally, Plaintiff's citation should be excluded under SCRE 403 as its probative value is substantially outweighed by the risk of unfair prejudice and confusion to the jury. In this case of disputed liability, evidence of Plaintiff's traffic citation is not probative of who caused the collision. In fact, the evidence sought to be admitted is unduly prejudicial when considered against its probative value. If defendants insist on making Plaintiff's speed an issue in this case, the way to admit that evidence is not by using evidence of a traffic citation or conviction. In fact, Defense

has indicated that they plan to introduce evidence of Plaintiff's speed through the testimony of their expert accident reconstructionist, Kendrick Richardson. Additionally, the citation will only serve to confuse the jury regarding fault. Therefore, it is unnecessary to discuss Trooper Marlin's opinion regarding whether Plaintiff was violating 56-5-2120. Allowing this evidence could impermissibly tip the scales in favor of the defense, in the face of well-settled law.

**Conclusion:**

Defendants are seeking to escape liability and improperly bolster their argument to the jury that Plaintiff's speed caused the collision by using evidence of a traffic citation. A citation an accusation and, in this instance, contains Trooper Marlin's opinion. Neither the accusation of violating 56-5-2120, nor Trooper Marlin's opinion regarding whether Plaintiff violated 56-5-2120 are admissible on the point for which they are being offered.

Respectfully submitted,

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Columbia, SC  
March 5, 2025

|                                             |   |                                         |
|---------------------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS            |
|                                             | ) |                                         |
| COUNTY OF RICHLAND                          | ) | Civil Action No.: 2019-CP-40-02129      |
|                                             | ) |                                         |
| Troyce Mack,                                | ) |                                         |
|                                             | ) |                                         |
|                                             | ) | <b>PLAINTIFF'S MOTION FOR NEW TRIAL</b> |
| Plaintiff,                                  | ) | <b>ABSOLUTION AND MOTION FOR NEW</b>    |
|                                             | ) | <b>TRIAL</b>                            |
| vs.                                         | ) |                                         |
|                                             | ) |                                         |
| Gregory Parker as Special Administrator for | ) |                                         |
| the Estate of David Joseph Rudd, and Delta  | ) |                                         |
| Plumbing, LLC                               | ) |                                         |
| Defendants.                                 | ) |                                         |
|                                             | ) |                                         |

---

COMES NOW PLAINTIFF, and moves before the Court for new trial absolution, and/or new trial.

This matter was tried March 10-13, 2025 in front of the Hon Milton Kimpson. At the conclusion of the trial, the jury returned a verdict for the Plaintiff in the amount of \$16,545.34. Despite uncontroverted evidence of pain, suffering, mental anguish, and disfigurement, the jury awarded \$0.00 for each of these elements of Plaintiff's damages. Defendants did not dispute that Plaintiff had suffered pain as a result of injuries from the motor vehicle collision. Defendants did not dispute that Plaintiff had suffered disfigurement as a result of injuries from the motor vehicle collision. Defendants did not dispute that Plaintiff had suffered mental anguish as a result of injuries from the motor vehicle collision. Defendants did not present any opposing expert testimony or contrary evidence on whether Plaintiff had sustained any of these elements of damages.

Further, the jury returned a note requesting information about Plaintiff's traffic citation for the underlying motor vehicle collision. Plaintiff objected to evidence of the traffic conviction being admitted. S.C. Code Ann. § 56-5-6160 provides that "[n]o evidence of conviction of any

person for any violation of this chapter shall be admissible in any court in any civil action.” Defendants were allowed to cross-examine Plaintiff about the traffic conviction and repeatedly referred to the conviction during closing argument. This evidence clearly led to confusion for the jury and unquestionably prejudiced the Plaintiff as the jury returned with 50% comparative negligence against the Plaintiff.

### **NEW TRIAL ABSOLUTE**

A trial court may grant a new trial absolute on the ground that the verdict is inadequate. “The trial [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.” *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007). Here, the jury award was inconsistent with the unchallenged evidence presented at trial.

There was no dispute or contrary evidence that Plaintiff suffered a broken clavicle in the collision. Plaintiff testified about his broken clavicle and the pain and suffering resulting from the injury. Plaintiff presented photographs of the disfigurement resulting from the injury. There was no dispute or contrary evidence that Plaintiff experienced pain, suffering, mental anguish, and disfigurement as a result of injuries from the violent motor vehicle collision. Despite this uncontroverted and unopposed evidence, the jury awarded \$0.00 for damages that are clearly compensable under the law. The verdict was “shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.” *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761 (2000).

