

RECEIVED

Nov 07 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas, Twelfth Judicial Circuit

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-000303
Civil Action No. 2017-CP-21-01375

April Jones, ...Respondent,

v.

Tim Ringer, individually and as employee/agent of Wal-Mart Stores Inc. d/b/a Wal-Mart Store #630, Wal-Mart Stores, Inc, and Wal-Mart Stores East, L.P., ...Defendants,

of which

Walmart Stores, Inc. and Wal-Mart Stores East, L.P. are the.....Appellants.

RECORD ON APPEAL
VOLUME VI

Nashiba Boyd, SC Bar No. 78376
Robert C. Blain, SC Bar No. 100024
Gaffney Lewis, LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
(803) 790-8838 (telephone)
nboyd@gaффneylewis.com
rblain@gaффneylewis.com

Miles E. Coleman, S.C. Bar No. 78264
Abigail L. Wood, S.C. Bar No. 105426
NELSON MULLINS RILEY &
SCARBOROUGH LLP
2 W. Washington St. / Fourth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300 (telephone)
miles.coleman@nelsonmullins.com
abigail.wood@nelsonmullins.com

Attorneys for Appellants Wal-Mart Stores, Inc. and Wal-Mart Stores East, L.P.

George M. Hearn, SC Bar No. 02889
Hearn & Hearn, P.A.
1411 First Avenue
Conway, SC 25926
(843) 248-3172
ghearn@sccoast.net

Lane Douglas Jefferies, SC Bar No.101764
Roy T. Willey, IV, SC Bar No. 101010
Eric Mare Poulin, SC Bar No. 100209
Poulin, Willey, Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888
lane@akimlawfirm.com
roy@akimlawfirm.com
eric@akimlawfirm.com

Attorneys for Respondent April Jones

INDEX

VOLUME I

Orders

District Court Remand Order, filed November 7, 2017.....	1
Order Denying Motion for Continuance, filed May 13, 2019	11
Order Granting Motion to Dismiss Appeal, filed July 31, 2019.....	13
Order Denying Petition for Rehearing, filed November 14, 2019.....	17
Order Denying Petition for Certiorari, filed June 24, 2020	19
Form 4 Order Denying Motion for Summary Judgment, filed August 24, 2020	20
Form 4 Verdict Form, filed November 15, 2021	23
Form 4 Order Denying Post-Trial Motion, filed February 15, 2022	26

Pleadings

Complaint, filed May 22, 2017	29
Notice of Removal, filed August 31, 2017	35
Amended Complaint, filed January 16, 2018	44
Answer to Amended Complaint, filed March 26, 2018.....	50

Motions and Memoranda

Defendants' Motion for Continuance and Entry of Scheduling Order, filed April 24, 2019	59
Defendants' Motion for Summary Judgment (with Exhibits), filed May 17, 2019.....	65
Notice of Appeal, filed May 23, 2019	94
Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment (with exhibits – <i>see</i> Record at p. 3479 for Compact Disc containing Ex. H), filed August 10, 2020.....	96

VOLUME II

Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment
(with exhibits – *see* Record at p. 3479 for Compact Disc containing Ex. H), filed August 10,
2020 (Continued) 428

Defendants' Motion for Summary Judgment (with exhibits), filed October 27, 2021 558

VOLUME III

Defendants' Motion in Limine to Exclude Photographic Evidence and for Sanctions
(with exhibits – *see* Record at p. 3479 for Compact Disc containing Ex. B), filed October 27,
2021 924

Plaintiff's Memorandum in Opposition to Defendants' Motion in Limine to Exclude
Photographic Evidence and for Sanctions (with exhibits), filed November 5, 2021 1130

VOLUME IV

Plaintiff's Memorandum in Opposition to Defendants' Motion in Limine to Exclude
Photographic Evidence and for Sanctions (with exhibits), filed November 5, 2021
(Continued) 1395

Defendants' Motion and Memorandum in Support of Motion for Judgment Notwithstanding the
Verdict and for a New Trial, filed November 22, 2021 1517

Plaintiff's Response in Opposition to Defendants' Motion for Judgment Notwithstanding the
Verdict and for a New Trial, filed February 10, 2022 1681

VOLUME V

Plaintiff's Response in Opposition to Defendants' Motion for Judgment Notwithstanding the
Verdict and for a New Trial (with exhibits), filed February 10, 2022 (Continued) 1829

VOLUME VI

Plaintiff's Response in Opposition to Defendants' Motion for Judgment Notwithstanding the
Verdict and for a New Trial (with exhibits), filed February 10, 2022 (Continued) 2271

Notice of Appeal (with attachments), filed March 16, 2022. 2527

Transcripts

Pretrial Hearing Transcript, dated November 5, 2021 2546

Trial Transcript, dated November 8, 2021—November 12, 2021	2648
Testimony	

Dr. Keith Player	
Direct Examination by Mr. Willey	2732
Cross-Examination by Mr. Blain	2751

VOLUME VII

Trial Transcript, dated November 8, 2021—November 12, 2021 (Continued).....	2755

Dr. Keith Player	
Cross-Examination by Mr. Blain (Continued).....	2755
Redirect Examination by Mr. Willey.....	2772

Tim Ringer	
Direct Examination by Mr. Willey	2795
Cross-Examination by Mr. Blain	2851
Redirect Examination by Mr. Willey.....	2885

Ayesha Cooke-Simmons	
Direct Examination by Mr. Willey	2906
Cross-Examination by Mr. Blain	2914
Redirect Examination by Mr. Willey.....	2917

Virginia Wright	
Direct Examination by Mr. Willey	2920
Cross-Examination by Mr. Boyd	2934
Redirect Examination by Mr. Willey.....	2937

Allen Pavlovich	
Direct Examination by Mr. Willey	2940
Cross-Examination by Mr. Boyd	2957
Redirect Examination by Mr. Willey.....	2962

Christian Jones	
Direct Examination Mr. Jefferies.....	2966
Cross-Examination by Mr. Blain	2978

Isaac Jones	
Direct Examination Mr. Jefferies.....	2981

Chelsea Riley	
Direct Examination Mr. Jefferies.....	2993

Jason Jones	

Direct Examination Mr. Jefferies.....	3006
Brooke Jones	
Direct Examination Mr. Jefferies.....	3014
April Jones	
Direct Examination Mr. Jefferies.....	3035
Cross-Examination by Mr. Boyd	3135
Redirect Examination by Mr. Jefferies	3190
 <u>VOLUME VIII</u>	
Trial Transcript, dated November 8, 2021—November 12, 2021 (Continued).....	3223
Kevin Lane	
Direct Examination Mr. Boyd.....	3233
Cross-Examination by Mr. Willey	3248
Redirect Examination by Mr. Boyd.....	3250
Dr. John Ross	
Direct Examination Mr. Blain.....	3252
Voir Dire Examination by Mr. Jefferies	3261
Continuing Direct Examination by Mr. Blain.....	3264
Cross-Examination by Mr. Jefferies	3313
Redirect Examination by Mr. Blain.....	3353
Tim Ringer	
Direct Examination by Mr. Blain.....	3361
Cross-Examination by Mr. Willey	3368
Proffered Testimony by Mr. Willey.....	3369
Continued Cross-Examination by Mr. Willey	3374
Jury Charge	3456
Verdict.....	3474
Motions	3476
 <u>Other Materials</u>	
Plaintiff’s Trial Exhibit 3: Compact Disc/Video Clips	
.....	3479
Compact Disc Videos of May 15, 2019 Inspection	
.....	3479
Certificate of Counsel	3480

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF FLORENCE

4 -----x

5 APRIL JONES,)

6 Plaintiff,)

7 vs.)

Transcript of Record
2017-CP-21-01375

8 TIM RINGER, WALMART STORE)

9 NO. 630, WALMART STORES,)

INC., and WALMART STORES)

10 EAST, LP,)

11 Defendants.)

-----x

12 Friday, November 11, 2021

13 JURY TRIAL - VOLUME 4 of 4

14 B E F O R E:

15 The Honorable Michael G. Nettles, Presiding Judge; and jury.

16 A P P E A R A N C E S:

17 Roy T. Willey, IV, Esq.

Lane Jefferies, Esq.

18 Kenneth Thomas, Esq.

Eric Poulin, Esq.

19 Vanisa Siler, Esq.

Attorneys for the Plaintiff

20 Nashiba Boyd, Esq.

21 Robert Blain, Esq.

Regina Lewis, Esq.

22 Attorneys for Defendants

23
24 Recorded by: Court Monitor/DCRP

25 Transcribed by: Bobbi Fisher, RPR

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
MATTERS OF LAW/MOTIONS	579
PLAINTIFF RESTS	584
KEVIN LANE	
Direct Examination by Ms. Boyd	586
Cross-Examination by Mr. Willey	600
Redirect Examination by Ms. Boyd	602
JOHN ROSS, M.D.	
Direct Examination by Mr. Blain	604
Voir Dire Examination by Mr. Jefferies	613
Continuing Direct by Mr. Blain	616
Cross-Examination by Mr. Jefferies	665
Redirect Examination by Mr. Blain	705
TIM RINGER	
Direct Examination by Mr. Blain	713
Cross-Examination by Mr. Willey	720
Proffered Testimony by Mr. Willey	721
Continued Cross-Examination by Mr. Willey	726
DEFENDANT RESTS	728
MATTERS OF LAW/MOTIONS	729
CLOSING ARGUMENT by Mr. Willey	742
CLOSING ARGUMENT by Mr. Blain	779
REPLY CLOSING ARGUMENT by Mr. Willey	801
JURY CHARGE	808

I N D E X (Continued)

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
VERDICT	826
MATTERS OF LAW/MOTIONS	828

E X H I B I T S(Exhibits on file in the Clerk's Office.)

<u>EXHIBIT</u>	<u>ID.</u>	<u>ADM.</u>
P-18 Dr. Ross Invoice/Opinions	703	703
P-19 Photograph	724	--
P-20 Photograph	724	--
P-21 Photograph	724	--
P-22 Photograph	724	--
P-23 Photograph	724	--
P-24 Photograph	724	--
P-25 Photograph	724	--
P-26 Photograph	724	--
D-2 Medical Records	618	--

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:37 a.m.)

MATTERS OF LAW/MOTIONS

THE COURT: I recognize the plaintiff. There was some indication there might be another witness. Is there another witness?

MR. WILLEY: Your Honor, no, there will not be. We have reached an agreement. We're not going to call our expert and they're not going to call theirs. I have one motion before I rest and then we will rest.

THE COURT: Okay. And I think -- what I'm going to -- I'm going to allow you to rest on the record, but let's take up the -- do y'all have an objection to taking up the motions at this juncture?

MR. WILLEY: What motions is that?

THE COURT: We have -- any additional motions that you have.

MR. WILLEY: Oh, no.

THE COURT: So we don't have to bring the jury out --

MR. WILLEY: Yeah, no --

THE COURT: -- let you rest --

MR. WILLEY: I'll do it now. That's what I was suggesting, since we already did the other motions.

THE COURT: Okay. Very good.

MR. WILLEY: Okay. And, Your Honor, it's a motion. As

1 you'll recall at the pre-trial hearing, there was a motion
2 filed which -- with regard to some discovery that was not
3 produced, and there were ten items that were requested in
4 written discovery during the course of Mr. Ringer's deposition
5 where he indicated that they would be produced.

6 They were never produced. As you'll recall, we filed a
7 motion for spoliation remedy as to those items as well. Your
8 Honor indicated that you thought motion to compel would be
9 proper, so I made an oral motion to compel, agreeing to that,
10 indicated that they should produce what they have.

11 They did produce some of those items. They produced the
12 schematic of camera locations, one missing video, which was
13 cited in the deposition, a copy of Video 3, all of which are
14 now in evidence.

15 What they did not produce is a record of what outside
16 vendors brought items into the store during April, May, and
17 June of 2015; log of incidents and accidents, other similar
18 incidents; personnel records, indicating potential respondents
19 to the Code White; a list of department managers during April,
20 May, and June 2015; the training manual for handling pallets.
21 They produced the department safety guidelines, of course,
22 which we have; the monthly safety bulletins and an
23 organizational chart for the store.

24 And so, pursuant to the rules of discovery at this time,
25 we would move for sanctions based on failure to produce those

1 items. I will tell you that the response from counsel was
2 that counsel isn't in possession of these items but, of
3 course, that's not what the rules of discovery require. It
4 requires the defendant to produce items in its possession,
5 custody, and control, and I can't imagine how they could
6 produce the camera schematic, they wouldn't be able to produce
7 as to organizational chart, which, among things, would show us
8 who was on this safety team, which we haven't been able to
9 ascertain from any other evidence, either written or oral.

10 So that's -- that's the motion at this time.

11 THE COURT: Be glad to hear from defense.

12 MS. BOYD: Your Honor, at the pre-trial hearing, Your
13 Honor indicated you asked specifically of defense counsel did
14 we have any of these things, and I indicated to you that we
15 had some of them, not all of those things. And you asked --
16 you ordered us to produce the things we had, and that is what
17 we did.

18 I have in my possession previously already requested from
19 Walmart the items that we produced. Some of the items that
20 Plaintiff's counsel asked for during that deposition weren't
21 things that they had previously asked for, and so I did not
22 have it in my possession.

23 As far as the prior incidents, our discovery responses
24 indicated that there were no such incidents. We did respond
25 to that, so there was nothing additional to produce because we

1 advised that there were no similar incidents that occurred in
2 that store. So we had been responsive. Your Honor, we gave
3 them everything the Court ordered us to give that was in
4 defense counsel's possession, is how the Court ordered it.
5 And so that's what we produced, given that it was two days
6 before trial.

7 THE COURT: All right. Your motion is noted. My ruling
8 stands with regard to spoliation.

9 I do want to mention something else. Sheila Hanna has
10 tested positive for COVID, and that calls upon us to activate
11 one of the alternate jurors. There seems to be a split on the
12 authority -- I don't think that there is definitive authority
13 as to whether or not you pick the first alternate or whether
14 or not you pick randomly.

15 If we can't agree that we take the first one, then I
16 think we need to randomly select between the two. What is the
17 plaintiff's position?

18 MR. WILLEY: In my experience, it's always been a random
19 selection between the two.

20 THE COURT: Is that what you want?

21 MR. WILLEY: Yes.

22 THE COURT: Okay. Is what that you want?

23 MS. BOYD: We'll agree to the random selection, Your
24 Honor.

25 THE COURT: Okay. Who has got a coin?

1 MS. BOYD: I have one, Your Honor.

2 MR. WILLEY: These days you have to flip a debit card.

3 THE COURT: There you go. That's true.

4 I'll let you flip it. If it's heads, we're going -- and
5 y'all remember this. If it's heads, we're going to pick the
6 first one. If it's tails, we're going to pick the second one.

7 MR. WILLEY: And the first one was?

8 THE COURT: All right. So we pick Gracie S. Hannah. Is
9 everybody in agreement?

10 MR. WILLEY: Yes, sir.

11 THE COURT: Gracie S. Hannah.

12 Anything further?

13 MR. BLAIN: Your Honor, from the defense case, we intend
14 to recall Mr. Tim Ringer. That's Under Rule 611 of the Rules
15 of Evidence, we think --

16 THE COURT: You can do that.

17 MR. BLAIN: Okay, okay. Thank you. We just want to
18 alert the clerk of that.

19 THE COURT: All right. How many other witnesses do you
20 have?

21 MR. BLAIN: Including Mr. Ringer, there would be three
22 witnesses for today.

23 THE COURT: Okay. Very good. All right. We're ready
24 for the jury.

25 All right. Everybody is entitled to the necessary time

1 that -- you know, we're here on Friday. Let's move with speed
2 and dispatch and cut down on the repetitiveness. How about
3 that?

4 MR. WILLEY: I'm supposed to be in a wedding in Asheville
5 by tonight, so I'm with you, Your Honor.

6 THE COURT: All right.

7 (The jury entered the courtroom at 9:45 a.m.)

8 THE COURT: Mr. Foreman, ladies and gentlemen of the
9 jury, I did want to inform you that Ms. Sheila Hanna, the
10 first juror, has tested positive for COVID. I think they
11 indicated that she had, like, symptoms very similar to a sinus
12 infection. They tested her and she did test positive for
13 COVID, and we're going to -- that requires that we activate
14 one of alternate jurors. Alternate jurors are Montes --
15 Antonio Montes and Gracie Hannah. We're required to select
16 randomly. We have done that. And Gracie S. Hannah, would be
17 activated to an active juror. So pay very close attention.

18 Ladies and gentlemen of the jury, the plaintiff has --
19 I'll recognize them at this juncture.

20 MR. WILLEY: Your Honor, ladies and gentlemen of the
21 jury, the plaintiff rests.

22 PLAINTIFF RESTS

23 THE COURT: All right. Ladies and gentlemen of the jury,
24 the plaintiff has rested in their case in chief, and the now
25 the defense has an opportunity to present evidence. Pay very

1 close attention.

2 Defense, you're recognized.

3 MS. BOYD: Thank you, Your Honor. The defense would call
4 Kevin Lane.

5 THE COURT: Yes. I hope you-all got to enjoy Veterans
6 Day and didn't have to go back to work.

7 Yes, sir, if you could approach the Bible, turn around,
8 face me. Place your left hand on the Bible and raise your
9 right hand as the clerk administers the oath.

10 KEVIN LANE,
11 the witness, after having been duly sworn, was examined and
12 testified to as follows:

13 THE CLERK: Please be seated.

14 THE COURT: Mr. Lane, come around and watch yourself.
15 That's a slanted ramp there. Have a seat in the witness
16 chair.

17 THE WITNESS: Thank you.

18 THE COURT: Pull up real close to that microphone. I'm
19 going to ask that you speak loudly, clearly, and slowly in
20 order that we can hear everything that you have to say. And
21 let's start -- and if you feel comfortable, you can take off
22 your mask so we can hear you better.

23 THE WITNESS: I'm fine.

24 THE COURT: And we'll start with your full name.

25 THE WITNESS: My name is Kevin Edward Lane.

1 THE COURT: Very good.

2 MS. BOYD: May it please the Court.

3 DIRECT EXAMINATION

4 BY MS. BOYD:

5 Q Mr. Lane, where are you from?

6 A Latta, L-a-t-t-a, South Carolina. Right down the road.

7 Q And how long have you worked for Walmart?

8 A Twenty-one years.

9 Q And walk me through your employment with Walmart. What
10 did you start off as and what are you now?

11 A I started basically as an hourly associate in the dairy
12 department. I worked my way up.

13 The next job after that was asset protection manager.
14 Most people know it as loss prevention. Loss prevention and
15 safety manager. Did that for six years.

16 Became a co-manager after that. Did that for four years.
17 And then got promoted to a store manager back in 2015 and been
18 doing that ever since.

19 Q Okay. And where are you a store manager? Which store?

20 A Now currently at Myrtle Beach, South Carolina.

21 Q But, in 2015, you were co-manager of the Beltline Drive
22 store in Florence?

23 A That's correct. Beltline Drive.

24 Q And what were your duties as co-manager?

25 A As co-manager, basically it's like a store manager but

1 you are training to be a store manager. So my duties included
2 everything that a store manager would do such as tour the
3 store every morning, check schedules, deal with associate
4 issues, check merchandising, zoning, safety issues. The back
5 of the building, is it clean? Customer issues. I mean, it
6 goes on and on. Profit and loss. Cash office. Loss
7 prevention. Open doors for customers that call in dealing
8 with their issues.

9 The main thing, though, is just taking care of the
10 customers and the associates.

11 **Q** Okay. So I think you said that a part of your duties,
12 you would regularly inspect the store?

13 **A** Every day.

14 **Q** Please describe the type of inspections that you would
15 conduct in the store every day.

16 **A** Well, as we walk into the facility, we're looking down.
17 Because our tile, you know, it can create hazards if it's wet.
18 If a rug's buckled up, if it's raining. Basically just as you
19 enter the store, make sure everything's safe and appropriate
20 for a customer and associate to walk into the store.

21 And as I walk in, you know, of course we check produce.
22 Is it clean? Is it fresh? We always looking underneath
23 tables, on the floor, around end caps. Are shelves leaning?
24 Are shelves falling? Is there merchandise falling? Are the
25 pallets in the middle of the aisle, are they stable? Is the

merchandise on the pallets stable?

Talking to the associates, asking how their day is going. Seeing what work, you know, is left to be done for each shift. And keeping the job going from third shift to first shift to second shift. Overall, assess -- you know, assess the store. See where we need to go help at. But always, you know, looking and seeing is there any issues that, you know, need to be addressed immediately and prioritize your day and go from there.

Q And you indicated that these types of inspections were done in the morning. Were they done any other time throughout the day?

A Basically all day. As we're walking, we're looking. As we're walking and talking, we're looking. If we're with a customer, we're looking. Even as our sales, because we do so much walking, you know, it's safe -- we have to be safe as well because, you know, there's -- you never know.

So whenever we're on the floor, there's never a minute where you're not paying attention.

Q Okay. And so you will always check in looking around, and you relied on your associates to inspect as well?

A We empower our associates to take ownership of their areas, and we hold accountability to when they do not, such as a spill not guarded, walking by a spill and not paying attention to it. We address those issues.

1 Q Okay.

2 A So they know to take ownership.

3 Q And so, to your knowledge, on June 26, 2015, did you have
4 any issues with associates inspecting their areas that day?

5 A No, ma'am. We did not.

6 Q Do you routinely have issues with associates not
7 conducting their safety sweeps or safety checks?

8 A No, ma'am. We do not.

9 Q And do you recall specifically inspecting the store on
10 June 26, 2015?

11 A Yes, I do.

12 Q So you would have walked around the entire store?

13 A I would have walked the entire store, being that I was
14 the senior manager in the store that day, and I'm responsible
15 for the entire store when the store manager is not in the
16 building.

17 Q Okay. And do you recall this incident involving
18 Ms. Jones?

19 A Yes, I recall the incident.

20 Q Where did you first encounter her?

21 A Encountered Ms. Jones up at the service desk. Customer
22 service.

23 Q And what do you remember about your encounter with
24 Ms. Jones?

25 A Well, as Ms. Jones was at the service desk, the first

1 thing I remember her mentioning to me was she stepped on a
2 nail in our store. And then, you know, we began to talk. And
3 we sat her in a chair over by the wall, up against the service
4 desk, and we began discussing first was she okay and did she
5 need an ambulance.