The disparity between the award and the admitted damages suggests that the jurors were motivated by improper considerations. This suggestion is demonstrated by the jury's question during deliberations concerning the traffic citation Plaintiff received, and the verdict showed that the jury was either confused by or ignored the instructions that the Plaintiff's traffic ticket was not admissible as evidence of his wrongdoing. The jury's award of \$ 16,545.34. in the face of undisputed damages is grossly inadequate and demonstrates that the verdict was actuated by improper motives.

### **NEW TRIAL – ERRORS OF LAW**

Plaintiff is entitled to a new trial based on errors of law made by the court. These errors of law are as follows:

1. Allowing evidence of Plaintiff's traffic citation from the collision. S.C. Code Ann. § 56-5-6160 is absolutely clear that this evidence was inadmissible. This evidence was indisputable prejudicial against Plaintiff as demonstrated by the jury's deliberations and question about the traffic conviction. This evidence was extremely prejudicial to Plaintiff, so much so that counsel for Defendants referenced the conviction several times throughout closing argument. This evidence was prohibited and allowing evidence of the citation and conviction was an error of law.

Based on the jury's question concerning the traffic ticket and their ultimate verdict finding Plaintiff 50% at fault, the jury's deliberations improperly included the Plaintiff's traffic citation as evidence of the Plaintiff's wrongdoing.

2. Allowing evidence from Defendants' expert accident reconstructionist that was withheld by counsel for Defendants until the day it was shown to the jury. Defendants' expert accident reconstructionist admitted there were errors in the original CAD (computer-aided design)

that was provided to the Plaintiff almost two years before trial. At trial, and without any warning to Plaintiff, Defendants' accident reconstructionist provided an updated CAD of the collision scene that he used for demonstrative purposes. Defendants' expert admitted he provided the CAD to counsel for Defendants the week before trial. Defendants' expert was retained on the matter 3 years prior to trial, yet Plaintiff was never provided with the updated CAD until moments before the evidence was presented to the jury.

This conduct by Defendants and their expert is prohibited by the rules of discovery and South Carolina jurisprudence. The entire thrust of the discovery rules involves full and fair disclosure, "to prevent a trial from becoming a guessing game or one of surprise for either party." *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). "Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Id.*, citing *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Unless the party who has failed to submit to discovery can show lack of prejudice, reversal is required." *Id.* at 46, 362 S.E.2d at 319.

Further, Defendants' expert admitted there were errors in the CAD, that he never visited the scene, that he did not inspect the vehicles, and that he never spoke with the investigating officer. Allowing unreliable evidence that was intentionally withheld by Defendants until just a few moments before cross-examination on a case that has been pending for *over 5 years* is extremely prejudicial. The court should not have allowed this evidence and in doing so, committed an error of law.

### CONCLUSION

This Court should grant Plaintiff's motion for new trial absolute and motion for new trial as the verdict shocks the conscience, is the result of some improper motive, and is shockingly

disproportionate to the injuries suffered by Plaintiff. The jury disregarded the evidence and the court's instructions. Further, allowing evidence of the traffic conviction that the law mandates as inadmissible was extremely prejudicial to the Plaintiff and clearly confused the jury. Finally, allowing unreliable expert evidence withheld by Defendants until only moments before being presented to the jury is contrary to discovery rules, South Carolina jurisprudence, and prejudiced Plaintiff.

Respectfully Submitted,

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March 21, 2025

|                                             |    |                                           |
|---------------------------------------------|----|-------------------------------------------|
| STATE OF SOUTH CAROLINA                     | /) | IN THE COURT OF COMMON PLEAS              |
| COUNTY OF RICHLAND                          | )  | Civil Action No.: 2019-CP-40-02129        |
| Troyce Mack,                                | )  |                                           |
|                                             | )  |                                           |
| Plaintiff,                                  | )  | <b>DEFENDANTS MEMORANDUM IN</b>           |
| vs.                                         | )  | <b>OPPOSITION TO NEW TRIAL ABSOLUTION</b> |
|                                             | )  | <b>AND MOTION FOR NEW TRIAL</b>           |
| Gregory Parker, As Special Administrator of | )  |                                           |
| the Estate of David Joseph Rudd and Delta   | )  |                                           |
| Plumbing, LLC,                              | )  |                                           |
| Defendants.                                 | )  |                                           |

---

Defendants, by and through his undersigned counsel, submits this Memorandum in Opposition to Plaintiff's Motion for a New Trial Absolute. Defendant requests the Court deny Plaintiff's motion for the reasons set forth below.

### **STANDARD FOR NEW TRIAL**

The jury returned a verdict in favor of Plaintiff on March 13, 2025. Plaintiff now moves for a new trial absolute. A trial judge may grant a new trial nisi additur when he or she finds the verdict to be inadequate. However, substantial deference must be afforded to the jury's determination of damages. A judge must offer compelling reasons for invading the jury's province by granting a motion for additur. See Green v. Fritz, 356 S.C. 566, 590 S.E.2d 39 (Ct.App. 2003).

A new trial absolute is permitted when "the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." Waring v. Johnson, 341 S.C. 248 at 257, 533 S.E.2d 906 (Ct.App. 2000).

Under the thirteenth juror doctrine, "the trial judge, sitting as the thirteenth juror charged

with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.” Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984). Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge’s finding that justice has not prevailed. See Todd v. Owen Indus. Prods., Inc., 315 S.C. 34, 431 S.E.2d 596 (Ct.App. 1993). Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury’s confusion. See Johnson v. Parker, 279 S.C. 132, 303 S.E.2d 95 (1983); Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 453 S.E.2d 908 (Ct.App. 1995). However, a jury verdict should be upheld when it is possible to do so and carry into effect the jury’s clear intention. Johnson v. Parker, 279 S.C. 132, 303 S.E.2d 95 (1983).

### **ARGUMENT**

#### **1. Facts Support the Jury’s Verdict**

Plaintiff contends that the verdict is insufficient based on the evidence at trial. Specifically, Plaintiff argues that the verdict did not award the entirety of Plaintiff’s claimed non-economic damages or any pain and suffering. In his motion, Plaintiff argues there was no testimony to contradict that Plaintiff suffered physical bodily injury and pain.

To the contrary, both liability and damages were disputed. While Defendants did not contest Plaintiff’s demonstrative evidence as to medical costs incurred, evidence relating to the minor nature of the injury and quick recovery was admitted through the Plaintiff’s own testimony and testimony of Plaintiff’s wife. Plaintiff confirmed the limited nature of the treatment, including discharge that day. Plaintiff further testified that he had ongoing pain as a result of this accident, but was able to go on a family flight and vacation to New York soon after the accident. Plaintiff’s wife testified that he was able to still do many activities including paintball, hiking, and other

strenuous actions. Plaintiff did not provide any testimony from his doctors or chiropractors regarding his diagnoses, if any, or testimony that his medical treatment was necessary and a result of the accident or that he was documented to have any ongoing pain or restriction.

**2. There are No Grounds for New Trial Absolute**

The jury, in its discretion, found that Plaintiff failed to meet his burden regarding his damages, economic and non-economic, or may have found Plaintiff lacked credibility regarding his alleged damages. However the jury determined the verdict, there was adequate evidence, or a lack of evidence, for them to do so. There are not compelling reasons to invade the jury's province by granting a motion for a new trial. Similarly, there are no grounds to find that the verdict "shocks the conscience" or was the result of some improper motive on the part of the jury. Therefore, a new trial absolute would be improper. Finally, Plaintiff's request for a new trial based on the thirteenth juror doctrine should also be denied because, as discussed above, there was sufficient evidence before the jury to warrant the verdict. The mere fact that the jury did not rule in the way requested by Plaintiff is not a sufficient basis for granting a new trial.

**3. There is No Basis for New Trial as There Were No Errors of Law, or, if any, they were harmless error.**

Plaintiff, in their opening statement, stated that Plaintiff had received a ticket for the accident and had paid the citation. In doing so, Plaintiff mischaracterized the ticket, which has a noted disposition of "Pled Guilty" on the public index. As such, Plaintiff "opened the door" to the evidence already allowed for impeachment purposes via the Court's ruling on the motion in limine for the same. Whether a person opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial judge. State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008), citing State v. Adcock, 194 S.C. 234, 234, 9 S.E.2d 730, 732 (1940). Plaintiff has failed to prove that the citation

itself was dispositive regarding the jury's decision as evidence from Mr. Rudd's testimony, the damage to the vehicles, and Mr. Richardson's testimony all indicated that the Plaintiff was traveling at a much faster speed than was reasonable for conditions at the time of the accident.