6 Q Okay. So you recall asking her if she needed an
7 ambulance?

8 A Yes, I did ask.

9 Q And when she told you that she stepped on a nail, did you
10 ask to see the nail?

11 A Yes. She showed me the nail.

12 Q Did you ask to take the nail from her?

13 A I asked could I have the nail so we could put it with our
14 records, and she stated that she wanted to keep the nail.
15 And, at that point, I don't press no further.

16 Q Okay. So you only asked her to keep it once?

17 A Yes, ma'am.

18 Q Okay. Do you recall what the nail looked like?

19 A It was approximately an inch long. It had a round head
20 on the top of it. Kind of unusual nail.

21 Q Okay. Had you seen this kind of nail before in the
22 store?

23 A Not in the store.

24 Q Had you seen this type of nail before, period?

25 A In construction work, like a roofing nail.

1 Q Did she show you her shoe?

2 A Yes, she did.

3 Q Do you recall anything particular about her shoe?

4 A It was a flip-flop. A rubber sole flip-flop.

5 Q Did you see the hole in her shoe?

6 A When I picked the shoe up and turned it upside down, I
7 could see an impression of the nail on the sole, and I could
8 tell where the nail penetrated through the sole.

9 Q Okay. Did you provide Ms. Jones any medical assistance
10 that day?

11 A Yes, I did.

12 Q What kind of medical assistance did you provide?

13 A In our first aid kit, we have an antiseptic wipe. I took
14 that out. I made sure her foot was clean from where the nail
15 had went in or punctured her foot. I then took paper towels,
16 of course, and wiped her shoe out where there was some blood
17 inside of her shoe. Then I propped her foot up, I think, on
18 my knee or in my hand. I kind of grabbed her foot to kind of
19 look at it and pull it up. And I took the wipes and started
20 wiping the bottom of her foot off to try to get it to quit
21 bleeding at the time, in which we did get it to quit bleeding.

22 I made sure I had on gloves, and I sanitized her foot.
23 Then put a bandage on it. And, from that point, it wasn't
24 bleeding anymore.

25 Q Do you recall asking any other associates for the first

1 aid kit?

2 **A** Our customer service manager Charles was up front, and I
3 believe he provided it to me from the service desk.

4 **Q** Okay. So I'm going to show you this video that's already
5 been marked into evidence. And it is the customer service
6 area; correct?

7 **A** That's correct.

8 **Q** Can you identify yourself on this video?

9 **A** I can.

10 **Q** Where are you?

11 **A** The top left. Blue shirt.

12 **Q** Okay. And can you identify Ms. Jones?

13 **A** Right beside me in the white shirt.

14 **Q** Okay. (Video plays.) Did you see what just happened?
15 What happened?

16 **A** First aid kit was placed on the counter.

17 **Q** Okay. Is that where you got the gloves that you used to
18 assist Ms. Jones?

19 **A** That's where the gloves came from.

20 **Q** Okay. And that's where you got the antiseptic wipe that
21 you used on her foot?

22 **A** That's where I got the antiseptic from.

23 **Q** I want to fast-forward a little bit to show you actually
24 interacting, per your testimony, with Ms. Jones while she's in
25 the chair.

1 (Video plays.) Do you see yourself?

2 **A** I do.

3 **Q** What are you doing?

4 **A** I'm bending down now at her foot and having clear
5 communication about what her needs are at that time.

6 **Q** Okay. (Video plays.) And what are you doing now in the
7 video?

8 **A** I'm placing either a bandage or a Band-aid on the bottom
9 of her foot.

10 **Q** Okay.

11 **A** You can see her foot up in my hand.

12 **Q** Okay. So it's your testimony that you wiped off her foot
13 with an antiseptic wipe and you applied a bandage or a
14 Band-aid to her foot.

15 **A** Yes, that's correct.

16 **Q** Okay. And while you were interacting with Ms. Jones and
17 her foot, did you get a clear look at her foot?

18 **A** Yes, I did.

19 **Q** What did it look like?

20 **A** It had a few sores on the bottom.

21 **Q** Okay.

22 **A** And you could see the little tiny puncture wound from the
23 nail.

24 **Q** So you saw a tiny puncture wound from the nail?

25 **A** Yes.

1 Q And you indicated that you did offer EMS services to
2 Ms. Jones?

3 A Yes, I did.

4 Q And that she declined?

5 A She declined.

6 Q Did she tell you anything else in particular, like, why
7 she declined?

8 A Yes. Ms. Jones stated she was a diabetic and she would
9 rather go see her doctor.

10 Q Okay. And without her telling you that, you would have
11 had to way of knowing that.

12 A I would not have.

13 Q Okay. And did you report the incident to the store, to
14 corporate store or to your store manager, Mr. Ringer, in some
15 way?

16 A Yes. I called Tim right after this incident to explain
17 to him what happened.

18 Q Okay.

19 A We also keyed it in to our internal service, where it
20 goes to our claims management.

21 Q And did you key it in?

22 A Ayesha Cooke keyed it in.

23 Q Okay. And who is Ayesha Cooke?

24 A Ayesha Cooke at the time was an assistant manager over
25 the front end.

1 Q Okay. And was it routine for you to ask an assistant
2 manager to assist with completing paperwork?

3 A Yes. That's part of the duties.

4 Q Okay. And do you recall Ms. Jones specifically asking
5 you for a copy of the incident report?

6 A When we were looking at her foot, she made the statement
7 she would like a copy of it.

8 Q Okay.

9 A It wasn't really directed toward me, but she did say it.

10 Q Okay. So we talked about the fact that you're in the
11 store all day and you do some safety inspections and visual
12 sweeps. Have you ever found things on the floor in the store
13 when you do those types of inspections?

14 A Oh, yeah, all the time.

15 Q What kind of things have you found on the floor?

16 A Well, the most popular is plastic.

17 Q Okay.

18 A Paper towels, Kleenex, bubble gum, car keys, cellphones,
19 dimes, pennies, hair bows.

20 Q Have you ever found a nail like the one Ms. Jones stepped
21 on on June 26, 2015?

22 A No, I have never.

23 Q Have you ever found any type of nail on the floor in
24 Walmart?

25 A I have never.

1 Q Has any customers ever reported to you or to a manager in
2 your presence that they found a nail like the one Ms. Jones
3 stepped on, on June 26?

4 A No, never.

5 Q Have you ever had customers report issues with nails on
6 the floor ever in the store?

7 A No, never.

8 Q Were you aware that there were nails on the floor on June
9 26, 2015?

10 A I was not aware.

11 Q Okay. Have you ever seen wooden pallets in the store at
12 Walmart?

13 A Yeah, I have seen them.

14 Q And what kind of pallets do you typically have in
15 Walmart?

16 A Well, we got three or four different types. Plastic.
17 Two types of wood: A blue color, heavy -- heavy duty. A red
18 color heavy duty. And then just your normal wooden
19 lightweight pallet.

20 Q Okay. And how do you use these different types of
21 pallets in the store?

22 A Well, in your main aisles, you use your plastic pallets
23 unless the wooden pallet goes on top of the plastic pallet.
24 And different type merchandise already comes in on those
25 pallets.

1 Q Okay.

2 A Ready to be featured to the floor, so it's quick access.
3 You just pull it off the truck and merchandise it.

4 Q Okay. So it's merchandise that comes already on the
5 pallet.

6 A Yes, that's correct.

7 Q And I think you said featured to. They're featured
8 products?

9 A Features, uh-huh.

10 Q Would that be the same as a PDQ?

11 A PDQ is, like, cardboard and it's already got items in it,
12 and it's real neat and stackable. You can just reach your
13 hand in and grab the merchandise as a customer. PDQ stands
14 for pretty darn quick.

15 Q Okay. So those are displays that are pre-done and you
16 just drop them on the floor?

17 A Yeah, pre-done. It's already, like, priced. You just
18 cut the plastic off, put it out neatly and appropriately.

19 Q Okay. Are those on pallets?

20 A Yes. That's a pallet.

21 Q Okay. And what do you do when you get these types of
22 products in? Do you look at them in any way?

23 A Make sure they're stable. Make sure the pallet is not
24 broken. If it is broken, you have to transfer it off on to
25 another pallet that's in excellent condition. You wouldn't

1 just take something broken up to the floor because, then, it
2 could fall on a customer.

3 Q Okay. So you wouldn't put a broken pallet on the floor.

4 A No.

5 Q And you would specifically look to ensure that the
6 pallets aren't broken when they come in as a display?

7 A Yes.

8 Q Okay. And what kind of displays are usually on these
9 kind of pallets?

10 A On the wooden pallets?

11 Q Yes.

12 A Potato chips, cookies, some apparel. Nothing really
13 heavy. Just lightweight items.

14 Q Okay. And when that feature is done or when it's empty,
15 what do you do with the display?

16 A Well, the cardboard is broken down, placed in our baler.
17 Then we take the pallet and stage it with our pallet holding,
18 and return all those pallets back to our distribution center.

19 Q Would you do that on the floor of the store?

20 A No, no, never.

21 Q Where would you do that?

22 A You would pull the empty feature off the floor, to the
23 back room. And you would do it appropriately in the back room
24 behind the wall.

25 Q Okay. So have you ever taken the cardboard off of a

1 display, separated from a pallet?

2 **A** Yes.

3 **Q** Okay. When you normally do that, are the pallets still
4 intact?

5 **A** Yes.

6 **Q** Have you ever witnessed a pallet not still be intact?

7 **A** Oh, yeah.

8 **Q** And when you find that it's not intact, what do you
9 normally see about the pallet?

10 **A** Well, basically where the braces are in the middle and on
11 the sides and the wood comes across. If they're weak, then
12 those break. Just wood -- it's wood everywhere.

13 **Q** Okay.

14 **A** So you have to clean the wood up and take the pallet and
15 put it outside with the holding area.

16 **Q** Okay. And you usually find those in the back room when
17 you take the cardboard off or had it broken on the floor?

18 **A** Not on the floor. Sometimes when you receive them off
19 trucks, they're already broken. If you're in the back room,
20 you place something heavy on a weakened pallet, it will break
21 it. But it wouldn't go to the sales floor.

22 **Q** So when you have seen these broken pallets, have you ever
23 seen the nails that come out of the broken pallets?

24 **A** No, ma'am.

25 **Q** Okay. You don't see nails that usually fall out?

1 **A** No, ma'am.

2 **Q** So I just want to be clear. Have you ever seen a nail
3 like the one Ms. Jones says she stepped on in the store in the
4 front or the back of the store?

5 **A** No, I have not.

6 **Q** Have you ever seen a roofing nail fall out of a pallet in
7 your 21 years at Walmart?

8 **A** No, I have not.

9 MS. BOYD: I have no further questions for this witness,
10 Your Honor.

11 THE COURT: Cross-examination?

12 MR. WILLEY: Could we approach?

13 THE COURT: Yes.

14 BENCH CONFERENCE

15 (A bench conference was held off the record and outside the
16 hearing of the jury and others.)

17 (Open court resumes as follows:)

18 CROSS-EXAMINATION

19 BY MR. WILLEY:

20 **Q** Mr. Lane, you just indicated that, in your 21 years at
21 Walmart, you have never seen this type of nail in front of the
22 store or back of the store. Well, Walmart sells roofing
23 nails, don't they?

24 **A** We do in hardware, yes, sir.

25 **Q** All right. So now you have seen them in the front of the

1 store?

2 **A** No, sir, not in front of the store.

3 **Q** You have never seen them in the hardware section?

4 **A** That's in the back of the store.

5 **Q** Okay. And you also just said that, in your 21 years at
6 Walmart, you have never seen a nail fall out of a pallet;
7 right?

8 **A** Not fall out of a pallet, no, sir.

9 **Q** And isn't -- if you had seen a nail fall out of a pallet,
10 you would have picked it up; right?

11 **A** Yes, I would have.

12 **Q** If you saw a nail on the floor of Walmart, conducting a
13 safety sweep, you would have picked it up; right?

14 **A** Yes, I would have.

15 **Q** And if your associates, who were on duty on June 26,
16 2015, had conducted their safety sweeps and saw a nail on the
17 floor, you would have expected them to pick it up; right?

18 **A** Yes, I would have.

19 **Q** And in the six hours' time before the time that Ms. Jones
20 stepped on this nail, if we had video of the area where
21 Ms. Jones walked those six hours, you would have expected to
22 see three, maybe four, safety sweeps take place in that area;
23 right?

24 **A** Up to three or four, yes.

25 **Q** Okay. And we don't have that video, do we?

1 **A** We do not.

2 **Q** Mr. Lane, this nail is not a brand new nail, is it?

3 **A** No, it's not.

4 **Q** It's a rusty nail?

5 **A** Yes, it is.

6 **Q** And it was a rusty nail on the day that Ms. Jones showed
7 it to you in customer service?

8 **A** Yes, it was.

9 **Q** Thank you, sir.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MS. BOYD:

13 **Q** Mr. Lane, based on your previous testimony, you would
14 have walked through the store both before and after Ms. Jones
15 allegedly stepped on the nail in the store; correct?

16 **A** Yes, that's correct.

17 **Q** And you would have noticed if associates had not been
18 conducting their safety sweeps; correct?

19 **A** Yes.

20 **Q** And that's something that you would recall debris in the
21 area or some type of trash in the area; correct?

22 **A** Yes, that's correct.

23 **Q** Do you recall having to pick up anything off the floor or
24 reprimand an associate for not doing that?

25 **A** No.

1 Q So you have no reason to believe that associates had not
2 conducted their safety sweeps on June 26, 2015?

3 A Yeah, I have no reason to believe they did not.

4 Q And you have seen the videos of that day of the incident;
5 correct?

6 A Yes, I have.

7 Q Was there anything about the store that led you to
8 believe that safety sweeps had not been conducted?

9 A No. On video, everything looked great.

10 Q Including the floors?

11 A Including the floors.

12 Q In the action alley?

13 A In the action alley.

14 Q And that's your understanding where Ms. Jones stepped --
15 allegedly stepped on the nail; correct?

16 A That's correct.

17 Q I have no further questions for you. Thank you,
18 Mr. Lane.

19 THE COURT: You may step down.

20 Any objection to this witness being excused?

21 MR. WILLEY: Not from the plaintiff.

22 THE COURT: You're free to leave. Thank you, sir.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 MR. BLAIN: The defendant would call Dr. John Ross.

1 THE COURT: Dr. Ross, if you could come forward. I'm
2 going to ask, if you could, to come forward towards the
3 bailiff and turn around and face this direction. Place your
4 left hand on the Bible and raise your right hand as the clerk
5 administers the oath.

6 JOHN ROSS, SR., M.D.,
7 the witness, after having been duly sworn, was examined and
8 testified to as follows:

9 THE COURT: Dr. Ross, please come around. Watch that
10 area. That's slanted there. And have a seat in the witness
11 chair. I'm going to ask that you pull up real close to
12 microphone. Speak loudly, clearly, and slowly in order that
13 we can hear everything that you have to say.

14 And you may take your mask off if you feel comfortable
15 doing so.

16 THE WITNESS: Thank you, sir.

17 THE COURT: And let's start with your full name, please.

18 THE WITNESS: John Richard Ross, Sr.

19 DIRECT EXAMINATION

20 BY MR. BLAIN:

21 **Q** Good morning, Dr. Ross. Would you please introduce
22 yourself to the ladies and gentlemen of the jury.

23 **A** Well, I was a general surgeon down in Bamberg, South
24 Carolina. I was the only surgery for four counties for so
25 many years and developed a specialty practice in dialysis

1 access, doing operations so people could be on dialysis. This
2 is what I do. Done more of this more than maybe anybody in
3 the world.

4 So back in rural South Carolina -- Bamberg, Barnville;
5 you probably know some of those areas -- we had a tremendous
6 amount of problems associated with vascular disease. I was
7 the only surgeon there. And a lot of these people were really
8 never cared for. So we would see people frequently that had
9 gangrene of the feet. They would come in the emergency room
10 with gangrene, and we had to take them to the operating room
11 sometimes as an emergency situation because they were going to
12 die.

13 So that was the introduction into seeing all these
14 problems associated with feet, particularly the diabetic foot.
15 Now, back in the days when I went through the training, the
16 general surgeons did the vascular surgery, so we did the
17 reconstructive surgery. So what happened over a period of
18 time, we saw three bad things happen. We were doing a lot of
19 dialysis, which means we saw patients that had to get on
20 kidney machines. We saw a lot of peripheral vascular disease,
21 and we saw a tremendous amount of diabetes.

22 It has been said, if you're on dialysis, for every year
23 that you live, your blood vessels age seven years. And this
24 is why we see so many amputations in that particular area.

25 So over a period of time, I guess I have seen a lot of

1 this -- obviously, I'm not 21 years old anymore -- I have seen
2 a tremendous amount of this kind of stuff. And now I created
3 the Dialysis Access Institute whereby we train other doctors
4 from around the country on how to do -- how to deal with these
5 dialysis patients. It's a passion of mine. Big passion.

6 **Q** Thank you very much, Dr. Ross. And just to break down
7 that introduction a little bit for the jury, just to clarify,
8 are you a medical doctor?

9 **A** A surgeon, yes.

10 **Q** And so your field of practice is general surgery?

11 **A** Is general surgery.

12 **Q** In order to qualify you as an expert, I'm going to ask
13 you a few questions about your education and your personal
14 background.

15 If you would, could you explain your education for the
16 ladies and gentlemen of the jury, starting all the way back
17 with college.

18 **A** Okay. I went to Florida State University. Then I went
19 to the Medical University of South Carolina, and then the
20 surgical residency program up at USC.

21 **Q** Thank you. And are you licensed to practice medicine in
22 South Carolina?

23 **A** Yes.

24 **Q** Are you board certified?

25 **A** Yes.

1 Q And what are you board certified in?

2 A General surgery.

3 Q And were you the chief of surgery at the Bamberg County
4 Hospital?

5 A Yes, sir. That was easy. I was the only surgeon there.

6 Q How long were you the chief of surgery?

7 A Over 30 years.

8 Q And did you own your own general surgery practice?

9 A Yes.

10 Q And how long was that?

11 A About 35 years.

12 Q And are you a member of the Academy of Master of Surgeon
13 Educators?

14 A Yes.

15 Q And have you been recognized -- have you been recognized
16 by that group?

17 A Yes.

18 Q Could you explain that for me?

19 A Well, the American College of Surgeons -- after you
20 become board certified, we like to be a member of the American
21 College of Surgeons. So this is something we do early on, I
22 guess, somewhere in our early 30s. So I guess it was about
23 three or four years ago, the American College of Surgeons has
24 something called the Master Surgeon Educators.

25 So due to one of my friends deciding "maybe this is

1 something I ought to do, since I have trained more surgeons to
2 do dialysis access than anybody" -- this is what we do, we
3 still do -- is he said I should apply for this particular
4 position, of which, as far as I know, I'm the only
5 non-academic person that was accepted to that.

6 I thought it was very interesting that the American
7 College of Surgeons would recognize dialysis access as a
8 specialty.

9 Q And do you know how many master surgeon educators are in
10 South Carolina, to your knowledge?

11 A I'm not sure. As of last year, it was just me.

12 Q You're the only one?

13 A Yes. As of last year.

14 Q So you're kind of unique in that regard?

15 A Well, yes, yes.

16 Q Okay. And where do you work currently?

17 A I work up in Orangeburg.

18 Q At the Dialysis Access Institute?

19 A Right. We created the Dialysis Access Institute up
20 there. It's the only one like it really in the world.

21 Q I think you hinted at this in your initial introduction,
22 but what is the patient population like that you see at the
23 dialysis access institute?

24 A Well, once the kidneys go, everything else starts to go
25 also. There's almost no such thing as a real healthy dialysis

1 patient. They go to dialysis three times a week. Well, the
2 way God made us, we go to the bathroom several times a day.
3 You get to my age, you do it even more. And it's something
4 that we have to try to keep, in this patient very sick
5 population, to keep their accesses going because they have to
6 be connected to a dialysis machine.

7 Dialysis patients don't feel very good most of the time,
8 so our patients are coming in -- they're sick. Everybody's
9 sick. We're trying to make them less sick by giving them
10 dialysis, and those are the operations that we do on their
11 arms and tubes we put in their neck, goes down into the heart
12 such that they can be connected to the machine.

13 So what kind of patients do we see? We see very sick
14 patients. They're very, very sick.

15 **Q** Could you explain a little bit? These sick patients come
16 into your Dialysis Access Institute, and what sort of
17 treatment do you provide to them, just in a broad way?

18 **A** When the patient comes in, we have to look for --

19 THE WITNESS: Judge, may I stand just a second?

20 THE COURT: Yes.

21 THE WITNESS: Can I do that?

22 **A** What we have to do -- I would like -- maybe I can show
23 you. If you look at your own arm or even look at my arm, we
24 have arteries and veins. And what we do, we connect the vein
25 to arteries. They're all over the body -- here, here, your

1 legs, everywhere. Such that these veins get very large. They
2 get as big as my thumb. The reason for that, we have to put
3 two large needles in these. One needle to get blood out --
4 and we have to get almost a half a quarter of blood out of the
5 patient every minute. It goes to a dialysis machine, and then
6 another needle then returns the pure blood.

7 So that's the kind of procedures we do. And there's a
8 number of different procedures. We developed some new
9 procedures such that we wanted the patient to have the things
10 in their arm, as I just said. We do not like to have them to
11 have the catheters that go in from the neck, which is where
12 most people start dialysis, because you have almost a three
13 times greater chance of dying.

14 So that's what we do is try to get the best access such
15 that the patient can live as long as possible without
16 complications. Thank you.

17 **Q** Do you treat patients with diabetes?

18 **A** Oh, yes, large volume.

19 **Q** Do you treat patients with vascular disease?

20 **A** Oh, absolutely.

21 **Q** Do you treat patients hypertension?

22 **A** Yes.

23 **Q** Do you treat patients with end stage renal disease?

24 **A** Yes.

25 **Q** How often would you say you treat patients with those

1 kinds of conditions?

2 **A** Daily.

3 **Q** Have you done any research, publications, or
4 presentations about those disease processes -- diabetes,
5 vascular disease, hypertension, renal disease?

6 **A** The predominant number of the papers that I have written
7 and textbook chapters that I have written have been associated
8 with the complications of getting dialysis access, of which
9 those things you just mentioned are certainly until the
10 algorithm of how we think about what is going to be the right
11 operation to do.

12 **Q** All right. Does your background, whether by education,
13 training, experience, and skill, include the diagnosis and
14 treatment of diseases like diabetes, vascular disease,
15 hypertension, and renal disease?