As to the demonstrative exhibit used at Mr. Richardson's direct examination, the diagram itself was only referenced for the amount of footage between the 45mph sign and the accident site. Mr. Richardson, in his testimony, did not rely on the demonstrative exhibit to establish the point of impact or the resting place of the cars. Mr. Richardson relied upon the police video, which was consented to by both parties, to show the jury the basis of his calculations. Further, such evidence was not provided to the jury in their deliberations and there is no evidence that this demonstrative exhibit had any basis on their ruling.

In fact, the juries' determination that Defendant Rudd bore fault, rather than finding for the defendants outright, shows that such evidence was not determinative to the jury. Even if such evidentiary decisions by the Court were errors, which the Defendant denies, such errors would be harmless. Error is harmless where it could not reasonably have affected the trial's outcome. See State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. See State v. Reeves, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990).

### **CONCLUSION**

The facts and testimony presented at trial support the jury's verdict. The jury found for Plaintiff and awarded an adequate, and just, verdict. The verdict was within the range of damages and did not shock the conscience. Further, there is nothing demonstrating juror confusion, or anything which clearly indicates the verdict was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive by the jury. In fact, given the overwhelming evidence

of comparative negligence of the Plaintiff, any award from the jury was indicative of a reasoned, fair deliberation without prejudice to the Plaintiff. Accordingly, Defendant requests that Plaintiff's Motion be denied.

LYLES & ASSOCIATES

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*Attorney for Defendants*

Mount Pleasant, South Carolina  
March 25, 2025

|                                             |   |                                    |
|---------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS       |
|                                             | ) |                                    |
| COUNTY OF RICHLAND                          | ) | Civil Action No.: 2019-CP-40-02129 |
|                                             | ) |                                    |
| Troyce Mack,                                | ) |                                    |
|                                             | ) |                                    |
|                                             | ) | <b>THIRD AMENDED SUMMONS</b>       |
|                                             | ) | (Jury Trial Demanded)              |
| Plaintiff,                                  | ) |                                    |
|                                             | ) |                                    |
| vs.                                         | ) |                                    |
|                                             | ) |                                    |
| Gregory Parker, As Special Administrator of | ) |                                    |
| the Estate of David Joseph Rudd, and Delta  | ) |                                    |
| Plumbing, LLC                               | ) |                                    |
| Defendants.                                 | ) |                                    |

**TO: THE DEFENDANT(S) ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribed, **O'Shea Law Firm, LLC 1821 Hampton Street Columbia, SC 29201, within THIRTY (30) days** after the service hereof, exclusive of the date of such service. 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.

Respectfully Submitted,

O'SHEA LAW FIRM, LLC

BY: s/Karlen K. Senn  
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803/626-9158 office  
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Attorney for Plaintiff

Columbia, South Carolina  
January 20, 2025

|                                             |   |                                    |
|---------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS       |
|                                             | ) |                                    |
| COUNTY OF RICHLAND                          | ) | Civil Action No.: 2019-CP-40-02129 |
|                                             | ) |                                    |
| Troyce Mack,                                | ) |                                    |
|                                             | ) |                                    |
|                                             | ) | <b>THIRD AMENDED COMPLAINT</b>     |
| Plaintiff,                                  | ) | (Jury Trial Demanded)              |
|                                             | ) |                                    |
| vs.                                         | ) |                                    |
|                                             | ) |                                    |
| Gregory Parker, As Special Administrator of | ) |                                    |
| the Estate of David Joseph Rudd, and Delta  | ) |                                    |
| Plumbing, LLC                               | ) |                                    |
| Defendants.                                 | ) |                                    |
|                                             | ) |                                    |

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The Plaintiff would respectfully show this Honorable Court that:

**JURISDICTION AND VENUE**

1. Plaintiff Troyce Mack is a citizen and resident of Sumter County, South Carolina.
2. That, upon information and belief, David Joseph Rudd a resident of Lexington, South Carolina, and is an employee, agent, contractor, or servant of Defendant Delta Plumbing, LLC. Defendant Delta Plumbing, LLC are vicariously liable for the acts and/or omissions of Defendant David Joseph Rudd pursuant to the doctrine of respondeat superior.
3. That upon information and belief, at all relevant times herein, Delta Plumbing, LLC was a corporation organized under the laws of the State of South Carolina, licensed to do business in the State of South Carolina. Defendant Delta Plumbing, LLC is vicariously liable for the negligence of its employees, agents, and/or servants under the doctrine of respondeat superior.
4. The automobile accident occurred in Richland County, South Carolina.
5. Jurisdiction and venue are proper over the Defendants.