16 **A** Yeah. We had the diagnosis. What we have is -- these
17 patients are come in to see me because they already have these
18 diseases. So the hypertension, cardiac disease, pulmonary
19 disease, renal failure, of course, they're coming in with me
20 with those diagnosis already in hand and being treated for
21 those things.

22 **Q** Does the treatment of those diseases ever involve
23 amputation or revascularization procedures?

24 **A** Frequently.

25 **Q** And specifically, do you have specialized knowledge,

1 training, experience and skill regarding the effects on the
2 body of the progression of those diseases: Diabetes,
3 hypertension, vascular disease, renal disease?

4 **A** Yes, we do. As mentioned earlier, when you have kidney
5 disease, your blood vessels age very, very quickly. Very,
6 very quickly. A good thing -- the pleasure of doing this kind
7 of practice, if you could say that, we get to see the patients
8 at least a couple, three times a year [verbatim]. We get to
9 know the patients by their first name, which is kind of
10 unusual. In a pure general surgical practice, you take the
11 gallbladder out, you fix the hernia, you go home. I never see
12 you again until at the office visit.

13 Dialysis patients aren't like that. We have got to see
14 you a lot because everything we do fails. We are creating a
15 pathological operation. God never created an AV access, the
16 things I'm talking about. That's always pathological.

17 So in answer to your question, I guess, somewhat, these
18 patients are presenting to us already very sick, and many
19 times, we will see other problems that maybe were not
20 identified by the nephrologist, who is a kidney doctor, and we
21 will send them back to the appropriate people. Even cardiac
22 situations.

23 **Q** And have you ever been qualified as an expert witness in
24 South Carolina?

25 **A** Yes, I have. I have reviewed charts but rarely go to

1 court.

2 Q Okay. Rarely, but have you ever gone to court?

3 A Never had to.

4 Q Okay.

5 MR. BLAIN: At this time, I will offer Dr. Ross as an
6 expert in the field of general surgery.

7 THE COURT: Any query with regard to his qualifications?

8 MR. JEFFERIES: Yes, Your Honor.

9 THE COURT: Yes.

10 VOIR DIRE EXAMINATION

11 BY MR. JEFFERIES:

12 Q Dr. Ross, have you ever examined the plaintiff, April
13 Jones?

14 A No, sir.

15 Q Have you ever asked to examine the plaintiff?

16 A No.

17 Q Have you ever met the plaintiff?

18 A No, sir.

19 Q Have you asked to meet the plaintiff?

20 A No.

21 Q Have you talked to the plaintiff, you know, not person to
22 person but on the telephone?

23 A No, sir.

24 THE COURT: Mr. Jefferies, this query is limited to his
25 qualifications as an expert.

1 MR. JEFFERIES: Yes, sir.

2 THE COURT: And those are general cross-examination
3 questions that you'll have an opportunity to do. The question
4 is: Do you have any questions about his qualification as
5 being an expert in the area of surgery?

6 MR. JEFFERIES: Yes, we do, Your Honor. This goes to his
7 methodology, because I'm about to ask him if this is the
8 methodology he uses in diagnosing his own patients and whether
9 or not it's the same as what he has used in diagnosing
10 Ms. Jones.

11 But I'll move on, nonetheless, from talking to Ms. Jones.

12 BY MR. JEFFERIES:

13 Q Have you looked at photographs of Ms. Jones's foot or
14 leg?

15 A I have not seen photographs.

16 Q And not seen it personally?

17 THE COURT: Mr. Jefferies, might you approach the bench.

18 MR. JEFFERIES: Yes, Your Honor.

19 BENCH CONFERENCE

20 (A bench conference was held off the record and outside the
21 hearing of the jury and others.)

22 (Open court resumes:)

23 BY MR. JEFFERIES:

24 Q Doctor, one final question on the examination. What you
25 have just described to us, this is not how you learn to

1 practice this type of medicine in medical school, is it?

2 **A** Medical school?

3 **Q** Yes.

4 **A** No, sir.

5 **Q** Not examination.

6 **A** Not in medical school, no, sir.

7 **Q** Did you learn somewhere to practice this type of
8 medicine, diagnosis, without examination?

9 **A** The diagnosis without examination is done very frequently
10 because we have other ancillary things that actually give us a
11 diagnosis: CT scans, angiograms, etc.

12 **Q** And have you reviewed CT scans and angiograms --

13 **A** I have seen the reports, yes.

14 **Q** Okay. We'll come back to that.

15 Doctor, with respect to your appearance here today, are
16 you being paid to be here?

17 **A** Yes.

18 MR. BLAIN: Objection, Your Honor.

19 THE COURT: Once again, those matters you're going to
20 have an opportunity to explore. This has to do with whether
21 or not he's qualified as an expert.

22 MR. JEFFERIES: Just questioning about bias, Your Honor,
23 but I'll move on.

24 THE COURT: I mean, that's general cross-examination.
25 The query that I'm affording you an opportunity to do is

1 whether or not there are any questions concerning his
2 qualifications as a medical doctor, a surgeon testifying as to
3 matters such as this.

4 THE COURT: Understood.

5 MR. JEFFERIES: Your Honor, we must then object based on
6 his methodology not being appropriate and his not having
7 testified before, been qualified to testify before.

8 THE COURT: Those matters you can address on
9 cross-examination.

10 MR. JEFFERIES: Understood.

11 THE COURT: You're tendering him as an expert in what?

12 MR. BLAIN: In general surgery.

13 THE COURT: Okay. And, ladies and gentlemen of the jury,
14 we have dealt with experts earlier in this trial, and I'll
15 charge you at the conclusion of the case how to evaluate
16 expert testimony. Once again, he's allowed to render his
17 opinions in the area of general surgery, and he's allowed to
18 do that. And I'll charge you how to evaluate expert testimony
19 in greater detail at the conclusion of the case.

20 He is so qualified. Yes, sir.

21 MR. BLAIN: Thank you, Your Honor.

22 CONTINUING DIRECT EXAMINATION

23 BY MR. BLAIN:

24 Q Dr. Ross, if you weren't here today sitting in front of
25 the ladies and gentlemen of the jury, would you be practicing

1 medicine at work?

2 **A** Not today. Yesterday.

3 **Q** Yesterday you were. Okay.

4 Yesterday, were you seeing patients?

5 **A** Yes.

6 **Q** Did Walmart hire you to lend your expertise to review
7 Ms. Jones's medical records and explain your opinions to a
8 jury?

9 **A** I was asked to review the records, that's right.

10 **Q** Do you charge a fee for your services to review those
11 medical records and be present here today?

12 **A** Yes. It takes time.

13 **Q** And your time is valuable; correct?

14 **A** Well, at my age it is.

15 **Q** Is the fee that you charge reasonable and appropriate for
16 a doctor with your experience and qualifications?

17 **A** I assume so.

18 **Q** Does the fact that Walmart is paying you bias or
19 influence your opinions?

20 **A** Not at all.

21 **Q** Are your opinions based on your review of Ms. Jones's
22 medical history and treatment as documented in her medical
23 records?

24 **A** Yes.

25 **Q** Are her medical records the type of records that are

1 reasonably relied upon by experts in your field of general
2 surgery to form opinions?

3 **A** Yes.

4 **Q** Did you indeed base your opinions that you'll discuss
5 here today, did you base those opinions that you intend to
6 share on your review of those medical records?

7 **A** Yes, sir.

8 **Q** Do you recall -- do you recall how many pages roughly of
9 medical records you reviewed for this case?

10 **A** A lot.

11 **Q** Okay. Bear with me one moment.

12 MR. BLAIN: At this time, I would mark a selection of
13 Ms. Jones's medical records as Defendant's Exhibit No. 1.
14 Two. My apologies.

15 (Defendant's Exhibit No. 2, Medical Records, was marked
16 for identification.)

17 BY MR. BLAIN:

18 **Q** Dr. Ross, this is just a selection of the medical records
19 that you reviewed for purposes of your testimony today; is
20 that right?

21 **A** Yes.

22 MR. BLAIN: At this time, I would move the selection of
23 medical records for Ms. Jones into evidence as Defendant's
24 Exhibit No. 2.

25 MR. JEFFERIES: Your Honor, I'm still looking through

1 these, but none of these appear to be Dr. Ross's records. As
2 such, they would be hearsay. He, of course, can, as an
3 expert, he's qualified and can rely on hearsay --

4 THE COURT: I agree with you. He can testify as -- he's
5 an expert. He's allowed to look at hearsay testimony and
6 render opinions therefrom, but he's correct in that they're --
7 the documents themselves cannot be introduced into evidence
8 because they're hearsay. He can rely upon him to base his
9 decision. As a matter of fact, most expert opinions are based
10 on hearsay.

11 MR. BLAIN: Thank you, Your Honor. Understood.

12 BY MR. BLAIN:

13 Q And, Dr. Ross, your opinions are based on your review of
14 the medical records from Ms. Jones?

15 A Yes.

16 Q Okay. Have you also reviewed Ms. Jones's deposition
17 testimony?

18 A Her deposition? No.

19 Q Okay. Have you reviewed -- are you aware that Ms. Jones
20 claims she stepped on a nail in Walmart?

21 A Yes.

22 Q Have you -- you haven't examined Ms. Jones other than
23 seeing her in the courtroom today, have you?

24 A That's right.

25 Q Have you reviewed Dr. Player's deposition?

1 **A** Yes.

2 **Q** Do you agree with Dr. Player when he said under oath --

3 MR. JEFFERIES: Objection, Your Honor. Pitting the
4 witnesses.

5 THE COURT: What was -- repeat the question.

6 BY MR. BLAIN:

7 **Q** Do you agree with Dr. Player, when he said in his
8 deposition testimony --

9 MR. JEFFERIES: May we approach?

10 THE COURT: I'll sustain the objection. You can ask him
11 what his opinion is.

12 MR. BLAIN: Certainly.

13 BY MR. BLAIN:

14 **Q** Before I get to that, Dr. Ross, are your opinions also
15 based on the deposition testimony --

16 MR. JEFFERIES: Objection, Your Honor. He's been leading
17 a fair bit but it's clearly suggestive.

18 THE COURT: I think the appropriate question is what did
19 he rely upon.

20 MR. BLAIN: Certainly.

21 THE COURT: He can list the things he relied upon and go
22 from there.

23 **A** There's a method by which, when you review charts -- and
24 this can be either a situation like this or medical review we
25 do in hospitals for quality assurance, particularly if you

1 have had multiple procedures done.

2 And the order, I think, that seems to make the most
3 sense, you go directly to the operative notes. I want to know
4 what the surgeons are doing.

5 Any time you have an operation, what are the indications
6 for the operation, what's the operation, and what do you think
7 your outcome is going to be? Because we have to go out and
8 talk to the family. And the family needs to know. So many
9 times, the first thing we'll say, "Your husband's fine" or we
10 can say "We have got a little bit of a problem, we did this."

11 And so when I look at these records -- and we have got
12 five surgeons involved here. We have got five surgeons doing
13 drastically different procedures. But all of them are coming
14 up with almost the same conclusion after all their individual
15 procedures. And so that's where a lot of this information is
16 coming from.

17 Q Thank you, Dr. Ross.

18 Let's take a look at Ms. Jones's medical records, if we
19 can.

20 MR. JEFFERIES: Well, he --

21 THE COURT: Hang on. Objection? What's the grounds for
22 your objection?

23 MR. JEFFERIES: It's -- the hearsay documents that are
24 excluded from evidence --

25 THE COURT: I sustain. I sustain that.

1 You can ask him what he reviewed and what his conclusions
2 were and what his opinion is, but the documents themselves are
3 inadmissible.

4 MR. BLAIN: Understood.

5 Your Honor, if we may approach?

6 THE COURT: Yes.

7 BENCH CONFERENCE

8 (A bench conference was held off the record and outside the
9 hearing of the jury and others.)

10 (Open court resumes as follows:)

11 BY MR. BLAIN:

12 **Q** Dr. Ross, we have been talking about Ms. Jones's medical
13 records that you have reviewed for your opinions in this case.
14 Did you review medical records from prior to the date of the
15 incident in Walmart on June 26, 2015?

16 **A** Yes.

17 **Q** Okay. And I know there's a volume of medical records. I
18 have provided a selection to refresh your recollection of the
19 records that you have reviewed. Do you have that with you?

20 **A** Yes.

21 **Q** Okay. Was Ms. Jones seen --

22 MR. JEFFERIES: Objection, Your Honor. He can't lead the
23 witness through the medical records. They're hearsay. The
24 witness can --

25 THE COURT: I'll allow him some leeway in that regard.

1 Let's hear what he's got to say.

2 BY MR. BLAIN:

3 Q Dr. Ross, was Ms. Jones seen at the Hope Health Clinic in
4 2012?

5 A Yes.

6 Q What -- at the time of that May 2012 visit to Hope
7 Health, what medical conditions did she have?

8 MR. JEFFERIES: Objection, Your Honor.

9 THE COURT: Overruled. Overruled.

10 MR. BLAIN: Thank you, Your Honor.

11 A We have listed here abdominal pain, hypertension, and
12 diabetes.

13 BY MR. BLAIN:

14 Q Okay. So, in 2012, based on your review of the records,
15 did Ms. Jones have diabetes?

16 A Yes.

17 Q What is diabetes?

18 A It's one of the worst diseases that we have in the human
19 and it's increasing rapidly. And what it involves -- people
20 think it's a blood sugar disease, of which it is. But
21 diabetes, what is it? It's where the blood sugars go very
22 high, but diabetes does something else. It goes for every
23 organ in the body. Diabetes, it looks for little blood
24 vessels all over the body to destroy them. This is why people
25 go blind with diabetes. This is why you have strokes. This

1 is why you have cardiac conditions, even gastrointestinal
2 problems with the stomach called gastroparesis. Also problems
3 associated with peripheral vascular disease. It goes and
4 looks for little tiny blood vessels and it destroys those
5 blood vessels.

6 And what happens, it takes a little bit of time for this
7 to happen. So when you think of diabetes, you just can't
8 think of blood sugar. You have to think about the ravages
9 that it causes all over the body with the blood sugar, if that
10 explains it.

11 **Q** All right. Thank you, Dr. Ross.

12 And what is diabetes mellitus?

13 **A** Well, that means sweet sugar, actually. That's the same
14 thing as diabetes. We just abbreviate it to diabetes
15 nowadays. There are other kinds of diabetes, but we're doing
16 mellitus there now.

17 **Q** So if we refer to diabetes going forward today, we're
18 talking about that type of diabetes, mellitus; right?

19 **A** We're talking sugar diabetes.

20 **Q** Based on your review of the medical records, do you know
21 when Ms. Jones's diabetes started?

22 **A** No, I don't know the exact date on that. I don't.

23 **Q** Okay. Do you know, based on your review of the Hope
24 Health records of whether her diabetes problem was getting
25 better or getting worse in 2012?

1 **A** Having the records here, it says --

2 MR. JEFFERIES: Objection, once again, Your Honor. He
3 can't read the records.

4 THE COURT: He can't read the records, but he can glean
5 from his conclusions are from reviewing the records.

6 Go ahead.

7 BY MR. BLAIN:

8 **Q** Dr. Ross, based on your review of the records, can you
9 glean whether Ms. Jones's diabetes in 2012 was getting better
10 or getting worse?

11 **A** I can't tell you that. I don't know.

12 **Q** Okay. Can you glean from your review of the Hope Health
13 records whether the -- what the risk factors were for
14 diabetes?

15 **A** Yes.

16 **Q** What were those risk factors?

17 **A** The vision problems, the chest pain, the shortness of
18 breath, frequent urination, heartburn, fatigue, plus the
19 other -- not listed that I mentioned earlier.

20 **Q** Okay. Would obesity be a risk factor for diabetes?

21 **A** Yes. A lot of people that have adult onset diabetes,
22 type 2 diabetes which we're talking about -- I'm very familiar
23 with this. I had two parents that had this. Is that, if we
24 have rather profound weight loss, in a significant percentage
25 of people, the diabetes goes away.

1 Q Would a sedentary lifestyle be a risk factor for
2 diabetes?

3 A Oh, for sure.

4 Q Do you know whether, based on your review of the 2012
5 Hope Health records, Ms. Jones had risk factors of obesity and
6 a sedentary lifestyle at that time?

7 A That's correct.

8 Q Do you know, based on your review of the Hope Health
9 records, whether Ms. Jones's -- can you glean from those
10 medical records whether Ms. Jones's diabetes started -- began
11 in 1999?

12 A Yes. I see it says 1999.

13 Q Do you know whether Ms. Jones was -- well, let's talk
14 about hypertension. Based on your review of the medical
15 records from Hope Health in 2012, did Ms. Jones have
16 hypertension at that time?

17 A Yes, she did.

18 Q What is hypertension?

19 A Well, it's an increase in blood pressure. And the
20 problem with the hypertension, with the increasing in blood
21 pressure, the little blood vessels again are getting beat up
22 by a big pulse. That's why we don't want this blood pressure
23 to be too high. This is what causes strokes, heart attacks,
24 peripheral vascular disease. It's a very common malady that
25 we have. And when we couple that with diabetes, it makes

1 everything much worse.

2 **Q** And what causes hypertension?

3 **A** Well, there are multiple causes of hypertension. Most of
4 them really what's called essential hypertension, which we
5 kind of don't know. There are other types of hypertension
6 associated with renal artery, stenosis, and hormonal kind of
7 things that can be treated, but this usually what we're
8 looking at is called essential hypertension.

9 **Q** And what do you usually do to treat hypertension?

10 **A** Usually medications.

11 **Q** Okay. Based on your review of the 2012 Hope Health
12 medical records, can you glean whether Ms. Jones was taking
13 any medication for either hypertension or diabetes?

14 **A** I'm looking for a medication list right now. Sorry.

15 MR. JEFFERIES: Your Honor, may we approach the bench?

16 THE COURT: Yes.

17 BENCH CONFERENCE

18 (A bench conference was held off the record and outside
19 the hearing of the jury and others.)

20 (Open court resumes as follows:)

21 BY MR. BLAIN:

22 **Q** Dr. Ross, based on your review of the 2012 Hope Health
23 records, can you glean whether Ms. Jones was taking any
24 medications for her hypertension or diabetes?

25 **A** Evidently not. She was not taking them.

1 Q Without medications, would those disease conditions be
2 uncontrolled, in your opinion?

3 MR. JEFFERIES: Once again, objection to the leading
4 question, Your Honor.

5 MR. BLAIN: Withdrawn.

6 BY MR. BLAIN:

7 Q Dr. Ross, what do these diseases -- diabetes and
8 hypertension -- what happens to those diseases on the body if
9 there are no medications being taken?

10 A Well, the hypertension certainly can cause stroke. It's
11 one of the more common causes of stroke. It can certainly
12 cause heart issues. Can cause you to have a heart attack. It
13 can certainly cause kidney failure, which is one of the more
14 causes of kidney failure associated with diabetes. And the
15 diabetes are the things that we have already mentioned that it
16 affects every organ in the body.

17 Q Dr. Ross, what does comorbidity mean?

18 A Additive.

19 Q Would diabetes and hypertension, are those comorbidities?

20 A Yes.

21 Q What other comorbidities did Ms. Jones have prior to the
22 incident at Walmart?

23 A Well, we have several, but I guess the big three is going
24 to be associated with diabetes, kidney failure, hypertension,
25 and presumptively known atherosclerotic disease. These are

1 high risk and they're additive.

2 **Q** Okay. Is vascular disease and atherosclerotic disease,
3 are those one and the same or could you explain the difference
4 to us?

5 **A** No, think of them as -- vascular disease unto itself is
6 nothing more -- think of blood vessels. They're tubes. And
7 what is happening in vascular disease, the tubes are getting
8 narrowed down. And that's where we get cholesterol checked
9 because we know cholesterol can embed themselves into the
10 walls of the blood vessel, and that's what causes strokes,
11 heart attacks, and legs to be lost and that kind of thing.

12 So atherosclerotic, that's what it's called when it is
13 caused by the atheroma associated with cholesterol and plaque.

14 **Q** Okay. And if there are plaque -- if there's plaque in
15 the vessels -- the blood vessels, is that commonly seen in
16 blood vessels of the lower extremities, the legs?

17 **A** It's seen all over the body.

18 **Q** Okay.

19 **A** You can start at the carotid arteries up here where
20 people have to have operations to clean these out so they
21 don't have a stroke, coronary arteries, and certainly the
22 legs.

23 **Q** And what causes that plaque build-up in the vessels?

24 **A** Well, a lot of it has to do with dietary things. Some of
25 it is genetic but certainly dietary things, exercise things,

1 weight. Probably the biggest thing associated with it is
2 dietary.

3 Q And what would you do to treat vascular disease or
4 atherosclerotic disease?

5 A Well, vascular -- in the treatment of vascular disease,
6 what you're trying to do is re-establish the flow somewhere so
7 you can get the flow back where it is supposed to go. If you
8 have a problem with legs, you want to get the flow back down
9 to the foot.

10 So there's vascular disease somewhere. If that is a
11 problem, it may be high up in what's called the aorta in the
12 abdomen. It could be in the groins. It could be in the
13 thigh. But the idea is to get more blood back down to the
14 small blood vessels again, which could be foot, brain, heart.

15 Q And if someone has atherosclerotic disease and vascular
16 disease, is that the key or --

17 MR. JEFFERIES: Objection, Your Honor. Once again, he's
18 leading the witness.

19 THE COURT: Sustained.

20 BY MR. BLAIN:

21 Q How does vascular disease affect the flow of blood into
22 the lower extremities?

23 A It decreases the amount of flow into the lower
24 extremities.

25 Q Based on your review of all of Ms. Jones's medical

1 records, is it your opinion that --

2 MR. JEFFERIES: Objection, Your Honor.

3 THE COURT: What is your question?

4 MR. BLAIN: Let me rephrase my question, Dr. Ross.

5 BY MR. BLAIN:

6 **Q** Based on your review of Ms. Jones's medical records, what
7 is your opinion about whether she had vascular disease prior
8 to the incident at Walmart?

9 **A** Well, the -- I guess the big documentation that we have
10 is when she has vascular disease, which she had to have before
11 the incident event -- because we had non-invasive studies
12 done, we had CT angiograms done, and later on, we had direct
13 arteriography done.

14 So we have got -- these things do not develop acutely.
15 This is a gradual process. Sometimes it can be accelerated,
16 but this is a gradual process, so there had to be some
17 component of that there probably starting years ago.

18 **Q** Okay. A moment ago, we were talking about comorbidities.
19 You were talking about diabetes, hypertension, and vascular
20 disease. Is renal disease a comorbidity?

21 **A** Oh, yes.

22 **Q** Based on your review of Ms. Jones's medical records, what
23 is your opinion as to whether she had -- whether or not she
24 had renal disease?

25 **A** Oh, she obviously had renal disease.

1 Q Okay.

2 A Not only did she have renal disease, she had renal
3 failure.

4 Q And what causes renal failure?

5 A Multiple situations can cause it. Diabetes is a big
6 thing that we see and particularly in women. Hypertension can
7 cause it. Lead poisoning can cause it. There are certain
8 auto-immune diseases. There's a list of things that can cause
9 it.

10 Q And in your records -- in your review of the records, do
11 you know whether she had -- is it your opinion whether she had
12 end stage renal disease?

13 A She did.

14 Q What does end stage mean?

15 A Essentially means that the kidneys are end stage. They
16 don't work anymore. The kidneys are this amazing organ. It's
17 an amazing organ because it adjusts the fluids in our body, it
18 adjusts the electrolytes in our body -- potassium, sodium, and
19 that kind of thing. It filters things out that should not
20 stay in our body.

21 So when you have end stage renal disease, we can't adjust
22 the fluid, we can't adjust the electrolytes, and we retain the
23 poisons. And if we retain too much in the way of poisons,
24 then we can't live with that.

25 Q And is dialysis used to treat renal disease?

1 **A** Yes.

2 **Q** Could you explain that dialysis process for the jury?

3 **A** The dialysis machine, it's going to take -- as we said
4 earlier, it's going to take about a half a quart of blood out
5 of the body every minute. And it's a filtering process. And
6 we can adjust the fluid in the body with the dialysis machine
7 of how much fluid we want to take off because it is not
8 unusual for sometimes to retain as much as 10 to 12 pounds of
9 fluid that has to be taken off.

10 Also, the potassium levels will rise because now we don't
11 have a kidney function that can adjust the potassium and the
12 sodiums appropriately. That can be adjusted with the machine
13 also.

14 There are also numerous different poisons that build up
15 in our body that we cannot rid the body of without having
16 kidney function, and the purpose of the machine is to try to
17 get some of that out too. It's never good as a God-given
18 kidney, but it does keep us alive.

19 **Q** Thank you, Dr. Ross.

20 We talked about diabetes, hypertension, vascular disease,
21 and renal disease. Are there any other comorbidities, in your
22 opinion, based on your review of the records that you found
23 Ms. Jones to have prior to the incident in Walmart?

24 **A** I think we had a history in there of congestive heart
25 failure. Also, there was recorded early on of severe

1 pulmonary hypertension.

2 **Q** Okay. How would pulmonary hypertension affect Ms. Jones?

3 **A** Well, pulmonary hypertension, that's where the pressures
4 inside the lung get very, very, very high, and when the
5 pressures get very high in the lung, it puts some extra strain
6 on the heart. And so what can happen, when we have these
7 drastic fluid shifts when we get on the dialysis machine --
8 remember, on the dialysis machine, you go to dialysis three
9 times a week for four hours.

10 So, in 12 hours, we have got to readjust fluid and
11 everything. There's 168 hours in a week. And our kidneys --
12 our kidneys in this room work 168 hours a week. The only
13 thing that we have in dialysis is try to fix all this stuff in
14 12 hours. And that's where the problems come in, if that's
15 what you're asking.

16 **Q** And you mentioned congestive heart failure. How would
17 congestive heart failure affect Ms. Jones?

18 **A** Well, congestive heart failure simply means the body has
19 more fluid than the heart can pump out so fluid backs up.
20 That's when you get leg swelling, you can get short of breath,
21 because the fluid backs up in the lungs. That's what
22 congestive heart failure is.

23 So, in dialysis patients, it becomes absolutely more
24 critical because our kidneys are not helping us adjust fluid
25 during the day. We drink a little bit too much orange juice,

1 we have too much sodium, something, and we can -- we can get
2 ourselves out of balance very quickly, and that puts us in
3 heart failure because the heart can't handle the fluid.

4 **Q** Based on your review of the records, do you have an
5 opinion or did you glean whether Ms. Jones had severe anemia?

6 **A** Yeah. One time, she had a hemoglobin down to 5.9. She
7 had to have a couple of units of blood.

8 **Q** What is hemoglobin?

9 **A** The hemoglobin -- our normal hemoglobin in here should be
10 between 12 and 15. Hemoglobin carries oxygen. That's what it
11 does. And so when our hemoglobin goes down, we can't carry as
12 much oxygen.

13 Well, we need oxygen. And that means less oxygen for the
14 brain, less oxygen for your eyes, less oxygen for everything.
15 We need oxygen.

16 So when the hemoglobin is very, very low, we're not
17 having appropriate oxygen-carrying capability to places that
18 it needs to go.

19 **Q** Dr. Ross, did you review medical records -- the selection
20 of medical records. Did you review medical records from Hope
21 Health dated October 1 of 2013?

22 **A** Mr. Blain, I assume that's in here because I'd have to
23 refresh that. Yes, I see it.

24 **Q** Based on your review of that medical record, do you know
25 whether -- is it your opinion whether -- can you tell whether

1 Ms. Jones --

2 MR. JEFFERIES: Objection, Your Honor. He's going to
3 lead the witness again into reading the record.

4 THE COURT: All right.

5 MR. BLAIN: Let me rephrase my question.

6 MR. JEFFERIES: Can we approach, Your Honor, because
7 this...

8 THE COURT: Yes, you can approach.

9 BENCH CONFERENCE

10 (A bench conference was held off the record and outside the
11 hearing of the jury and others.)

12 (Open court resumes as follows:)

13 BY MR. BLAIN:

14 Q Dr. Ross, did you review a medical record from Hope
15 Health dated October 1st, 2013, an office visit?

16 A Yes.

17 Q And you have a copy of that record in front of you to
18 refresh your recollection of that record?

19 A Yes, I do.

20 Q Do you have an opinion whether Ms. Jones was taking her
21 medications correctly in October of 2013?

22 A Recorded, it does not appear she was taking appropriate
23 medications.

24 Q Do you have an opinion whether Ms. Jones had -- had any
25 blisters on her feet at that time?

1 **A** Recorded as such.

2 **Q** Okay. Recorded as --

3 **A** As having the blisters.

4 **Q** Okay. Based on your review of those records from 2013,
5 what are -- what's going on with those blisters? Are those
6 blisters -- what's causing those blisters?

7 **A** Well, it can be many causes for blisters. I'm sure most
8 of us have had blisters. It can be a simple friction kind of
9 thing in running shoes, and we have had that before.
10 Different things can cause blisters.

11 You can also have venous hypertension, which can be -- if
12 there's a fluid overload problem or swelling of the legs can
13 cause an increase pressure and give you blisters.

14 You would worry, indeed, if the skin is starting to break
15 down a little bit. Diabetics should be using some type of
16 lanolin lotion or something to keep the skin very, very soft.
17 We must protect the feet.

18 So any of those things or lack of those things can
19 actually cause you to form blisters.

20 **Q** Okay. Would it be a problem if a patient's blisters are
21 open and draining?

22 **A** Well, it could be. It could be. Because if you're
23 having anything that's open and draining, of course that means
24 bacteria can get in. The outside world out here is just full
25 of all kinds of bacteria that can be very bad.

1 Q Based on your review of that October 2013 record, can you
2 tell whether Ms. Jones -- do you have an opinion whether
3 Ms. Jones had problematic blisters on her feet?

4 A Well, as recorded --

5 MR. JEFFERIES: Objection, Your Honor. He's now not
6 offering --

7 THE COURT: You can review it and testify as to what it
8 says.

9 A So say it again, please.

10 BY MR. BLAIN:

11 Q Sure. My pleasure.

12 Based on your review of that October 2013 record, in your
13 opinion, was Ms. Jones having any problems with the blisters
14 on her feet?

15 A Well, we have sores as recorded, on the bottom of the
16 foot.

17 Q Was she having any problems with those sores on the
18 bottoms of her feet?

19 A Yeah, they're draining.

20 Q Okay. And draining, could that introduce infection?

21 A Yes. Because, if it's draining, if fluid can come out,
22 bacteria can go in.

23 Q Did you review medical records from McLeod Hospital from
24 October of -- and November of 2013 when Ms. Jones -- let me
25 ask you that one.

1 Did you review records from McLeod Hospital when
2 Ms. Jones was treated in 2013?

3 A I reviewed records, yes.

4 Q Okay. And you have been provided with those records to
5 refresh your recollection of that treatment; correct?

6 A Yes.

7 Q Are you able to follow along, Dr. Ross?

8 A Yeah, I think so.

9 Q Okay.

10 A We're looking at October the 1st of '13; is that correct?

11 Q From the McLeod Regional Medical Center on October 5th of
12 2013, admit date.

13 A Yes, I think I'm looking at this.

14 Q Was Ms. Jones admitted October 5th of 2013 and discharged
15 almost a month later on November 1st of 2013?

16 A Yes.

17 Q Why was she in the hospital?

18 A Severe pulmonary hypertension.

19 Q Severe pulmonary hypertension. Was -- in your opinion,
20 was she dealing with end stage renal disease at that time?

21 MR. JEFFERIES: Objection, Your Honor. He's leading him
22 again.

23 THE COURT: "What was her condition," would be
24 appropriate.

25 MR. BLAIN: Thank you, Your Honor.

1 BY MR. BLAIN:

2 Q Dr. Ross, in 2013, what was Ms. Jones's medical condition
3 related to that?

4 A Well, she has the severe pulmonary hypertension, chronic
5 diastolic heart failure, uncontrolled hypertension. Her blood
6 pressure was out of control. Non-insulin dependent diabetes.
7 Kidney dysfunction. Anemic. She also has what's called
8 hyperbilirubinemia, which I don't think we need to go into,
9 but this is where people get jaundice and that kind of thing.
10 I'm not sure we know why.

11 And the discharge -- that was pretty much what was
12 thought on that admission.

13 Q And, in your opinion, what was the status of her kidneys
14 at that time?

15 A Well, evidently, we have got end stage renal disease
16 going on. She actually had the dialysis catheter put in.
17 This is where we go through the vein in the neck and we put
18 the tube that goes down into the heart and then we can take
19 blood out of that little plastic tube, which is about half the
20 size of my little finger, and push the same amount of blood
21 back. So we are dealing with kidney failure.

22 Q Did Ms. Jones have to have --

23 MR. JEFFERIES: Objection, Your Honor.

24 THE COURT: What -- what happened?

25 BY MR. BLAIN:

1 Q What happened? How did they treat Ms. Jones's kidneys in
2 2013?

3 A Well, she had the dialysis catheter put in. She's going
4 to have the kidney failure treatment with a dialysis machine.

5 Q Okay. After Ms. Jones had the dialysis catheter put in,
6 in your opinion, would she need to begin the dialysis
7 treatment?

8 A Oh, yes.

9 Q Okay. Based on your review of the records, do you know
10 where Ms. Jones did her dialysis treatment?

11 A I don't know where.

12 Q Okay. At a dialysis clinic, would it be a common
13 practice --

14 MR. JEFFERIES: Objection, Your Honor.

15 THE COURT: He can ask that.

16 BY MR. BLAIN:

17 Q Do dialysis clinics inspect -- do a physical examination
18 of their patients?

19 A Yes.

20 Q Okay. What does that physical examination of the
21 patients at a dialysis clinic include?

22 A Well, it's a comprehensive physical examination initially
23 when they come in, usually done by the nephrologist, the
24 kidney doctor. They want to know the status of everything,
25 because as we talked about, these fluid shifts that are taking

1 place on a dialysis machine, can drop the blood pressure out
2 the bottom, which can come in with a blood pressure of 160
3 and, all of a sudden, you get two hours into dialysis and it's
4 75 and the patient really is almost -- almost in shock.

5 So we have to know all about the cardiac status. We have
6 to know about pulmonary status. We have got to know the
7 general medical condition of the patient, because dialysis is
8 very difficult on the body. Physiologically, it's very
9 difficult on the body. So a complete check is done from top
10 to bottom and episodically throughout the year.

11 **Q** If we check the top and bottom, does that include a check
12 of the feet?

13 **A** Yes.

14 **Q** Okay. Do you know whether -- based on your review of the
15 records, is it your opinion --

16 **MR. JEFFERIES:** Objection, Your Honor. He can't tell him
17 what his opinion is.

18 **THE COURT:** What is your...

19 **MR. BLAIN:** Thank you, Your Honor. I apologize.

20 **BY MR. BLAIN:**

21 **Q** Dr. Ross, what is your opinion about the condition of
22 Ms. Jones's feet in 2013?

23 **A** We have the history of her having problems, as we have
24 already discussed, with the blisters and the sores, that kind
25 of thing, going on as documented. And then we -- I have also

1 documented from the Fresenius, that's a dialysis clinic -- the
2 outpatient dialysis clinic -- that they did a foot check and,
3 evidently, an educational program, as they should do
4 concerning socks and shoes and protection for the diabetic
5 foot.

6 **Q** Have you reviewed the records from the Fresenius foot
7 checks?

8 **A** I saw one report, yes.

9 **Q** Okay. And based on your review of those records, what is
10 your opinion regarding the condition of the soles of
11 Ms. Jones's feet?

12 **A** I don't remember particularly the sole. You may have
13 to -- I may have to refresh that, but I do remember them
14 having the foot check done and that -- and then -- as they're
15 supposed to do, counsel her concerning foot care. This is so
16 important in a diabetic.

17 **Q** Okay. Do you recall if they -- and what -- when a
18 dialysis clinic is counseling a patient, what does that
19 counseling look like? What things are being discussed in that
20 education?

21 **A** It will be -- it should be comprehensive. Some of it is
22 done by the nephrologist, the kidney doctor, some of it will
23 be done by the clinic director, and some of it will actually
24 be done by the nurses and/or the techs on the floor.

25 But concerning the foot check, this is something that, in

1 many of the clinics, they do very, very frequently. The foot
2 check in a diabetic is just so terribly important.

3 Q Doctor, do you have an opinion whether -- what could
4 cause sores on the soles of a patient's foot?

5 A A diabetic patient?

6 Q Yes, sir.

7 A Well, a diabetic patient because, as we talked about with
8 the blood sugar elevation, it also affects the nerves. And
9 the nerves are also inside the blood vessels, and they can get
10 what's called a neuropathy.

11 And so what happens with a diabetic patient is that the
12 arteries -- we could go into that but it decreases the blood
13 flow to the foot itself and the small vessels just kind of
14 clamping down with time. And so it makes that foot very
15 vulnerable to having any kind of injury that could be
16 catastrophic.

17 Q In your opinion, as to whether Ms. Jones's feet were
18 vulnerable to injury at the time of the Fresenius checks?

19 A Opinion based. Diabetic feet are always vulnerable.

20 Q And what would you counsel your patients to do to protect
21 those feet -- diabetic feet?

22 A Well, they have an education program of, first of all,
23 what it is and what are the complications of having a diabetic
24 foot. It's how relatively minor things can, again, be quite
25 catastrophic, and we want to protect the feet. And in

1 protecting the feet, we'd love to have diabetic shoes. You
2 know, the diabetic shoes used to be real ugly-looking shoes to
3 protect the feet so that nothing would get through. They have
4 since have become much better, much more fashionable. But
5 that is absolutely imperative.

6 I have what I call the "me and the mama test." It's what
7 I want done to me or mama. If I had diabetic feet -- and mama
8 did have diabetes, by the way -- is that we wanted to make
9 very sure those feet were taken care of, because even
10 something like an ingrown nail toe can be catastrophic if not
11 attended to appropriately.

12 **Q** And, in your opinion, are -- could you explain to the
13 jury -- let me ask it this way: Are flip-flops appropriate
14 footwear for diabetics?

15 **A** Oh, no.

16 **Q** Why not?

17 **A** Trauma. Flip-flops -- I mean, all of us have worn
18 flip-flops before, and we can get trauma to our feet, we can
19 stub our toe. Flip-flops don't give you any protection at
20 all. It's almost like going barefoot. Not quite but almost.

21 **Q** And is education -- would education include counseling
22 regarding appropriate footwear, diabetic shoes versus
23 flip-flops?

24 **A** I don't know if they'd say the word "flip-flops" but
25 certainly diabetic shoes and protection of the foot.

1 Q Okay. Do diabetic patients --

2 MR. JEFFERIES: Objection, Your Honor.

3 THE COURT: That's a leading question. Ask him what his
4 opinion is.

5 MR. BLAIN: Thank you, Your Honor.

6 BY MR. BLAIN:

7 Q Dr. Ross, what is your opinion regarding the risk of
8 ulcers or pressure wounds for diabetic patients?

9 A It can be quite dire.

10 Q And why is it dire?

11 A Introduction of bacteria with poor circulation and with
12 inability for the body to get the appropriate amount of blood,
13 for healing, even to get antibiotics to the correct place. We
14 take antibiotics through our mouth. It goes -- it's absorbed
15 into the blood system, and then it takes the antibiotic to
16 where it needs to go to fight whatever kind of infection.
17 With poor circulation, you can't do that.

18 Q And what causes pressure wounds or pressure ulcers?

19 A Yeah, that comes from what's called a trophic ulcer, and
20 it's usually on the ball of the foot, right underneath --
21 usually under the second toe, moving back on the ball of the
22 foot. And what happens, that's just an area there that's a
23 pressure point, and that pressure point, because of the
24 vascular supply to that particular point because that's the
25 push-off point when we actually walk, is that that area

1 becomes stressed.

2 **Q** So, Dr. Ross, we just happen to have a foot in evidence
3 here -- an exemplar foot. But the area that you were just
4 describing, could you point to it on this exemplar foot?

5 **A** Yeah. Right here.

6 **Q** All right, sir.

7 And you reviewed Ms. Jones's medical records -- we talked
8 about 2013. Did you review her medical records in 2014 and
9 2015, leading up to the incident in Walmart?

10 **A** Yes.

11 **Q** Do you have an opinion as to whether she was
12 continuing -- do you have an opinion as to what the condition
13 of the diseases that we have discussed -- diabetes,
14 hypertension, vascular disease, renal disease -- we mentioned
15 congestive heart failure, pulmonary hypertension. Do you have
16 an opinion as to how those diseases were affecting Ms. Jones
17 in 2014 and 2015 prior to Walmart?

18 **A** Well, it seems that -- the terminology that was used in
19 the chart is going to be "uncontrolled," and that can go for
20 blood sugar, that can go for hypertension. We have history of
21 having peripheral swelling in the legs, which could be
22 relative to the heart. It could be relative to congestive
23 heart failure in inadequate dialysis, one or the other.

24 Peripheral vascular disease, if it were there, which it
25 had to be there, then, indeed, all this is progressing.

1 Q And do those diseases work in concert as a --

2 MR. JEFFERIES: Objection, Your Honor.

3 MR. BLAIN: Thank you. Withdrawn. My apologies.

4 BY MR. BLAIN:

5 Q Dr. Ross, what is your opinion about how those diseases
6 act in concert together on the body?

7 A Well, you have several organ systems that are suboptimum,
8 and one organ system affects the other organ system which
9 affects the other organ system. So when you have several
10 organ systems that have gone down, the body's resistance to
11 anything -- any kind of trauma, any kind of insult at all, it
12 decreases a lot. You just don't want to have heart, lungs,
13 peripheral vascular disease, diabetes, hypertension. And all
14 these things are additive.

15 Q Dr. Ross, you weren't there in Walmart on June 26, 2015,
16 were you?

17 A No.

18 Q And you weren't at the hospital where Ms. Jones sought
19 medical care; right?

20 A Not at McLeod, no.

21 Q Your opinions are related to your review of the medical
22 records?

23 A Yes.

24 Q I think earlier in your testimony, you mentioned that --
25 what records in particular would be key to your opinions

1 about -- about the ongoing care? Is it history and physical?

2 Is it operative reports? Is it arteriograms?

3 MR. JEFFERIES: Objection, Your Honor. I mean...

4 THE COURT: All right. We have been going at it for
5 awhile. We're going to take a brief recess. Once again, do
6 not discuss the case.

7 (The jury exited the courtroom at 11:18 a.m.)

8 THE COURT: Might counsel approach the bench one moment?

9 BENCH CONFERENCE

10 (A bench conference was held off the record and outside the
11 hearing of the jury and others.)

12 (A brief recess was taken from 11:18 a.m. to 11:25 a.m.)

13 (Jury enters the room at 11:25 a.m.)

14 THE COURT: Mr. Blain.

15 MR. BLAIN: Thank you, Your Honor. May it please the
16 Court.

17 BY MR. BLAIN:

18 Q All set? Thank you. Dr. Ross, we took a brief break.
19 We were just getting to a transition from before the incident
20 at Walmart and now I'd like to talk about after the incident
21 at Walmart.

22 And you have reviewed medical records from Ms. Jones's
23 treatment and care after the incident at Walmart; correct?

24 A Yes.

25 Q I'd like to offer you a selection of those medical

1 records to refresh your recollection about that medical
2 treatment.

3 **A** Thank you.

4 **Q** Now, you're aware that Ms. Jones claims she stepped on a
5 nail in Walmart; correct?

6 **A** Yes.

7 **Q** What was the -- do you have an opinion about the size of
8 the ulcer that Dr. Player found --

9 MR. JEFFERIES: Objection, Your Honor. That's -- he may
10 as well sit in the witness stand.

11 THE COURT: Overruled.

12 BY MR. BLAIN:

13 **Q** Do you have an opinion about the size of the ulcer that
14 Dr. Player --

15 MR. JEFFERIES: Different objection. Facts not in
16 evidence. Dr. Player didn't identify an ulcer.

17 THE COURT: Overruled.

18 BY MR. BLAIN:

19 **Q** Dr. Ross, do you have an opinion about the size of the
20 ulcer that Dr. Player found when he examined Ms. Jones's foot?

21 **A** In his operative note, he recorded an ulcer, 1.8 --

22 MR. JEFFERIES: Objection, Your Honor. He's talking
23 about what's recorded in a hearsay document.

24 THE COURT: Overruled. I overrule.

25 BY MR. BLAIN:

1 Q I'm sorry, Dr. Ross. You may proceed.

2 A From the record, 1.8 centimeters by 1 centimeter ulcer.
3 It would be about that big (indicating).

4 Q Dr. Ross, I know you didn't see the ulcer, but you had an
5 opinion as to whether a 1.8 by 1 centimeter ulcer is
6 consistent with a puncture wound caused by this particular
7 nail?