### **FACTS**

6. On October 19, 2018 at approximately 4:40 AM, David Joseph Rudd, while working as an employee, agent, contractor, and/or servant of Defendant Delta Plumbing, LLC, was driving a commercial truck in the course of employment west on U.S. Highway 76/378 outside of Columbia, South Carolina. David Joseph Rudd abandoned the commercial truck he was driving in the left lane of the roadway, without activating the truck's flashing hazard lights.

7. At the time and place described above, Plaintiff was traveling west on U.S. Highway 76/378 in the left lane. Because David Joseph Rudd left the vehicle in the roadway without flashing hazard lights, Plaintiff struck the rear of Defendants' vehicle.

8. As a direct result of the collision caused by David Joseph Rudd, Plaintiff suffered serious injuries including but not limited to his shoulder, wrist and clavicle, which caused him to suffer and endure pain and discomfort. Plaintiff has been compelled to expend significant sums of monies for medical treatments and for the services of doctors under whose care he has been, and under whose care, he may, upon information and belief, be compelled to be in the future and he may, upon information and belief, also be compelled to expend additional monies for further medical and doctors' treatments required in the future. Plaintiff endured pain and suffering which he otherwise would not have, and he has been otherwise injured and damaged.

9. As a result of this collision, Plaintiff has incurred actual damages, financial loss, consequential damages, all of which include, but are not limited to: past and future medical expenses, mental anguish, emotional distress, loss of enjoyment of life, pain and suffering, and impairment of health and bodily efficiency.

### **FOR A FIRST CAUSE OF ACTION** **(Negligence)**

10. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

11. David Joseph Rudd had a duty to operate his vehicle in a reasonable manner and was negligent, careless, reckless, grossly negligent, willful, and wanton in the following particulars:

- a. In parking on a controlled access highway;
- b. In failing to take reasonable efforts to move his vehicle off of the roadway;
- c. In failing to initiate flashing hazard lights to warn others of the danger he created;
- g. In failing to follow proper procedures for safe commercial vehicle operation;
- h. In failing to exercise the degree of care which a reasonably prudent person would have exercised under the same circumstances;
- i. In failing to have the requisite knowledge and skill regarding the procedures for safe vehicle operations; and
- j. In such other and further particulars as may be ascertained during the course of discovery or trial of this case.

12. All of which combined to proximately cause the damages suffered by the Plaintiff. Defendant Delta Plumbing is vicariously liable for the acts and/or omissions of Defendant David Joseph Rudd pursuant to the doctrine of respondeat superior. Plaintiff seeks actual and punitive damages under this cause of action.

**FOR A SECOND CAUSE OF ACTION**  
**(Negligence Per Se)**

13. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

14. David Joseph Rudd had a duty to operate his vehicle in compliance with state laws, rules, regulations, and guidelines designed to protect the health and safety of all persons traveling on the highway and failed to comply with state laws, rules, regulations, and guidelines.

15. David Joseph Rudd was negligent per se in violating the following statutes and regulations:

- a. S.C. Code Ann. § 56-5-730 which relates to required obedience to traffic laws;
- b. S.C. Code Ann. § 56-5-1220(B) ; which relates to the duties of a driver involved in an accident;
- c. S.C. Code Ann. 56-6-2530 which relates to parking on a controlled access highway;
- c. S.C. Code Ann. § 56-5-2510 which relates to parking on the roadway outside of a business or residential district;
- d. S.C. Code Ann. § 56-5-5090 which relates to flashing hazard lights ; and
- e. any other regulations which were violated as ascertained during the course of discovery.

16. These laws prescribe certain actions and define certain standards of conduct. Plaintiff is in the class of persons sought to be protected by these laws. Plaintiff's damages represent the type of harm the regulations were intended to prevent. To the extent Defendant David Joseph Rudd's conduct violated this regulation, such conduct constitutes negligence per se.