8 Let me ask it a different way. How big is the tip of
9 that nail? Can you tell?

10 A 2 millimeters.

11 Q 2 millimeters.

12 If the tip of that nail created a puncture wound, in your
13 opinion, is that -- do you have an opinion as to whether
14 that's consistent with a 1.8 by 1 centimeter ulcer?

15 A Not with the shaft of this.

16 Q Not with the shaft of that?

17 A Yes.

18 Q Okay. After Dr. Player treated the 1.8 by 1 centimeter
19 ulcer, how -- what's your opinion about the treatment that
20 Dr. Player rendered to that 1.8 by 1 centimeter ulcer?

21 A Well, his treatment consisted of a standard treatment
22 where, if you have an infected ulcer on the plantar surface of
23 the foot, you're going to make an incision around like this
24 and you try to get all what's considered devitalized or dead
25 tissue out. You're trying to cut the infection out. That's

1 one principal.

2 The second principal is you're looking for bleeding and
3 you go high enough to get bleeding. If you cannot bleed, you
4 cannot heal.

5 So the concept in any kind of surgery is to take the
6 devitalized tissue out, the dead tissue out as much as you can
7 visibly see, but you also visibly want -- love to see
8 bleeding. In fact, we love to see pumping blood.

9 **Q** Now, do you have an opinion as to whether there was
10 pumping blood or sufficient bleeding when Dr. Player did the
11 debridement?

12 **A** Bleeding was somewhat marginal, is his operative note.

13 **Q** Does that raise any concerns in your mind?

14 **A** A lot.

15 **Q** Can you explain that to the jury?

16 **A** Well, we have got a diabetic foot that's infected. And
17 now we're asking a diabetic foot to heal without adequate
18 blood supply. The chance of marginal blood supply, healing in
19 a diabetic foot is not good. It's -- we have got a problem.

20 So if we're in a situation where, again, when we look at
21 a surgeon's note, what are the indications for what he's
22 doing? You have got an infected foot. We have got to get the
23 infected tissue out.

24 What was the operation? It was this bigger incision, and
25 you took about this much tissue out. About this much

1 (indicating). And then he -- the surgeons, in operative
2 notes, records, they want to record what their impression was.
3 What do we feel like?

4 The surgeon goes and talks to the family. This is what
5 we all do. And so what would we say? I would say to the
6 family, "I'm very worried about this foot, that we're not done
7 with this foot by any stretch of the imagination, and the
8 reason for that, we have a diabetic foot with minimal
9 bleeding. Expect to have more things done."

10 **Q** What would have been the cause -- do you have an opinion
11 as to the causes of why the bleeding is minimal?

12 **A** Well, we've a diabetic foot with the blood vessel disease
13 we have talked about, and also would be very concerned that
14 there's a problem upstream, going up the leg, and may even be
15 in the aorta, could be in what's called the iliac arteries.
16 Upstream to get the blood down to the appropriate level, to
17 the foot, to get appropriate bleeding.

18 **Q** Do you have an opinion as to whether the upstream problem
19 in the arteries, was that prior to the incident at Walmart?

20 **A** Is your question, did we have -- with what we know from
21 the records, could we have upstream problems prior to Walmart?
22 Is that your question?

23 **Q** Yes. I didn't mean to make it complicated.

24 **A** I think I did.

25 **Q** Does vascular disease cause the upstream problems in the

1 leg?

2 **A** Yes, yes.

3 **Q** Do you have an opinion as to whether Ms. Jones had
4 vascular disease prior to the incident at Walmart?

5 **A** Yes, she did.

6 **Q** Okay. After the debridement, what was the next care in
7 her medical chronology?

8 **A** So we have got an open wound this big on the bottom of
9 the foot, and now we have to treat this wound with topical
10 things to try to get it cleaned up as much as possible. So
11 there are multiple, multiple different ways of doing that. So
12 over the ensuing two-week period of time, I assume that she
13 was getting an excellent topical care for that to see if that
14 area was going to heal in.

15 Although, with the surgeons, Dr. Player's documentation
16 of marginal bleeding, I think he knew that we were going to be
17 in trouble there. Marginal bleeding with a bad thing in a
18 diabetic foot.

19 **Q** And so he knew -- okay.

20 And after Dr. Player's initial debridement, would
21 Ms. Jones have gone home?

22 **A** She may have gone home, yes.

23 **Q** Do patients have a responsibility to --

24 **MR. JEFFERIES:** Objection, Your Honor. He's testifying
25 again.

1 THE COURT: Leading. Sustained.

2 MR. BLAIN: Understood.

3 BY MR. BLAIN:

4 Q After procedure, what counseling do doctors provide to
5 their patients about at-home care?

6 A Yeah, there is a discharge planning that has to be done
7 concerning any operation or any time the patient goes home.
8 So concerning this foot care, I would assume there would be
9 arrangements made for a wound care center, frequent office
10 visits. Somebody needs to be looking at this foot every day.

11 Q Okay. Would Ms. Jones need to be looking at her foot?

12 A If she could see it.

13 Q What happened next? Did she come back to see Dr. Player?

14 A Yeah. On 7/15, the operative note -- so we're two weeks
15 later into this process, and you get a feeling for what he is
16 feeling like. And I'd like to -- when I reviewed this record,
17 this was -- "on examination, she was found --

18 MR. JEFFERIES: Objection, Your Honor. He can't read
19 from the record. Refreshing is one thing, reading is another.

20 THE COURT: He can refresh his memory.

21 A Well, refresh my memory then.

22 So frank mummification, that means there's no blood
23 supply to that second toe. It's a mummy. There's no blood
24 supply there.

25 Also, we have a situation where there is more infection

1 that is there. So what is his task to do? We're 14 days out
2 now from the initial operation. We are going to make an
3 incision. Same principals apply. We want to get rid of all
4 the infection. So he is taking this incision and extending it
5 from the toe -- where is the foot? -- the toe here. And this
6 incision is going all the way back here because now we have to
7 take one of the bones out. It's going back that far.

8 Now, he was as -- I recollect in the record -- he was
9 somewhat amazed that this got that way in two days. He even
10 documents in there, this did not happen over a two-day period.
11 This is going on much longer than this. It's in his record.

12 He also documents that there is very little bleeding.
13 We're in trouble. We have got two operations on this foot
14 without bleeding. This can't heal. Why can't this heal?
15 This is a circulation problem. This is the ultimate example
16 of poor circulation. We have got to invest this circulation,
17 and that's what's going to be the next step involved is what
18 are we going to do now? We're in trouble.

19 **Q** Thank you, Dr. Ross.

20 You mentioned mummification. What -- do you have an
21 opinion as to whether there was any mummification on any part
22 of Ms. Jones's foot?

23 **A** Yeah, it's documented, as he documented on the second
24 toe.

25 **Q** Second toe.

1 What does mummification mean in medical terms?

2 **A** In medical terms it means lack of blood supply.

3 **Q** Okay. Is that -- what's that --

4 **A** Or no blood supply. I won't say "lack." No blood
5 supply.

6 **Q** What's that going to look like when you're examining a
7 foot, mummification?

8 **A** It's going to be -- if you feel it, it feels like this,
9 the texture of it. It contracts down. Sometimes it's kind of
10 a gray-white-looking thing. I have seen entire legs
11 mummified.

12 And so it is -- the look of it is not like usually a
13 black ulceration, although it can be. The whole thing can be
14 black -- can be considered mummified also. But when you see
15 it, you know what it is. There's just no doubt.

16 **Q** Did Dr. Player get -- consult with a vascular specialist?

17 **A** Yes, he did.

18 MR. JEFFERIES: Objection, Your Honor. Dr. Player was
19 here. All these questions could have been asked of
20 Dr. Player.

21 THE COURT: First of all, we don't have speaking
22 objections. If you have an objection, you need to state the
23 grounds for it.

24 MR. JEFFERIES: Leading, Your Honor.

25 THE COURT: I'll sustain.

1 BY MR. BLAIN:

2 Q Dr. Ross, do you know what Dr. Player did next?

3 A Yes. He has lack of bleeding on two operations: One on
4 July the 1st, the other one on July the 15th. He's got to
5 find out what can be done to get more blood to the foot, as he
6 should do. So he consults Dr. Cunningham, a very fine
7 vascular surgeon in this community.

8 Dr. Cunningham's procedure was initially to do an
9 angiogram. This is where you put dye directly into the blood
10 vessels. And what did he find? The big blood vessel called
11 the superficial femoral artery was totally blocked. There was
12 very little blood going down the leg. Now, this is high up in
13 the thigh.

14 So what he did, his task -- what's a surgeon supposed to
15 do? We have got to get more blood to the foot. So he did an
16 operation. It's called a superficial femoral artery
17 endarterectomy remote with a stent and a drug-coated balloon
18 and angioplasty.

19 So what does all that mean? It's just medical
20 terminology. You open the hole up so you can get more blood
21 to go down. Also, the secondary big blood vessel in the groin
22 area, called the profunda femoral artery, he had to take the
23 stuff out of that to get circulation through that secondary
24 blood vessel to go down. Then he did what's called a patch
25 angioplasty where you put a patch on it to make the whole

1 thing wide open.

2 Now, here is what happens. He is so pleased with himself
3 he can't stand it. Why? Because after you do a vascular
4 procedure, the thing you want to know: What does the foot
5 look like? And he documents very clearly in his operative
6 note that the color on the foot has improved tremendously.

7 When we look at our coloring of foot, you push on your --
8 or hand -- you push on this. And I push the blood out of this
9 fingertip and I let it go. It refills within two to three
10 seconds. That's called capillary refill. That's a good
11 thing.

12 But not only did he say the color was good, he said the
13 pulses in the foot were excellent. That's the word he used:
14 Excellent. What does that mean? He can feel the pulse.

15 There are two pulses in your foot. Just like when you go
16 to your family doctor or somebody examines you. You have got
17 one on top of the foot and you got one on the inside of the
18 ankle. I'll take one of those. We got two.

19 Then he does something else. He takes a Doppler out --
20 this is a little ultrasound machine -- and listens to the
21 pulse. And the pulse is what's called multiphasic. That
22 means there's a little bit of elasticity going on there.

23 He is very pleased with this outcome. This is two days
24 after 7/15. This is on 7/17. We're pleased now.

25 Dr. Player's first operation, not pleased. Dr. Player's

1 operation, we're definitely not pleased. Dr. Cunningham's
2 operation, we're now very pleased.

3 So now, as this progresses in time, what do we do with
4 the foot now? Now, remember the description of this foot
5 where we have this gigantic wound here. To get that wound to
6 heal in in a non-diabetic is going to be tough. So what we
7 are going to do?

8 We want to get a functional limb out of this. So Dr. Pat
9 was called about a week after this, and he makes a decision
10 that the blood supply is so good, he's going to do a
11 transmetatarsal amputation. That means we're going to take
12 this across here and we're going to take this flap and we're
13 going to rotate it up. Why is that a good thing? Because you
14 can walk on your heel. We want function out of this thing.

15 But the interesting thing of all the operations and
16 amputations that we do on the leg where we have above-knee
17 amputation, below-knee amputations, and we have this
18 transmetatarsal amputation, this is the hardest one to heal.
19 This is the hardest one to heal.

20 So what happens after -- you would never do this
21 operation, this transmetatarsal amputation, unless you were
22 assured that you're going to have good blood supply for this
23 thing to heal. It's a hard place to heal.

24 Well, that's what he did, so he had to be somewhat
25 assured that it was going to heal. And he says in his

operative note: Bleeding. And not only does he have bleeding, he has to do what's called suture ligation of the bleeding. This is where we take a stitch and we actually have to tie the blood vessel off. That's like pulsatile flow. Pump, pump, pump.

We're all feeling pretty good now. Dr. Cunningham felt pretty good. Dr. Kite (ph) felt very good.

Q Thank you, Dr. Ross.

The procedure that Dr. Cunningham did, was that on the foot?

A I'm sorry. Say again.

Q Where on the body was the procedure that Dr. Cunningham did?

THE WITNESS: Judge, may I stand?

THE COURT: Yes.

THE WITNESS: Okay. Thank you.

A Here's where it comes from. The operation is done in the groin but the blood vessels that are diseased are here. We actually got pretty good blood vessels down there and we got the two pulses back: The one behind the ankle and the one on the top. That's, like, really, really good.

Every vascular surgeon in the world, if you're doing some kind of reconstructive surgery and you have got pulses in your foot, we feel really good about that. That's what he did.

Q Thank you, Dr. Ross.

1 After the transmetatarsal amputation by Dr. Pack
2 (indiscernible), do you have an opinion as to whether that
3 operation or that surgical site, did that heal?

4 **A** On the transmetatarsal amputation, again, it's a hard
5 place to heal, of the amputations. That's why a lot of people
6 will not even default to do a transmetatarsal amputation.
7 They'll go directly to a below-knee amputation. And the
8 easiest one to heal is going to be the above-knee amputation.

9 So what happens -- and it looks like he did not even
10 close the skin, because sometimes, you just leave the skin
11 open because, if you close the skin too tight, you can cause
12 the skin not to have its blood supply. That's what it looks
13 like here.

14 So what happened, along that suture line where you close
15 this flap that comes up, that will remain open. But what's
16 interesting, if you follow this over a few months, this
17 started out at 37 millimeters, and this thing, by January --
18 now, Dr. Pack's (ph) operation was done on 8/4. August the
19 4th.

20 So to get this to heal in, from the wound center when
21 Dr. Pack was seeing her, evidently, in the wound center, from
22 the records, is that this thing totally healed in. Totally
23 healed in.

24 So what does it mean to totally heal in on a
25 transmetatarsal amputation? Two things are not there:

1 Infection and you have good circulation. You have got to have
2 good circulation.

3 So we have progressed from July the 1st with Dr. Player's
4 two operations unhappy; Dr. Cunningham operation, very happy;
5 Dr. Pack's operation, medium happy. But on January of '16 --
6 well, what, six months later now? Seven months later? -- the
7 thing has totally healed. That would be considered a big
8 success.

9 **Q** So after the transmetatarsal operation, it's your opinion
10 that --

11 **MR. JEFFERIES:** Objection, Your Honor. He can't tell him
12 what his opinion is.

13 **THE COURT:** Sustained.

14 **BY MR. BLAIN:**

15 **Q** Did the transmetatarsal amputation heal, Dr. Ross?

16 **A** Yes.

17 **Q** Did -- after the transmetatarsal operation healed, did it
18 break down?

19 **A** Yes.

20 **Q** Why did it break down?

21 **A** Why would it break down? You only got two reasons. The
22 big reason is circulation. It healed because we restored the
23 circulation and now it's breaking down.

24 Now, remember, we talked about atherosclerotic disease is
25 progressive. Everything that Dr. Cunningham did, this

1 wonderful operation, the disease is progressing. It's always
2 there. And with kidney disease -- whether it be heart,
3 whether it be carotid arteries, in the brain, it makes the
4 disease progress very quickly.

5 So what would we assume? We would assume that indeed
6 where is the circulation? It should not break down unless we
7 don't have circulation. So what happens now, once it gets
8 broken -- the skin breaks down again, we have got to do a
9 circulation test. We have got to find out.

10 So the definitive test that we do, the real test, we have
11 got to know, they called in another vascular surgeon, a very
12 good vascular surgeon in this town, Dr. Stonerock. So he does
13 an angiogram. He puts dye down in that same area on the right
14 side, but he's coming from the left side, probably, and
15 shooting dye down this leg because he needs to see everything
16 up here. He needs to see what's going on here, and we have to
17 go also down to the foot.

18 So what did he find? The superficial femoral artery --
19 that's the big one -- he even uses the word "atriach" (ph)
20 which means very, very, very small, in his operative note.
21 That's not a good sign.

22 He also says, in his operative note, that dorsalis pedis
23 and posterior tibial pulses -- remember where we were feeling
24 the pulses? We could feel them. Can't even see them on the
25 angiogram now. They're gone.

1 So what has happened here, there seems to be
2 progression -- excuse me -- progression of disease. We don't
3 have anything really that is thought to be reconstructible
4 because the progression of disease. So now we're left with a
5 decision: What are we going to do? If we can't reconstruct
6 and we don't have good blood supply to where it needs to go,
7 then you have to do some kind of amputation that's going to
8 meet the appropriate blood supply. The basic principal of
9 surgery. Blood supply has to meet amputation. And that's
10 when a decision was made to go further with Dr. Sonnefield
11 (ph).

12 **Q** Now, what procedure did Dr. Sonnefield do?

13 **A** Above-knee amputation.

14 **Q** Dr. Ross, do you have an opinion to a reasonable degree
15 of medical certainty most probably what the cause was of the
16 procedure done by Dr. Sonnefield, the above-knee amputation?

17 **A** It's no doubt. It's peripheral vascular disease
18 associated. We have got the angiographic documentation before
19 and after.

20 **Q** Thank you very much, Dr. Ross. I have no further
21 questions right now.

22 THE COURT: All right. Cross-examination?

23 MR. JEFFERIES: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. JEFFERIES:

1 Q I know it's getting on to the lunch hour, and I promise
2 I'm not going to be long. I'm going to grab this chart real
3 quick. I'm going to try to keep this simple.

4 Dr. Ross, if I understand you correctly, it's your
5 opinion that, on June 26 of 2015, before April Jones stepped
6 on this nail, that she was an unhealthy person.

7 A Yes, oh, absolutely.

8 Q Let's just put that on there.

9 Dr. Ross's opinions: On June 26, 2015, April Jones was
10 unhealthy. That's your opinion? That's one of your opinions;
11 right? Not all of them.

12 A Well, you have got renal failure -- we have gone through
13 all that.

14 Q Right. We have gone through all that. We don't need to
15 go back again.

16 You mentioned earlier that Walmart hired you to be here.

17 A Hired me to review the chart, that's exactly right.

18 Q Okay. And how much are they paying you to do that?

19 A I can't tell you. I think it's like \$500 an hour.

20 Q If I were to show you an invoice from yourself to the law
21 firm for Walmart, would that help you refresh? Is that your
22 invoice?

23 A Looks like it.

24 Q And can you tell us what that hourly rate is?

25 A Looks like 500.

1 Q Is that what you charge your patients that you treat?

2 A No. Of course not.

3 Q What do you charge them?

4 A I don't charge -- look, you want an answer to this?

5 Q Yeah, I'm curious, yeah.

6 A No, I'll give you --

7 Q Well, hold on a second.

8 A No, hold on, hold on. Remember I told you I was in
9 Bamberg, South Carolina? We didn't bill the patients. Wait a
10 minute. You asked the question.

11 MR. JEFFERIES: We're getting pretty nonresponsive here.
12 I'm asking --

13 THE COURT: Wait a minute. The question was asked is
14 that what he charges the patient. And he should have an
15 opportunity to answer.

16 Go ahead.

17 MR. JEFFERIES: Your Honor, may we approach?

18 THE COURT: Yes.

19 BENCH CONFERENCE

20 (A bench conference was held off the record and outside the
21 hearing of the jury and others.)

22 (Open court resumes as follows:)

23 BY MR. JEFFERIES:

24 Q I'm going to withdraw the question, Doctor. Let's move
25 on.

1 **A** All right.

2 **Q** Take a look at the invoice that I just showed you. That
3 invoice is dated -- or what date does it say? May 13, 2019?

4 **A** Is that January 30th, '19? Or the invoice date?

5 **Q** The invoice date.

6 **A** Oh, yeah, I'm sorry. You're right. Okay. That's right.

7 **Q** And that January 30, 2019, date, that's when you started?

8 **A** Right, mm-hmm.

9 **Q** Okay. So you started working on this case for Walmart on
10 January 30, 2019, and you -- by the time of this invoice of
11 May 13th of 2019. So five months roughly; is that right?

12 **A** That's right.

13 **Q** Okay. And, by that time, you had spent five hours at
14 \$500 an hour for a total of \$2500?

15 **A** That's right.

16 **Q** Okay. Now, will you confirm for me -- I asked your
17 attorneys last night -- not your attorneys, Walmart's
18 attorneys last night if there were any invoices past this May
19 13, 2019, invoice, and they said no, nope, those are it.
20 That's the only one. Just the \$2500. Are they right?

21 **A** I don't know.

22 **Q** You don't know if they're right?

23 **A** I don't know if they're right. That's exactly right.

24 **Q** All right. Do you see this email from me to the Walmart
25 attorneys I just handed you?

1 **A** Okay. I'm sorry. Say your question.

2 **Q** Yeah. Do you see that this is an email from me to the
3 Walmart attorneys I just handed you? And then their response;
4 is that right?

5 **A** Yes, yes, yes, yes.

6 **Q** And my question was whether there were any other invoices
7 from Dr. Ross --

8 MR. BLAIN: Objection, Your Honor.

9 THE COURT: Approach the bench, please.

10 BENCH CONFERENCE

11 (A bench conference was held off the record and outside the
12 hearing of the jury and others.)

13 (Open court resumes as follows:)

14 BY MR. JEFFERIES:

15 **Q** I'm going to let you hold on to that invoice. Since you
16 don't know about this email, I'll just skip that. I won't ask
17 about things you don't know about.

18 So as far as you know, the only bill that you have billed
19 on this case so far is May 13, 2019, for \$2500?

20 **A** Counsel, I don't know. My secretary takes care of these
21 kinds of things. It may be some more out there but I'm not
22 aware of that.

23 **Q** Okay. Well, certainly, there would be a bill for today,
24 right, at some point?

25 **A** I would hope so.

1 Q Okay. But, otherwise, between May 13 of 2019 and today,
2 y'all haven't waited, what, two and a half more years to send
3 a bill, have you? You wouldn't expect that to be the case,
4 would you?

5 A (No audible response.)

6 Q You don't know. All right.

7 Have you done any more work on this case besides the five
8 hours?

9 A Oh, yeah.

10 Q Are you going to bill for it?

11 A Probably not.

12 Q Okay. How much more work besides the five hours have you
13 done?

14 A Probably, over the past two or three weeks, I would say
15 maybe five or six. Five maybe.

16 Q All right. So five hours back between January and May of
17 2013. Is that right? Pardon me, of 2019. And then in the
18 past what did you say, two or three weeks?

19 A Yeah, over the past two or three weeks.

20 Q Two to three weeks.

21 Another, what, five or six hours?

22 A I would think so.

23 Q All right. Now, you formed your opinion in this case
24 back in May of 2019; isn't that right?

25 A I formed an opinion in '19.

1 Q Okay. After doing five hours of work?

2 A Mm-hmm. Yes.

3 Q Okay. And the opinion that you formed back in May of
4 2019, after doing five hours of work, was that Ms. Jones was
5 unhealthy, she had all the conditions you have already listed,
6 and that that's what caused the amputations. Is that a fair
7 summary?

8 A No, it's not.

9 Q Okay. Give me a fair summary of the opinion you formed
10 back in May of 2019.

11 A Well, we do have these pre -- these co-morbid factors,
12 which we have discussed.

13 Q Right.

14 A Number two, we have looked into the operative notes, of
15 which the operative notes themselves, that's where the crux of
16 everything is. So how is the opinion formed? The opinion was
17 formed because of the operative note, which your surgeons have
18 already said. Five different surgeons.

19 Q And we'll get into how you formed the opinion.

20 A Yeah.

21 Q I just wanted to confirm that it was formed back in May
22 of 2019.

23 A Yes.

24 Q You haven't changed your mind. You haven't said
25 suddenly, oh, no, it's the nail, it's not the diabetes?

1 **A** Well, my -- my opinion has not changed but what we're
2 talking -- if I may, if I may.

3 **Q** Yeah.

4 **A** We are talking about the above-knee amputation. That's
5 what I'm really concerned with when I review these things.
6 And the above-knee amputation with Dr. Cunningham's work, with
7 Dr. Pack's work, with Dr. Sonnefeld's work, and
8 Dr. Stonerock's work became quite apparent that my opinion is
9 based that we have angiographic proof of what happened, what
10 was done, and the progression of disease that happened six,
11 seven months later.

12 **Q** If I understand you, your opinion that you formed back in
13 May of 2019 is still your opinion today based on the medical
14 records?

15 **A** That's my opinion.

16 **Q** Okay. Doctor, do you -- I know you weren't in the
17 Walmart. Do you dispute that April Jones stepped on a nail in
18 the Walmart?

19 **A** Counsel, I don't know if she stepped on a nail. I was
20 not in Walmart.

21 **Q** Right. And you weren't here to hear her testify she
22 stepped on a nail.

23 **A** I did not.

24 **Q** And had you been in here this morning, you would have
25 heard Kevin Lane at Walmart say that he didn't see her step on

1 the nail but he saw her flip-flop with a nail hole through it
2 and he saw puncture wounds on the bottom of her foot.

3 MR. BLAIN: Object to the form, Your Honor. Pitting
4 witnesses.

5 MR. JEFFERIES: Well, I'm not asking him to disagree.

6 THE COURT: I'll overrule it.

7 BY MR. JEFFERIES:

8 Q So, you have no reason to doubt that she -- whether or
9 not it caused her amputations; I'm not asking you that -- you
10 have no reason to doubt that she stepped on the nail in the
11 Walmart, do you?

12 A Well, I -- you talk about hearsay. I guess this is kind
13 of hearsay because I'm hearsaying it.

14 Q And that's what I'm asking you. You don't have -- but
15 you don't have any evidence to say --

16 A No, I don't.

17 Q -- she didn't do that.

18 A No, I don't.

19 Q Okay. Fair enough. All right.

20 An unhealthy person, like Ms. Jones back in 2015,
21 stepping on a nail in a Walmart, a rusty nail -- that rusty
22 nail -- would you expect that, given all her conditions --
23 diabetes, all these other things -- to heal really well and to
24 heal quickly?

25 A No, not with her vascular disease and her premorbid

1 things that we just talked about.

2 **Q** Would you expect it to heal at all or would you expect it
3 to get worse?

4 **A** Not so much from the nail but from the nail with the
5 peripheral vascular disease. You can't de-couple these.

6 **Q** Okay. So that whatever injuries she got from the nail,
7 you would not expect it to heal. You would expect it to go
8 downhill.

9 **A** With the peripheral vascular disease.

10 **Q** Fair enough. Okay.

11 That you know that Ms. Jones stepped on the nail in
12 Walmart, according to Walmart, according to her, on June 26 of
13 2015?

14 **A** Right.

15 **Q** All right. Now, you were reading from some medical
16 records earlier about a right foot ulcer that Dr. Keith Player
17 said he noticed. What's that date of consult?

18 **A** 6/30.

19 **Q** 6/30. So that's four days after she stepped on the nail
20 in the Walmart. So you would expect that injury to be worse
21 four days after stepping on a rusty nail in somebody with
22 diabetes and poor vascular flow and all this stuff?

23 **A** I would expect it to get worse.

24 **Q** So when it started, it was just a little two millimeter
25 nail prick.

1 **A** Mm-hmm.

2 **Q** It wouldn't be a two millimeter nail prick four days
3 later, would it?

4 **A** Not necessarily because, basically, when you get an
5 injury with a puncture wound, your infection usually starts
6 inside and comes out, not outside and going in. So what
7 happens -- and we have seen this so many times -- when you get
8 a twenty-penny puncture nail to the bottom of the foot, you
9 may have a filament (ph) infection inside the foot, but on the
10 outside of the foot, you don't see a lot.

11 **Q** All right. And you didn't see her foot on that --

12 **A** No, no, no.

13 **Q** So when Dr. Player saw an ulcer on her foot on the 30th,
14 you can't say one way or another whether that could have been
15 four days' worth of bad healing from this nail, can you?

16 **A** No, I can't, no.

17 **Q** Okay.

18 **A** No.

19 **Q** We talked about -- or you talked with opposing counsel
20 about -- a lot about that third amputation, and it was your
21 opinion that the third amputation -- this one -- the last one,
22 I should say --

23 **A** The transmetatarsal.

24 **Q** The one above the knee. This amputation. Your opinion
25 is this amputation was due to poor healing?

1 **A** Not poor healing. That amputation was due to the blood
2 supply issues that we have discussed with the peripheral
3 vascular disease.

4 **Q** Would Ms. Jones's amputations have resulted if she had
5 been in good health, if it were somebody -- I'll represent to
6 you I'm in good health. Would this have happened had she been
7 in good health?

8 **A** Do you have diabetes?

9 **Q** I do not?

10 **A** Do you have peripheral vascular disease?

11 **Q** I'll represent to you I have none of the things that she
12 has --

13 THE COURT: Counsel --

14 **A** Well, you're asking me --

15 THE COURT: Doctor, the way this things works is he asks
16 the questions.

17 THE WITNESS: Okay, I'm sorry.

18 THE COURT: And you'll provide the answer. It will be
19 more efficient.

20 THE WITNESS: I understand.

21 BY MR. JEFFERIES:

22 **Q** Let me ask it in a different way. Would Ms. Jones's
23 amputations, do you agree that they would not have resulted
24 had she been in excellent health -- good health?

25 **A** In excellent -- nothing is for sure in medicine. Period.

1 The likelihood, when we do operations, are you a low risk, a
2 medium risk, or high risk? Most of us in this room are going
3 to be faced with that situation.

4 If you are in excellent health, then, indeed, your chance
5 of having this ongoing cascade of complications is far less.
6 100 percent? Nothing is 100 percent but certainly far less.

7 Q All right. So you attribute these amputations -- at
8 least the last one, certainly -- to her poor health?

9 A The AK amputation? I want to be sure we're talking about
10 the correct one.

11 Q Is that this one here?

12 A Yeah, above-knee amputation.

13 Q Above-knee.

14 A Right. The above-knee amputation was caused by
15 peripheral vascular disease with inappropriate blood supply
16 below the level of the knee because --

17 Q And that --

18 A I'm sorry.

19 Q I'm sorry, go ahead.

20 A -- because of progression of disease, which is clearly
21 shown on Dr. Stonerock's angiogram. It's clearly there.

22 Q All right. And had she been in good health and didn't
23 have those things that you just described that caused it, you
24 agree it wouldn't have happened?

25 A No, no. I agree that it is less likely that it would

1 happen.

2 Q Okay. Fair enough.

3 In this five hours you spent reaching your opinion, what
4 did you -- what did you actually do to reach that? I know you
5 reviewed some records so that's part of it. What else?

6 A Yeah, what you're going to do -- to review the records,
7 number one --

8 Q Well, let's just get it listed out first before we talk
9 in details. I'm going to ask about each in detail.

10 I know you reviewed the records. Did you do anything
11 else besides review the records? Did you review, for
12 instance, pictures? Did you review video? Did you read
13 deposition testimony? I'll ask them one at a time.

14 A Read deposition.

15 Q You read depositions.

16 A Uh-huh.

17 Q Okay.

18 A And the records review, as we had talked about. We were
19 able to look at the operative notes.

20 Q Okay.

21 A We're going to look at the chronological history going
22 back, I think, until '13.

23 Q All right. Now that chronological history, is that part
24 of the medical records or is that something you would have
25 compiled?

- 1 **A** No, that's in the medical record.
- 2 **Q** Okay. Did you review any video of, like, the actual --
- 3 **A** I did -- I did actually see a video.
- 4 **Q** Inside the Walmart?
- 5 **A** Mm-hmm.
- 6 **Q** Just one or more than one?
- 7 **A** I think it was just one.
- 8 **Q** Can do you remember what the video --
- 9 **A** No, I'm sorry. It was two. Two. I'm sorry.
- 10 **Q** Do you remember what they showed?
- 11 **A** I think it was walking down the aisle, looking at the
- 12 foot. And then when the Walmart people were attending, trying
- 13 to help Ms. April.
- 14 **Q** Okay. And you watched those videos all the way through?
- 15 **A** I'm not sure how long they were.
- 16 **Q** The one, I'll represent to you, where the Walmart folks
- 17 were with her in the customer service area is about an hour.
- 18 **A** No, no, no, I didn't see that much.
- 19 **Q** Okay. And the other one is probably only a few minutes.
- 20 All right.
- 21 Did you read any recorded interviews? Telephone recorded
- 22 interviews?
- 23 **A** Didn't have any.
- 24 **Q** Okay. So didn't do that. All right.
- 25 So aside from reviewing two videos -- parts of two

1 videos, reviewing medical records and reviewing deposition
2 testimony, was there anything else that you reviewed in order
3 to form your opinion during those five hours before May 13,
4 2019?

5 **A** Mr. Jefferies, you realize how big these files are. This
6 is like this. And you have to go through this. You have to
7 pick out from -- from the wound care center. You have got to
8 pick that out. Not just the operations.

9 Then you have to cross-correlate each operation with
10 what's -- how the wounds are being taken --

11 **Q** I get that it takes time. I'm not challenging you on the
12 time you spent.

13 Do you know how many pages of medical records you
14 reviewed?

15 **A** No. It's a lot.

16 **Q** I mean, hundreds? Thousands?

17 I'll come back to that.

18 **A** I don't know.

19 **Q** I'm not going to belabor this. You didn't examine
20 Ms. Jones?

21 **A** No.

22 **Q** You did not ask to examine Ms. Jones.

23 **A** No. No, I can't do that, I think, can I?

24 **Q** Okay. Well, I'll represent to you, actually, an opposing
25 party could.

1 You have never met Ms. Jones before today?

2 **A** No.

3 **Q** Okay. Never seen her.

4 Didn't look at her foot?

5 **A** No.

6 **Q** Didn't see a picture of her foot?

7 **A** (No audible response.)

8 **Q** Okay.

9 COURT MONITOR: He's not answering the question.

10 BY MR. JEFFERIES:

11 **Q** You didn't do any of those things, did you?

12 **A** No, sir.

13 **Q** Okay. For the record, I get it. All right.

14 You have watched some videos of her walking around
15 Walmart. You have reviewed some medical records. You have
16 reviewed some depo testimony.

17 **A** Correct.

18 **Q** Okay. When you treat your own patients, do you examine
19 them before giving a diagnosis?

20 **A** Well, always.

21 **Q** Always.

22 And presumably, you have met with other patients before
23 you give a diagnosis; right?

24 **A** Yes. And you're saying my own patients now?

25 **Q** Yeah, your own patients.

1 **A** Okay. Let's be clear.

2 **Q** All right. Why do you always examine your own patients
3 before rendering a diagnosis?

4 **A** Mr. Jefferies, we need to meet the human being. This is
5 very important is a person -- a doctor needs to actually touch
6 the patient, in my opinion. If you're going to allow me the
7 privilege to operate on you, I want to talk to you a little
8 bit. So it's not -- and do we have the diagnosis in what
9 we're going to do before we even see the patients? Frequently
10 we do. We already know the diagnosis. And if you look at
11 many of the diagnosis that we do in medicine, the radiographic
12 diagnosis where what you do on the physical examination is
13 only reporting to the patient of what we have, what's going
14 on, and what you are to expect.

15 So how are you going to do that unless you meet the
16 patient? You can't do it.

17 **Q** I tend to agree it's important.

18 Here's some medical records that opposing counsel -- you
19 have copies right there -- showed to you.

20 **A** Okay.

21 **Q** This isn't all the medical records you reviewed, is it?

22 **A** No, it's more than that.

23 **Q** I'll represent to you -- well, I'll just ask you the
24 question. Just to put (indiscernible). How many pieces of
25 paper is that?

1 **A** I have no idea. You'd have to tell it.

2 **Q** Can you put on your glasses and get real close? It says
3 right on it.

4 **A** It's 500 sheets.

5 **Q** 500 sheets of paper. That's about what you said.
6 Something like this or maybe that much?

7 **A** Maybe about like this.

8 **Q** 500 sheets.

9 **A** We'll go with that.

10 **Q** I'm going to show you medical records that Dr. Player
11 testified on April Jones's medical records.

12 **A** Mm-hmm.

13 **Q** It's more than 500 sheets; right?

14 **A** Okay.

15 **Q** Do you agree?

16 **A** Yeah, I do.

17 **Q** And you reviewed this many.

18 **A** Mm-hmm.

19 **Q** Dr. Player reviewed this many.

20 **A** Mm-hmm. I guess. That's what you're telling me.

21 **Q** It's two, three, four, five, six times more?

22 **A** Mm-hmm.

23 **Q** Is there any possibility that, in the additional
24 thousands of pages of records that Dr. Player reviewed, he saw
25 something that -- well, you didn't see in the 500 that you

1 reviewed?

2 **A** Mr. Jefferies, in --

3 **Q** I'm sorry; my question is a simple yes or no. Is it
4 possible that Dr. Player saw something in the additional
5 thousands of pages beyond what you reviewed different from
6 what you saw?

7 **A** No.

8 **Q** Oh. That's not possible?

9 **A** Would you like to know why?

10 **Q** I'd be very curious to know why it's impossible.

11 **A** Well, hospital records -- when we review hospital
12 records, a lot of things digital records nowadays. And if you
13 look through the records, you have to go to key points in the
14 records to find the things that you need to know because most
15 of the records in charts, you don't really have anything in
16 there that's going to be of any relevance because there's
17 going to be -- there will be a summation somewhere of what's
18 going on. That's why you have an admission history and
19 physical, you have a discharge history and physical, you have
20 operative notes you go by.

21 And when you put all these things together, many times,
22 you can condense everything that has happened because it's
23 going to be summarized. So having these records in here,
24 you're going to have a lot of -- you're going to have a lot of
25 digital records that have been simply copied off of the

1 computer that are going to mean little to nothing.

2 Q But you don't know because you haven't reviewed it.

3 A No, I'm just telling you overall.

4 Q Overall. In general.

5 A In general.

6 Q But not in this case.

7 A Not in this case, did not see all those records.

8 Q The 500 or so pages of records that you did review, where
9 did those come from? How did you get them?

10 A The attorney sent that to me.

11 Q The attorney.

12 A Yes.

13 Q So if they missed one of those important things that's in
14 here of all the records that Dr. Player's testified he
15 reviewed, you'd have no way of knowing that, would you?

16 A No, I would have no way of knowing that.

17 Q I think you said earlier that it's necessary, in your
18 opinion, for a doctor to examine a patient before rendering a
19 diagnosis. Was that your opinion?

20 A No. Let's be clear. I said many times the diagnosis can
21 be rendered with -- it may be coming from a CT scan, it may be
22 coming from an ultrasound, it may be coming from an EKG, but
23 meeting the patient itself, many times, you'll already have
24 the diagnosis. How many times has that happened to us a lot?

25 Q So you diagnose your own patients frequently without --

1 without even examining them?

2 **A** It depends on what we're trying to diagnose.

3 **Q** Would you recommend an amputation without examining the
4 patient?

5 **A** The ampu--

6 **Q** Would you perform an amputation without examining the
7 patient?

8 **A** You have got to examine the patient because you're going
9 to have -- it has to be confirmatory of why you are going to
10 do the amputation and what level. Because what level that
11 amputation is going to be done on is going to be dictated by
12 multiple factors.

13 Would I personally do an amputation on somebody that I
14 would not examine or talk to? No.

15 **Q** Okay.

16 **A** I'm not sure any surgeon would do that.

17 **Q** All right. Do you agree with me that a patient's
18 treating physician is very likely to have a better
19 understanding of their medical condition than someone who has
20 never examined them, never seen them, and has read only a
21 fracture of their records?

22 **A** Not necessarily.

23 **Q** You don't have any reason to doubt that Dr. Player
24 actually examined this patient, do you?

25 **A** Say that again.

1 Q You don't have any reason to doubt that Dr. Player
2 actually examined --

3 A I'm sure he's a very fine surgeon.

4 Q Are you familiar with Dr. Player?

5 A I don't think so.

6 Q Do you have any reason to doubt that he is a fine
7 surgeon, a highly respected member of the legal community?

8 A You know, the -- when you review charts --

9 Q I'm sorry, my question was: Do you have any reason to
10 doubt whether Dr. Player --

11 A No --

12 Q -- is a highly respected surgeon?

13 A I have no reason to believe that he's not very good, and
14 I get a lot of this information from the charts that he did
15 when he dealt with Ms. April Jones.

16 Q Okay. You're aware he's originally from Florence, went
17 off to Princeton for college, then to MUSC for medical school?

18 A No, I'm not aware of that.

19 Q Okay. Then came back to Florence, his hometown, to
20 practice? Been here practicing 20 years. Are you aware of
21 that?

22 A Not aware of that.

23 Q Okay. In fact, he's just right, like, literally right
24 down the street.

25 You mentioned that you reviewed, you think, two videos.

1 Is that right?

2 **A** That's right.

3 **Q** One of Ms. Jones walking around Walmart and a portion of
4 a video of her seated in the customer service area.

5 **A** That's right.

6 **Q** All right. Did any of those videos show Ms. Jones's
7 injuries?

8 **A** You know, on the video, I couldn't see it. I could see
9 where she lifted the foot up, took the flip-flop off, and
10 placed the flip-flop on a shelf or something like that. But
11 on the video that I saw, the section, I could not see the
12 injury.

13 **Q** Okay. And certainly couldn't see it well enough to form
14 a diagnosis based on what you (indiscernible)?

15 **A** Oh, no, no, no.

16 **Q** All right. How many hours out of the five hours you
17 spent reaching your opinion, how many hours did you spend
18 reviewing the videos?

19 **A** Oh, very -- very little.

20 **Q** Very little. All right.

21 Mostly it was reviewing medical records?

22 **A** That's right.

23 **Q** Okay. And 500 pages in five hours, about 100 pages an
24 hour?

25 **A** No, it doesn't work that way. You'd have certain things

1 that you'd have to look at, particularly on the operative
2 note, to read, re-read, correlate, that kind of thing. So
3 don't think you read a page and you have got it. I'm not that
4 smart.

5 **Q** Fair enough.

6 But, on average, to get through 500 pages in five hours,
7 it's 100 pages an hour, ultimately?

8 **A** Yeah, but...

9 **Q** I mean, is that right?

10 **A** You might have look at medical pages. Some of them take
11 on the order of four seconds, so let's be clear.

12 **Q** All right. So you'd spend longer on others.

13 **A** Yeah, you spend --

14 **Q** But on average --

15 **A** You spend time where you need to need spend.

16 **Q** Yeah. Fair enough. All right.

17 What date range of medical records did you review for
18 Ms. Jones?

19 **A** I'm not sure but I think -- recollection, I think I
20 probably reviewed -- intensively reviewed going back to '13.
21 And then when Dr. Tommy Wilson, who we trained, by the way, he
22 actually put the catheter in Ms. April and when dialysis got
23 started. So we were kind of following this thing along from
24 that period of time. And there were some hospitalizations, I
25 think, in there, intermittently in there somewhere. We

1 reviewed that.

2 And then the Fersenius records, there were some of those
3 that we reviewed. This is the dialysis clinics where they
4 keep records about how -- the effectively of dialysis.

5 Q And that's all a part of those 500 pages of records that
6 you reviewed?

7 A Yeah, mm-hmm.

8 Q Did you talk to Patricia Barrineau (ph)?

9 A No.

10 Q Did you talk to John Bigham (ph)?

11 A I don't know these people.

12 Q So that would be a no, you didn't talk to them?

13 A That would be a no.

14 Q Did you talk to Dr. Gulbalbai (ph)?

15 A No.

16 Q Did you talk to Dr. Laqued (ph)?

17 A No.

18 Q Did you talk to any of April Jones's doctors?

19 A No.

20 Q You didn't talk to Dr. Wilson?

21 A I talked to him about different things. Nothing to do
22 with this.

23 Q Nothing to do with this. All right.

24 So you could have talked to Dr. Wilson about this; right?

25 I mean, you know him and you talk to him; right?

1 **A** Oh, I know this guy. Absolutely.

2 **Q** So you would have gleaned from more than just what's in
3 these sheets of paper; right? If you wanted to, you'd call
4 them up and talk to them?

5 **A** I don't know if I could not or because I assume that this
6 is being well reflected on what had happened with this case.

7 **Q** But you didn't talk to any of these folks?

8 **A** No.

9 **Q** Did you bring any of April Jones's medical records with
10 you today?

11 **A** I have a copy of some of the operative notes in case I
12 needed to reference that. You have those.

13 **Q** That's the same thing. So that's --

14 **A** Yes, yes.

15 **Q** All right. Pretty clearly, but I'll ask it anyway, if
16 the last time you reviewed medical records was May 13 of 2019,
17 you wouldn't have reviewed any medical records dated after
18 that; right?

19 **A** Well, that's a long time ago. We had to re-review
20 things. I'm not that smart to remember what I did two years
21 ago, so I have got to re-look at all these medical records
22 again -- the pertinent medical records again.

23 **Q** And those are all medical records back before May 13 of
24 2019, the same ones you looked at the first time.

25 **A** Yes.