17. David Joseph Rudd's negligence per se proximately caused the damages suffered by the Plaintiff. Defendant Delta Plumbing, LLC. is vicariously liable for the acts and/or omissions of David Joseph Rudd pursuant to the doctrine of respondeat superior. Plaintiff seeks actual and punitive damages under this cause of action.

**FOR A THIRD CAUSE OF ACTION**  
**(Negligent Hiring, Training, Supervision and Retention as to Defendant Delta Plumbing LLC)**

18. Plaintiff restates and re-alleges each and every allegation as if repeated herein verbatim.

19. Defendant Delta Plumbing, LLC was negligent, careless, reckless, wanton, and grossly negligent at the time and place hereinabove mentioned in the following particulars:

- a. In failing to have in place policies and procedures to properly hire, train, supervise and/or retain its drivers, or if such procedures were in place, in failing to enforce them;
- b. In failing to have in place adequate policies and procedures to mandate compliance by its employees or independent contractors with regulations, policies, procedures and standards related to safely delivering its goods and/or services and, if such procedures were in place, in failing to enforce them;
- c. In failing to ensure that its employees or independent contractors had the proper training and experience to be able to be able to navigate the vehicle in a safe and effective manner;
- d. In entrusting a vehicle to Defendant David Joseph Rudd when Defendant Delta Plumbing, LLC knew or should have known that Defendant David Joseph Rudd could not navigate the vehicle in a safe and effective manner;
- e. In failing to ensure that Defendant David Joseph Rudd possessed the requisite skill and attention to maintain control of and ability to drive a vehicle for Defendant Delta Plumbing, LLC;
- f. In failing to ensure that Defendant David Joseph Rudd had sufficient, adequate, and current training, credentials, and skills to properly drive a company vehicle; and

- g. In generally failing to use the degree of care and caution that should have used under the same or similar circumstances.

20. That because of the acts and/or omissions of Defendant Delta Plumbing, LLC, as enumerated hereinabove which resulted both proximately and directly in the damages also set out above, the Plaintiff seeks actual damages against the Defendant as well as punitive damages.

### **JURY DEMAND**

24. Plaintiff demands that all causes of action that may be tried before a jury be so tried.

**WHEREFORE**, Plaintiff prays for judgment against Defendants in a sum sufficient to adequately compensate him for actual damages, prejudgment interest, post-judgment interest, the costs of this action, attorneys' fees and for such other and further relief as this court may deem just and proper.

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January 20, 2025

RECEIVED

Aug 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Marlon Kimpson, Circuit Court Judge

Case No.: 2019-CP-40-02129

Troyce Mack .....Appellant,

v.

Gregory Parker as Special Administrator for the Estate of David Joseph Rudd, and Delta  
Plumbing, LLC

.....Respondent.

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Plaintiff Troyce Mack, ("Appellant") hereby appeals the orders and decisions rendered during the trial of this matter, held from March 10, 2025 – March 13, 2025. Judgment on the jury verdict was entered by the Court on March 13, 2025. The Court's Order denying post trial motions was entered on July 7, 2025. Appellant appeals the following:

1. Order granting Respondent's pre-trial motion to allow evidence of Appellant's traffic citation.
2. Decision by the Court to allow evidence of Appellant's traffic citation and conviction, and to charge the jury regarding the Appellant's traffic citation and conviction.
3. Decision by the Court allowing evidence from Respondents' expert that was withheld by counsel for Respondents until the day it was shown to the jury.
4. Decision by the Court excluding character evidence and impeachment evidence of Meghan Stevens, a witness that testified at trial on behalf of Respondents.
5. Decision by the Court to deny a new trial after the Jury refused to award damages for pain and suffering and permanent disfigurement.

Respectfully Submitted,

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August 6, 2025

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Attorneys for Respondent

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Feb 03 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Milton Kimpson, Circuit Court Judge

Case No.: 2019-CP-40-02129  
Appellate Case No.: 2025-001564

Troyce Mack.....Appellant,

v.

Gregory Parker as Special Administrator for the Estate of David  
Joseph Rudd, and Delta Plumbing, LLC.....Respondents.

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**CERTIFICATE OF COUNSEL**

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Pursuant to Rule 210, SCAR, I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

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