1 Q Okay. It's been alluded to that Dr. Player and you have
2 different -- different opinions. I'm not going to ask you to
3 contradict him. Is it possible that Dr. Player saw something
4 in the rest of those records that would cause him to have a
5 different opinion than yours?

6 A I doubt it, and I'll tell you --

7 Q I was just asking if it's possible.

8 A Oh, well, certainly anything's possible.

9 Q Would you agree with me that, generally speaking, a
10 medical opinion based on a thorough review of all the records
11 is more likely to be accurate than a review based on some of
12 the records?

13 A The medical review -- the quality of the medical review
14 depends on review of the pertinent records.

15 Q And how would you know which are pertinent unless you go
16 through them all to make sure you got them?

17 A That's easy. We have got the operative notes. We have
18 got the natural history of what has happened with the wound
19 care, and that tells a very nice story from the very beginning
20 from Dr. Player, Dr. Cunningham, Dr. Pat --

21 Q And the story that was told through those records is the
22 story that was told through the 500 documents that Walmart
23 gave to you.

24 A Mm-hmm.

25 Q If there's a different story in here that Walmart didn't

1 give to you, you'd never know, would you?

2 **A** Well --

3 **Q** How would you know?

4 **A** Well, Walmart did not generate those operative notes.
5 This has physicians' names on them.

6 **Q** Oh, I understand. Walmart gave them to you, though;
7 right? Walmart provided them.

8 **A** I don't -- the attorneys gave to me.

9 **Q** The attorneys. Fair enough.

10 **A** I don't like just Walmart. You know? I go to Walmart
11 but they don't give me medical records.

12 **Q** Fair enough.

13 The attorneys for Walmart provided you with those
14 records. And so what you reviewed and based your opinion on
15 were the records selected by the attorneys from Walmart?

16 **A** Oh, it was pretty comprehensive, actually.

17 **Q** And not the professionals (indiscernibles)?

18 **A** (No audible response.)

19 **Q** You can see Ms. Jones now. She has not had any other
20 limbs amputated, has she?

21 **A** Not that I'm aware of, no.

22 **Q** And since this series of amputations, middle of 2015
23 through early 2016, she hasn't had any amputations since then,
24 as far as you know?

25 **A** As far as I know.

1 Q Right. And looking at her, you don't see any; right?

2 A Well --

3 Q Both arms and I'll represent she has her left leg.

4 A That's right.

5 Q Okay. And prior to July of 2015, she didn't have any
6 limbs amputated, obviously, because she still has them;
7 correct?

8 A Correct.

9 Q If I'm understanding you correctly -- just tell me if I'm
10 right -- what you're saying is that these amputations, they
11 were all going to -- all of them -- going to happen anyway
12 regardless of whether she stepped on a nail?

13 A That's not exactly right.

14 Q Okay. Tell me what is exactly right.

15 A I'm going to tell you what's right. So, starting from
16 the beginning, we have a proposed nail -- the nail on 6/26.

17 On 7/1, we get a debridement, which is not a major
18 amputation, but it's actually digging tissue out.

19 Two weeks later -- now, we're getting into amputation.
20 The mummified toe re: amputation going on.

21 Q Is that what it showed us? Let's make sure. That's this
22 7/15/2015?

23 A Let me --

24 Q Where the second toe is being amputated?

25 A Yeah, yeah.

1 Q Okay.

2 A Well, that's not quite right, but that's close enough.
3 That's close enough. Yeah.

4 Q What's not right?

5 A Well, the way he described the operation itself, he was
6 doing an (indiscernible) incision and taking the mummified toe
7 and going up to the second metatarsal. And I'm not seeing
8 that except down here where this is extending.

9 Q Well, it's a necessarily (indiscernible).

10 A I understand. So down on the -- the one on the right
11 lower side, that's the first amputation -- true amputation.
12 And that was on 7/15. That's right.

13 Q So my question about that was, is this amputation, the
14 7/15, going to happen anyway regardless of whether Ms. Jones
15 ever stepped on a nail?

16 A I don't know that. I don't know that.

17 Q Can you say it's more likely than not that this
18 amputation on 7/15 was going to happen anyway regardless of
19 whether Ms. Jones stepped on --

20 A Not specific that amputation.

21 Q All right. So let me make sure I'm clear. You cannot
22 say, that it is more likely than not, that this second toe was
23 going to get amputated regardless of whether she stepped on a
24 nail?

25 A Not that amputation.

1 Q What about this amputation? This is the August 4th,
2 2015, clearly, you know, more significant, all but the last
3 two toes; right?

4 A Okay.

5 Q And I apologize. That's fine.

6 A No, no.

7 Q Right in your way. I'm sorry about that.

8 Can you tell us if this amputation on August 4, 2015, was
9 going to happen regardless of whether Ms. Jones ever stepped
10 on the nail?

11 A Can't tell you that.

12 Q Can you say that this amputation on August 4, 2015, was
13 more likely than not to happen regardless of whether Ms. Jones
14 stepped on a nail?

15 A In answer to your question, because we know it's
16 peripheral vascular disease, an amputation was in the future.
17 Which particular amputation would be yet to be determined.

18 Q And how far in the future was it? What date was it going
19 to happen?

20 A We don't know that. But we know from the angiograms
21 because we have a clear -- we have got angiograms -- and this
22 is very important. We have angiograms on 7/17/15. We have
23 got other angiograms that were done in the first of February,
24 February the 17th also, and it shows clear progression of
25 disease over that six-month period of time.

1 Q So your opinion is that some amputation was going to be
2 necessary at some time?

3 A It's right there on the angiograms. You can see it.

4 Q Well, that's not what I'm asking. Does that mean that
5 some amputation was going to be (indiscernible) at some time
6 due to her disease?

7 A That's what -- yes.

8 Q Okay. But it is not your opinion that it's more likely
9 than not that either of these amputations would need to be
10 done at these times due to disease. You just said you can't
11 say that.

12 A No, you can't take that.

13 Q And is the same thing true for this third operation? You
14 say that it's more likely than not that this third
15 operation -- I'm calling it the third. Let's call it February
16 26, 2016.

17 A Right, right, right.

18 Q Can you say that it's more likely than not that this
19 February 26, 2016, amputation was going to need to be done to
20 this part of her body on this date had she not stepped on a
21 nail?

22 A Not on that date. What we can say is that, what we know
23 from the angiograms and the progression of the disease over
24 that six-month period of time, we were going to have problems
25 below the level of the knee at some time in the future.

1 Q A month? A year?

2 A You can't do that.

3 Q Five years?

4 A You didn't do that.

5 Q Ten years?

6 A It's not going to be ten years.

7 Q So something more than a month, something less than ten
8 years?

9 A Counsel, you can't do that. That's not the way you
10 practice medicine.

11 Q Fair enough.

12 You have no idea when in the future she would have needed
13 an amputation?

14 A I have an idea when it's not going to be: Ten years.

15 Q It's not going to be in five-something?

16 But it's not your opinion that it's going to be that
17 these body parts on these days?

18 A Not on those dates, you don't -- I can't say that.

19 Q And is it just a -- in her 52 years of life, is it just a
20 coincidence that the amputation she had were all to the body
21 part that stepped on the nail and all began immediately after
22 she stepped on the nail? Is that just a coincidence? That it
23 didn't happen to any other body part and it didn't happen at
24 any other time before and it hasn't happened at any time
25 after. Is that just, like, a coincidence?

1 **A** The angiograms, it's there. When we have -- remember, we
2 had pulses in the foot from Dr. Cunningham? And then we have
3 clear on Dr. Stonerock six months later.

4 **Q** Okay. So my question again is: You're saying that she
5 was going to need to have some amputation to some body part at
6 some time, but you couldn't predict the body part and you
7 can't predict the time, right, other than you said it's going
8 to be within ten years?

9 **A** Well, I told you what it was not going to be. What I'm
10 telling you is, with progression of disease, of which we have
11 proof of over a six-month period of time, knowing that
12 retrospectively of what we have going on in that leg, it was
13 not going to be two years, five years, seven years, ten years.
14 You don't have circulation down there. We have proven it with
15 the angiogram done by Dr. Stonerock.

16 **Q** Didn't you say earlier that all these diseases affect the
17 entire body, all the organs in the body?

18 **A** They do.

19 **Q** Okay. All of them; right?

20 **A** All of them.

21 **Q** So it could just as easily have been her left arm or her
22 right arm or her left leg that ultimately had to be amputated?

23 **A** You have the likelihood of different things going on, to
24 answer your question. Arms and -- arms are the last blood
25 vessels to go down. Head goes early, heart goes early, legs

1 go early.

2 Q She didn't have her head amputated, did she?

3 A Not that I'm not aware. Looks pretty good to me.

4 Q Not her heart and not her arms and not her leg, left;
5 isn't that correct?

6 A All right --

7 Q I'm just asking you.

8 A Well, you're asking --

9 Q Isn't it correct that -- just answer my question. Isn't
10 it correct that the only thing she had amputated is the same
11 right leg that she stepped on the nail with?

12 A That's correct.

13 Q Okay. And isn't it correct that the only amputation
14 she's had to that limb were on July 15, 2015, two weeks and a
15 few days after stepping on the nail up through February 26,
16 2016?

17 A That's right.

18 Q And no more after that and none before it?

19 A (No audible response.)

20 Q You know, candidly, I'm getting hungry. Let's wrap this
21 up.

22 I want to show you the report you received from your --
23 pardon me, from Walmart's attorneys back in May of 2019.

24 That's your report. It's your opinion -- "Based on my review,
25 it's my opinion, to reasonable degree of medical certainty,

1 that on April 26th incident, which Ms. Jones alleged that she
2 stepped on a nail, did not cause the amputation she
3 subsequently received."

4 That's your opinion?

5 **A** The above-knee amputation.

6 **Q** The above-knee.

7 Did stepping on the nail cause the other ones?

8 **A** The -- the toe amputation, the toe?

9 **Q** Uh-huh.

10 **A** Yes.

11 **Q** Okay.

12 **A** I'm good -- absolutely.

13 **Q** So stepping on the nail caused this amputation.

14 **A** Remember, we haven't profused the leg yet. We haven't
15 got to Dr. Cunningham yet.

16 **Q** And it did not cause this one, this February 26th; right?
17 That's what you're saying?

18 **A** I'm saying peripheral vascular disease caused that.

19 **Q** So the nail did not cause this (indiscernible)? The nail
20 did cause July 15th?

21 **A** Because it was not revascularized.

22 **Q** Okay. But, again, the nail caused the July 15th?

23 **A** It was not revascularized, therefore, the amputation
24 occurred.

25 **Q** Because she stepped on a nail; is that right?

1 **A** Yes.

2 **Q** Yes. And so the nail caused this one because it didn't
3 heal because --

4 **A** It didn't heal because it wasn't revascularized. That's
5 right. That's right.

6 **Q** Had she been in good health, this would have healed. A
7 lot more likely it would heal; right?

8 **A** More likely.

9 **Q** Yeah, all right. So that one, July 15, goes to the nail.
10 We have got the February 26, '16, over here you say is due to
11 her underlying conditions.

12 What about April 4? Is that due to the nail or is that
13 due to an underlying conditions?

14 **A** By the angiogram, that was the underlying condition that
15 was taking place there because of the peripheral vascular
16 disease because we have not -- this amputation was required
17 because that was the demarcation we had after we had the
18 revascularization.

19 **Q** So this amputation in August was required because you had
20 to do this amputation in July?

21 **A** That's right. You have a deformed foot -- you have a
22 deformed foot on 7/15. That particular big wedge resection,
23 that's not going to be a usable foot. So the question -- what
24 was going to have to happen is do the transmetatarsal
25 amputation or to go higher on the leg.

1 Q So to make sure I got it, then, the August 4, 2015,
2 amputation was made necessary by the results of the July
3 amputation because of the nail?

4 A That's right.

5 Q All right. And the July amputation was made necessary
6 from stepping on the nail because, again, it didn't heal
7 because she was in bad health.

8 A That's right.

9 Q We're just going to offer something into evidence here
10 real quickly. Hold this up --

11 A Sure.

12 MR. JEFFERIES: I'm going to offer in your invoice and
13 the statement of opinion from Dr. Ross as Plaintiff's whatever
14 we're up to. 18. Plaintiff's 18.

15 THE COURT: Any objection?

16 MR. BLAIN: No objection.

17 THE COURT: Into evidence.

18 (Plaintiff's Exhibit No. 18, Dr. Ross invoice and
19 statement of opinion, was marked for identification and
20 received into evidence.)

21 MR. JEFFERIES: I have no further questions, Your Honor.

22 THE COURT: All right. Might counsel approach the bench
23 for just one moment.

24 BENCH CONFERENCE

25 (A bench conference was held off the record and outside the

1 hearing of the jury and others.)

2 (Open court resumes as follows:)

3 THE COURT: Mr. Foreman, ladies and gentlemen of the
4 jury, we're going to recess for lunch. We're going to ask
5 that everybody do sort of a quick lunch. I'm going to ask
6 that you be back at 12:45. 12:45 to resume taking -- I mean,
7 1:45.

8 MR. JEFFERIES: Even I don't eat that fast.

9 THE COURT: All right. At 1:45. 1:45. Very good. And
10 be back at 1:45 sharp. Very good.

11 Do not discuss the case. No independent investigation.

12 (The jury exited the courtroom at 12:35 p.m.)

13 THE WITNESS: I guess I'm done, huh?

14 COURT MONITOR: Is he done?

15 THE COURT: No. You're going to have to remain with us,
16 and you can't discuss the case with either of the lawyers.
17 And we'll see you back at 1:45.

18 (A lunch recess was taken from 12:37 p.m. to 1:47 p.m.)

19 THE COURT: -- before we (indiscernible)?

20 MR. WILLEY: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MS. BOYD: No, Your Honor.

23 THE COURT: All right. We're ready for the jury.

24 (The jury entered the courtroom at 1:47 p.m.)

25 THE COURT: I hope that answers your questions with

1 regard to COVID. Every evening, the clerk's office sanitizing
2 the jury room, and when we were informed of that, we
3 re-sanitized it this morning too. I don't know if that eases
4 your mind at all, but we did, indeed, do that.

5 And redirect, you're recognized.

6 MR. BLAIN: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. BLAIN:

11 Q Hope everyone had a nice lunch break.

12 Dr. Ross, did you ask any medical records that Walmart's
13 attorneys declined to provide to you?

14 A No.

15 Q Do you have all the records that you need to render a
16 sound opinion as supported by the medical science?

17 A Yes.

18 Q Do surgeons -- do surgeons need to rely on what their
19 patients tell them during history and physical?

20 A Yes.

21 Q We looked at the foot in evidence before. What is the
22 most common place for a pressure ulcer on a diabetic foot?

23 A Right there (indicating).

24 Q And, in your opinion -- what is your opinion regarding
25 Ms. Jones's risk for pressure ulcers on her feet?

1 **A** With her vascular disease and the other things we talked
2 about, it's high.

3 **Q** And did you rely on your review of the Fresenius foot
4 checks to make that opinion?

5 **A** Well, we rely on everything but the co-morbid features
6 that we have already talked about, all those things, as well
7 as the -- putting together even with or without the foot
8 check, we're still going to be a high risk.

9 **Q** Did you see anything in Ms. Jones's medical history that
10 confirmed your opinion that she was at high risk for ulcers on
11 her feet?

12 **A** Yeah. We had a documentation of those blisters on the
13 feet that were developing on both sides, actually.

14 **Q** Both feet?

15 **A** Mm-hmm.

16 **Q** Is that a yes?

17 **A** Yes.

18 **Q** Do you have an opinion whether the wound on Ms. Jones's
19 right foot that was treated by Dr. Player, do you have any
20 opinion on the cause of that wound?

21 **A** Well, there's so many causes of the kind of wound. This
22 could be anything from what it's been proposed to, to
23 everything to the pre-existing trophic ulcers. So we have an
24 open ulcerative wound, as described on 6/30 by Dr. Player.
25 That's where we're going with that. The question would be did

1 that develop over a three- or four-day period of time as an
2 ulcerative lesion or not.

3 Q Okay. And did you consider the wound size --

4 A Yeah, the wound --

5 Q -- as described by Dr. Player?

6 A Yeah, the wound, 1.8 centimeters, that's a pretty good
7 size wound. That's a typical wound size actually we see with
8 trophic ulcers.

9 Q That's a typical wound size we see with a pressure ulcer?

10 A Mm-hmm.

11 Q And did you consider the wound location?

12 A Right. The wound location, as the best I can understand,
13 is on the plantar surface, the bottom of the foot, and it was
14 a little bit back from the ball of the foot for the second --
15 where the second toe inserts.

16 Q Okay. I know plaintiff's counsel showed you these
17 photos, these demonstratives and asked whether that was caused
18 by the nail.

19 Now, you never saw --

20 MR. JEFFERIES: Objection, Your Honor.

21 THE COURT: That's leading. This is redirect. You have
22 to ask a direct question that does not suggest an answer.

23 MR. BLAIN: Understood. My apologies.

24 BY MR. BLAIN:

25 Q In your opinion, Dr. Ross, the first toe amputation, what

1 was the cause of that amputation?

2 **A** That's the second operation that Dr. Player did. The
3 most likely cause of that, we had an aggressive infection
4 going on, and it encompassed the toe that was where the
5 mummification came along that he documented so well and the --
6 going back to the metatarsal, which is going back on the foot
7 this far. That came from infection.

8 **Q** And was that -- was that amputation done in the same
9 general area --

10 MR. JEFFERIES: Objection, Your Honor.

11 THE COURT: Direct question.

12 MR. BLAIN: Thank you, Your Honor. My apologies.

13 BY MR. BLAIN:

14 **Q** Where on the foot -- I'll withdraw that.

15 Dr. Ross, what's your opinion about when the medical
16 treatment that Ms. Jones received, when was that medical
17 treatment caused by poor circulation?

18 **A** We had poor circulation from the beginning.

19 **Q** Okay. Do you have an opinion as to whether the wound or
20 the poor circulation caused the first amputation, the second
21 toe amputation?

22 **A** We had poor circulation as documented in the chart at
23 that time of the second operation.

24 **Q** And do you have an opinion about whether the poor
25 circulation or the wound caused the transmetatarsal

1 amputation?

2 **A** The transmetatarsal, after we established
3 re-vascularization of the leg where the pulse is back in the
4 foot and all those things we talked about from Dr. Cunningham,
5 then it was a matter with the transmetatarsal amputation of
6 trying to convert this back to a usable foot again, which was
7 going to be difficult with Operation No. 2.

8 **Q** Okay. And I believe we discussed it in your direct but
9 just to clarify, did that transmetatarsal amputation heal, in
10 your opinion?

11 MR. JEFFERIES: Objection, Your Honor. Objection, Your
12 Honor.

13 MR. BLAIN: I'll rephrase.

14 BY MR. BLAIN:

15 **Q** Dr. Ross, what is your opinion about the healing that
16 Ms. Jones had after the transmetatarsal?

17 **A** Yeah, over a period of a few months where we had, as we
18 talked about, with the transmetatarsal, there's a tendency for
19 it not to heal where we put things back together there, and
20 multiple simple debridements were done, evidently, in the
21 wound care center. And by January, it was documented that
22 they have complete healing.

23 **Q** And what is your opinion on the most probable cause of
24 Ms. Jones's above-knee amputation?

25 **A** Clearly, it's associated with peripheral vascular disease

1 as shown in the arteriograms before and after separated by six
2 months.

3 Q And could you explain for the jury, what is an
4 arteriogram and what would that show?

5 A That's where we talked about putting a dye down the leg.
6 Dr. Cunningham's operation showed, with the things that he had
7 done, the dye would go all the way from the groin all the way
8 down to the foot, with the pulses that we could feel with our
9 fingertips. So we have got that as our baseline where it's
10 been restored. And then we could do the transmetatarsal
11 amputation across the foot.

12 Then we know after -- later, mid January or so, is that
13 we have another angiogram with dye put down the leg, and that
14 was done by Dr. Stonerock, showing that, indeed, we have
15 severe progression of the disease not only where the previous
16 surgery was around the previous surgery but also more distal
17 in the foot, and we could no longer feel the pulses here
18 because the progression of disease. That's what necessitated
19 the above-knee amputation.

20 Q Did the wound --

21 MR. JEFFERIES: Objection, Your Honor.

22 THE COURT: Sustained. That's necessarily overleading.

23 MR. BLAIN: I understand. I understand. I apologize.

24 BY MR. BLAIN:

25 Q Dr. Ross, what is your opinion on the cause of the poor

1 circulation that is documented in the arteriogram in 2016?

2 **A** Progression of the disease.

3 **Q** Okay. Is that connected, in your opinion, to the wound?

4 **A** Oh, yes, because what has happened, as we had progression
5 of the disease over the interval of a six-month period of
6 time, the circulation is decreasing more and more and more and
7 more. And, finally, it came to a breakpoint where, indeed, it
8 could not sustain the heal of the foot, and that's why it
9 broke down.

10 **Q** Okay. And so what is your opinion -- I believe we just
11 covered -- what is your opinion of the most probable cause of
12 the second knee [verbatim] amputation, just to rehash that.

13 **A** I'm sorry. Say again. Which amputation?

14 **Q** Yes, sir.

15 MR. JEFFERIES: Objection, Your Honor, to the multiple
16 rehashing of this second knee. It's 2:00 in the afternoon.
17 We have heard it a bunch of times.

18 MR. BLAIN: I'm getting there. I promise I'm getting
19 there.

20 BY MR. BLAIN:

21 **Q** If you could just restate, what is -- in your opinion,
22 what is your opinion about the most probable cause of the
23 second knee amputation?

24 **A** The above-knee --

25 **Q** Yeah, the above-knee amputation.

1 **A** The above-knee amputation, the most probable cause, as we
2 see on the comparative angiograms, is associated with
3 peripheral vascular disease with progression of the disease
4 with inadequate circulation to the aforementioned
5 transmetatarsal.

6 **Q** And do you hold that opinion to a reasonable degree of
7 medical certainty based on your expertise, training,
8 experience?

9 **A** It's on the angiograms. You can see it.

10 **Q** Thank you, Dr. Ross. No further questions.

11 THE COURT: All right. You may step down.

12 Any objection of this witness being excused?

13 MR. JEFFERIES: None, Your Honor.

14 THE COURT: You're free to leave. Thank you, sir.

15 You may call your next witness.

16 MR. BLAIN: Your Honor, the defense would call Mr. Tim
17 Ringer.

18 THE COURT: Mr. Ringer, if you could please come forward.
19 I'm going to ask, if you could, to place your left hand on the
20 Bible and raise your right hand as the clerk administers the
21 oath.

22 TIM RINGER,
23 the witness, after having been duly sworn, was examined and
24 testified to as follows:

25 THE CLERK: Please be seated.

1 THE COURT: Ask you to have a seat in the witness chair.
2 Pull up real close to that microphone. Speak loudly, clearly,
3 and slowly in order that we can hear everything that you have
4 to say. And let's state your full name once again.

5 THE WITNESS: Timothy Blake Ringer.

6 DIRECT EXAMINATION

7 BY MR. BLAIN:

8 Q Mr. Ringer, good afternoon.

9 A Good afternoon.

10 Q Have you seen lots of video of your Walmart store this
11 week?

12 A Yes. A lot.

13 Q In your opinion, does the store look like it's in good
14 shape?

15 A In my opinion, the store looked --

16 MR. JEFFERIES: Objection, Your Honor. May we approach?

17 BENCH CONFERENCE

18 (A bench conference was held off the record and outside the
19 hearing of the jury and others.)

20 (Open court resumes as follows:)

21 THE COURT: The objection's overruled.

22 BY MR. BLAIN:

23 Q Mr. Ringer, based on what you have seen on the video,
24 what does the store look like?

25 A The store was clean. Looked well in stock. Displays

1 were in really good shape from stack bases in the action alley
2 to the displays in produce to the end caps. Side counter end
3 stock was good. Floors had a shine to them. It was -- as I
4 said before, that would have been a day I'd really like to
5 have my boss in the store to look at it because it looked that
6 good.

7 **Q** Based on what you have seen on the video, can you tell
8 whether -- whether the store looked like it had been zoned
9 recently?

10 **A** Oh, that store was zoned. I mean, when you look at the
11 overview -- again, like I just said, when you look at the
12 overview and you see there's absolutely no trash on the floor,
13 no paper, the displays were neat, stacked tightly. You look
14 down that side counter, all the merchandise on that counter
15 had been fronted up.

16 You got the keep in mind, I think this was around, like,
17 11:30 on a Friday. And around 11:30 on a Friday, that store
18 is busy, which was evident when you looked at the video of the
19 amount of customers up and down.

20 And in order to maintain that, that takes constant
21 revisiting of the sales floor, of the counters. You can't go
22 hours on end and maintain that type of a look when you have
23 got that kind of, you know, customer traffic. 11:30 on a
24 Friday, that's a busy, busy time.

25 **Q** You have seen the video of the grocery action aisle;

1 right?

2 **A** Yes, sir.

3 **Q** Are there vendor displays in the center of that grocery
4 action alley?

5 **A** There are vendor displays and there are what I would call
6 Walmart displays where it comes through our DCs.

7 **Q** And what is a stack base?

8 **A** A stack base is a solid plastic mold. It measures four
9 foot by four foot. It's made out of plastic. There's
10 nothing -- it's one solid piece. You can't take it apart.
11 You can't do anything to it. It's just one solid piece of
12 plastic.

13 **Q** Are there any nails on the stack base?

14 **A** No.

15 **Q** Are the stack bases at the base -- where is the stack
16 base in a display?

17 **A** They're on the bottom. They're what holds the display.

18 **Q** You also mentioned side counters. What is a side
19 counter?

20 **A** A side counter is a counter that you go up and down the
21 shop off of. That's where the majority of all the merchandise
22 in a Walmart store would be. Those are the counters.

23 **Q** Okay. Are there any nails in a side counter?

24 **A** No.

25 **Q** In all the videos that you have watched -- I won't go

1 through them right now -- have you seen any -- any at all,
2 anywhere in the store, have you seen any wooden pallets?

3 **A** Yes. I saw a display pallet up on top of a stack base.
4 I think it was on the shot from back to front of the action
5 alley.

6 **Q** Okay.

7 **A** I want to say it was like -- the best I could tell, it
8 kind of looked like an S'mores display. You know how we get
9 the S'mores in in the summertime, marshmallows and all that
10 kind of stuff.

11 And then I saw what could potentially be another display
12 in a produce shot way back over toward a wall. You can see it
13 way off in the background from when Ms. Jones was up close
14 toward the camera. There were some bins back there that were
15 holding watermelons that potentially could have been a pallet
16 display as well.

17 **MR. JEFFERIES:** Your Honor, may we approach?

18 **THE COURT:** Yes.

19 **BENCH CONFERENCE**

20 (A bench conference was held off the record and outside the
21 hearing of the jury and others.)

22 (Open court resumes as follows:)

23 **BY MR. BLAIN:**

24 **Q** Mr. Ringer, you just mentioned two examples of wood
25 pallets on the floor. You said a watermelon display in

1 produce and a S'mores display in the grocery action aisle.

2 Did you see any other wooden pallet displays anywhere in the
3 videos?

4 **A** No, sir. Not that I can tell.

5 **Q** Okay. And the first wooden display, is that shown on
6 this video screen?

7 **A** Yeah. They're not easy to see because they're made to
8 not -- you know, you don't want them to stand out. There's a
9 display right there. You see it's kind of a white-looking
10 box. It's a dollar and something. And it's sitting up on top
11 of a stack base. And, again, you can tell it came in pre-made
12 on a wooden pallet. And, again, we always set those pallets
13 up on top the stock base, again, to make it cleaner, neater, a
14 better-looking presentation for the customers when they come
15 in, because it's not something you want to call attention to.
16 You don't want to call attention to the packaging. You want
17 to call attention to the merchandise.

18 **Q** And the second wood pallet display you mentioned, you
19 said something about watermelons?

20 **A** Yes. In this picture, if you look almost in the dead
21 center of the top, it looks -- yeah, right there -- you can
22 see what appears to be, like, two big displays of watermelons.
23 And I can't sit here and tell you 100 percent that they're on
24 wooden pallets, but because they are the watermelon bin -- the
25 size of the normal watermelon bins, that's what I think they

1 are.

2 Q Could it be a table?

3 A It could be a table.

4 Q Could it be a plastic table?

5 A It could very well be. It could be another one of the
6 ones like we saw at the front of it. Because, again, they're
7 made to look like wood, and, from a distance, the light wood
8 and the cardboard are pretty much the same color. That's the
9 only other thing that I see that could possibly be any type of
10 a PDQ display, as we have talked about.

11 Q In your review of the video, did Ms. Jones ever go near
12 the pallet display at the top of this produce camera angle?

13 A No, she --

14 Q I'm sorry. The watermelon display.

15 A No. She had stopped right there -- the big produce sign,
16 she had stopped right there. That's a refrigerated berry case
17 behind it. She had stopped there.

18 Q Over here?

19 A Yeah, where the cursor is.

20 Q Okay. Based on your review of the video, did Ms. Jones
21 ever go near the S'mores pallet?

22 A No, she stopped short of that going down the laundry
23 detergent aisle to get her bleach.

24 Q Other than those two displays -- those two potential
25 pallet displays, have you seen any other possible source of

1 nails?

2 **A** No, not at all. Here's the thing: We take people's
3 safety seriously. As I said before, I want people to come
4 into the store and I want them to leave the store safely.
5 What's happened to Ms. Jones is -- it's difficult to sit here
6 today or this week. And I have empathy for Ms. Jones. But
7 when you look at the conditions of the store on that
8 particular day when she passed through, there was nothing that
9 we had been negligent on. There is nothing on these floors
10 that anybody can say that we didn't do.

11 We maintained a standard, and that standard is something
12 that we work toward every single day. Not just this one
13 moment in time. That's something we work toward every day.
14 Because we want to present a clean, safe environment for both
15 our customers and our associates to be in every single day.

16 **Q** Thank you, Mr. Ringer.

17 The pallets that are -- the display pallets, are you
18 familiar with those display pallets?

19 **A** I'm very familiar with them. As the gentleman said that
20 was here earlier in the week from the DC, the DC doesn't even
21 want those pallets back. Those are white wood pallets.
22 They're not reusable. You can't do anything with them.

23 So those particular pallets, we can send them back to the
24 DC or they can be hauled away from the store. And those
25 particular pallets are how I taught my son to be a carpenter.

1 I would take those pallets home, and we would disassemble the
2 pallets. We have disassembled hundreds of those pallets.

3 Q Do those pallets have nails?

4 A Yes.

5 Q What does a pallet nail look like?

6 A Pallet nail, generally, it's a blunt end on a pallet
7 nail. It's not a pointy. And most pallet nails are done with
8 a gun. But they're usually at least an inch and a half to two
9 inches long. I can tell you that because, like I say, I have
10 taken apart hundreds of things, because you have to use a pry
11 bar to get up under the slat across the front and to pop them
12 up. It's -- it's a long nail.

13 What has been shown here is a roofing nail. I have never
14 seen a pallet put together with a roofing nail.

15 Q This nail, this exhibit, have you ever seen a nail like
16 that in a pallet?

17 A No, sir.

18 Q No?

19 A No, sir. No, sir. That's a -- basically a 7/8th inch
20 roofing nail to put shingles on a house.

21 Q Thank you very much, Mr. Ringer. No questions right now.

22 CROSS-EXAMINATION

23 BY MR. WILLEY:

24 Q Mr. Ringer, you weren't there -- you weren't there that
25 day, right?

1 **A** No.

2 BENCH CONFERENCE

3 (A bench conference was held off the record and outside the
4 hearing of the jury and others.)

5 (Open court resumes as follows:)

6 THE COURT: Mr. Foreman, ladies and gentlemen of the
7 jury, I'm going to ask you to return to the jury room but do
8 not discuss the case.

9 (The jury exited the courtroom at 2:14 p.m.)

10 THE COURT: Yes, sir?

11 PROFFERED TESTIMONY

12 BY MR. WILLEY:

13 **Q** Mr. Ringer, we have talked about a lot of different -- at
14 least three different types of pallets in the Walmart store;
15 right?

16 **A** True.

17 **Q** And this is one such pallet from Walmart?

18 **A** The CHEP pallet, yes.

19 **Q** It's what type of wallet?

20 **A** CHEP.

21 **Q** CHEP pallet.

22 And this nail laying down here on the floor next to the
23 CHEP pallet -- between the pallet and the rollback sign, what
24 type of nail is that?

25 **A** I can't tell you. I mean, it's a nail.

1 Q You can't tell me whether it's a pallet nail or a roofing
2 nail or a --

3 A It's not a roofing nail because the head's not big
4 enough.

5 Q Is it is pallet nail?

6 A I don't know whether it's a pallet nail or what it is.

7 Q Well, sir, you just testified that you have taken apart
8 hundreds of these types of pallets.

9 A I have.

10 Q And that they all have the same type of nail; right?

11 A That they -- they all have an inch -- they're an inch and
12 a half to two inches long, yes, sir.

13 Q Okay. And what I just asked you, that you --

14 A I can't how long that nail is.

15 Q You can't tell?

16 A No, sir. Not in that picture, I can't.

17 Q The length will tell you everything you need to know?

18 Let me ask you this: This is another type of pallet.

19 And I'll mark that as whatever exhibit we're on.

20 MR. BLAIN: Your Honor, just for the record, we'd like to
21 note our objection. I understand this is a proffer. We just
22 want to note our objection to these photographs.

23 THE COURT: Why don't -- in order to expedite the matter,
24 we have talked about these photographs, and we're not allowing
25 them in pursuant to Rule 34, 401, and 403. I find that

1 they're irrelevant and the prejudicial value outweighs the
2 probative value. And you can identify them and you can state
3 the reason why you want them in, and that will suffice.

4 MR. WILLEY: I think I have to proffer them.

5 THE COURT: Well, you have proffered them.

6 MR. WILLEY: No, I think I have to proffer the specific
7 photographs, because, at this point, I'm not introducing them
8 for the reason that was originally relied upon at this point
9 during impeachment. And the jury is allowed to consider
10 impeachment. He's just testified about that's not what the
11 pallet (indiscernible), directly contradictory to the
12 photographs.

13 THE COURT: All right.

14 MR. WILLEY: It doesn't matter when these photographs
15 were made. It's just directly contradictory on the pallet,
16 the fact that pallet is (indiscernible) pallets.

17 THE COURT: Well, this is my ruling, and I'm going to ask
18 that you abide by it. These photographs, you have offered
19 into evidence. We have had loads of discussions about it, and
20 my ruling stands. I know that you say that the reason why you
21 offer them are different, and you have stated that for the
22 record. I don't think it's necessary for us to go through
23 additional testimony. I think that will suffice. I'm going
24 to ask that you move on.

25 And list the ones that you want.

1 MR. WILLEY: We have to -- I don't know what numbers were
2 on them. And I will just say for the record that none of
3 these involve a kite display.

4 THE COURT: All right.

5 (Plaintiff's Exhibit Nos. 19 through 26 were marked for
6 identification only.)

7 MR. WILLEY: What number are we on?

8 COURT MONITOR: 19.

9 MR. WILLEY: No. 19 is the one that we just talked about.
10 That's the CHEP pallet. A nail, randomly sighted in the
11 Walmart. That contradicts what Mr. Ringer just said about his
12 vast knowledge of pallet nails.

13 20 is a -- sorry. No. 20 is a white wood pallet in the
14 Walmart where the nail is sticking outside of it. There's
15 been a lot of testimony about "that would never happen in our
16 store, never be left on the sales floor." And a different
17 nail than pictured in the last photograph.

18 Exhibit 21 is a farther back shot of that pallet, showing
19 it next to Clorox products. Presumably we rolled in on it.

20 No. 22 is an up-close photograph of a pallet with the
21 head of a nail that was approximately the same size as the
22 head of the nail that is in evidence that Ms. Jones stepped
23 on, although we say we have never seen one of those in a
24 Walmart store.

25 No. 23 is a pallet close-up in the Walmart store with

1 several nails missing, with heads that are approximately the
2 same size as the nail that Ms. Jones stepped on.

3 Plaintiff's Exhibit 24 is a display pallet with Clorox
4 products on it, which is sticking out of the stack base into
5 the aisle.

6 No. 25 is just a farther away view of No. 19 to show that
7 there was product on it in the store. It wasn't in some
8 storage area.

9 And No. 26 is a shot farther away yet, showing, in fact,
10 that is a children's item that is on the pallet with the nail
11 plainly sighted.

12 So we have CHEP pallets here, we have white wood pallets,
13 and we have PDQ display pallets.

14 THE COURT: All right, Mr. Blain. What would you like to
15 say about all of that?

16 MR. BLAIN: Thank you, Your Honor. We would --

17 THE COURT: We're just talking about proffered
18 photographs he's just tendered.

19 MR. BLAIN: We are objecting to the proffered photographs
20 based on Rule 34. They're the result of an improper
21 inspection. Also based on Rule 401, that they are irrelevant.
22 They're irrelevant because every single one of those photos is
23 of a different area of the store in 2019, four years after
24 Ms. Jones's incident. Only one of those photographs shows a
25 pallet display, and the one -- No. 24 is the only one that

1 shows a pallet display, and there was no issue with that
2 pallet display other than it was allegedly sticking over a
3 stack base.

4 And so, also, we can't authenticate the source of these
5 photos, how the pallets -- how the conditions as shown in
6 those photographs got to be in that manner because it was from
7 a Rule 34, improper inspection.

8 THE COURT: All right. We're ready for the jury.

9 (The jury entered the courtroom at 2:21 p.m.)

10 MR. BLAIN: We closed our direct exam with Mr. Ringer.

11 THE COURT: Cross-examination.

12 CONTINUED CROSS-EXAMINATION

13 BY MR. WILLEY:

14 Q Mr. Ringer, you weren't in the store on June 26, 2015;
15 right?

16 A That's correct.

17 Q So everything that you have to go are on the videos that
18 we saw during the course of this trial?

19 A Yes, sir, same videos.

20 Q And there were no videos that were preserved by Walmart
21 prior to the injury in areas of the store that's subject to
22 this incident; correct?

23 A All the videos we had, we turned over.

24 Q And those videos would have shown us whether or not
25 safety sweeps actually took place; right? We would have been

1 able to see associates doing around conducting safety sweeps?

2 **A** I saw associates in those videos.

3 **Q** Okay. Walking around, right?

4 **A** Well, that's what a safety sweep is.

5 **Q** Right. And in the video we have with the associate, this
6 was after Ms. Jones stepped on the nail; right?

7 **A** She met Ms. Jones on the aisle, yes.

8 **Q** Right. And so we're not able to see what happened in
9 produce, what happened at the start of the action alley prior
10 to the time that Ms. Jones entered it; right?

11 **A** Not on these videos, no.

12 **Q** And your basis for saying that the store was clean and
13 pristine was solely based on these videos; right?

14 **A** That's all I have to go off of.

15 **Q** The same videos that you can't tell us whether or not a
16 watermelon display is a watermelon bin or a watermelon table;
17 right?

18 **A** Because it's off in a distance.

19 **Q** And same grainy videos where you can't identify a
20 particular product on the displays in the middle of the aisle;
21 right?

22 **A** There's some you can, some you can't.

23 **Q** I think you told us you think it's S'mores; right?

24 **A** Yes.

25 **Q** It looks like S'mores to me, too, but it's not exactly

1 clear, is it?

2 **A** No, sir.

3 **Q** Is this the type of video where we'd actually be able to
4 see if there was another rusty nail on the rust-colored floor?

5 **A** No, sir.

6 **Q** Okay. And, in fact, we wouldn't expect to see this nail
7 on the floor because, by the time we're looking at the video,
8 Ms. Jones is halfway down the action alley, it's already in
9 her foot; right?

10 **A** So they say.

11 **Q** So they say. Thanks.

12 THE COURT: Any redirect?

13 MR. BLAIN: No redirect at this time. Thank you.

14 THE COURT: You may call your next witness.

15 MR. BLAIN: The defendant rests. Thank you.

16 DEFENDANTS REST

17 THE COURT: And might counsel approach the bench.

18 BENCH CONFERENCE

19 (A bench conference was held off the record and outside the
20 hearing of the jury and others.)

21 (Open court resumes as follows:)

22 THE COURT: Mr. Foreman, ladies and gentlemen of the
23 jury, you have heard all of the testimony from the plaintiff,
24 all from the defense. Plaintiff has indicated they have no
25 reply.

At this time, we're required to make up matters of law outside of your presence. Bear with us just one moment but do not discuss the case. Thank you.

(The jury exited the courtroom at 2:26 p.m.)

THE COURT: Mr. Ringer, you may step down.

THE WITNESS: Thank you.

THE COURT: Glad to hear motions at this time.

MATTERS OF LAW/MOTIONS

MR. WILLEY: Your Honor, the plaintiff moves for a directed verdict on the establishment of a duty. All the evidence in the case has indicated that the plaintiff was a patron in the store on June 26, 2015, and so the duty owed to her would be that of an invitee under South Carolina law. There's been no evidence to the contrary, and so, at this time, we would move for a directed verdict as to that element.

THE COURT: What does the defense have to say in that regard?

MS. BOYD: We don't contest that she was an invitee on June 26, 2015, Your Honor.

THE COURT: All right. Well, it's matter of law there is a duty.

MR. WILLEY: Your Honor, at this time, the plaintiff would move for a directed verdict on the issue of breach. The evidence in the case is that Walmart has internal policies, including that to conduct safety sweeps and not to have

1 pallets on the sales floor. And in this -- those are two
2 separate things, of course, either of which would require
3 directing of a verdict.

4 With respect to the safety sweeps that Your Honor is
5 aware, in evidence, marked as Plaintiff's exhibits, there are
6 several preservation letters indicating -- indicating a
7 request for six hours of video prior to the incident, which,
8 of course, would have either firmly established or disproven
9 that those safety sweeps took place. Those letters in the
10 file are Plaintiff's Exhibit 7, and those were not preserved.
11 They were destroyed by the defendant.

12 Ms. Wright testified that those videos would have been
13 saved for a minimum period of 30 days, for a maximum period of
14 90 days, depending on the camera. This was well within the
15 30-day window. And so that time they were on notice, they
16 received the letter. They had the ability to retain those
17 videos. Mr. Ringer testified that he received the letter via
18 hand delivery. And Ms. Wright testified that nobody ever
19 asked her to go back and pull the videos, and so they were
20 destroyed.

21 And so with respect to the breach element, the narrow
22 issue of a violation of an internal policy, it could not be
23 more clear from a result of their destruction of the evidence,
24 and they have put in no evidence that safety sweeps actually
25 occurred. We have had general testimony about the store looks

1 like it was zoned properly, it looks like it was clean, but we
2 don't know whether or not that is because a safety sweep took
3 place at 8 a.m. and it did not take place again within an hour
4 and a half or two hours of the incident as required by their
5 internal policy.

6 And so we move for a directed verdict on the issue of
7 breach as well.

8 THE COURT: What does the defense have to say about that?

9 MS. BOYD: Your Honor, Plaintiffs have presented no
10 evidence that the videos were destroyed intentionally because
11 of this litigation or because of the incident involving
12 Ms. Jones. In fact, the testimony of Ms. Wright indicated
13 that the videos, it re-records as a part of the normal process
14 of the Walmart cameras. And so there is no indication that
15 Walmart destroyed the videos intentionally. So we believe
16 that Plaintiffs have not met their burden in that respect.

17 And as far as a violation of the internal policies
18 regarding the safety sweeps, the only evidence that's been
19 presented in this case is that they were done. The
20 surveillance videos themselves speak for the cleanliness of
21 the store. The circumstantial evidence of the testimony of
22 Mr. Ringer, Mr. Lane all indicate that the sweeps were done
23 based on a visual view of what the store looked like.

24 In fact, Mr. Lane testified that he, in fact, did sweeps
25 that day, multiple times a day. So I believe that there is

1 evidence proffered that there is no policy violation because
2 the safety sweeps were done, and Plaintiff has offered nothing
3 to rebut that.

4 THE COURT: I find that there's a -- that's a legitimate
5 question of fact for the jury to resolve.

6 MR. WILLEY: Your Honor, we would move for a directed
7 verdict on causation as to, for the purposes of this motion,
8 limiting it to the first amputation on July 15th of 2015. As
9 you'll recall, Dr. Player testified as to causation on this
10 surgery being from a nail wound. In fact, not only did he say
11 it was more likely than not that the nail wound caused the
12 surgery, he said he was certain.

13 In addition to that, we just heard testimony before the
14 lunch break from defendant's expert, Dr. Ross, where he was
15 asked whether it was more likely than not that this amputation
16 was a result of the nail wound, and he said that it was.

17 At best -- at best, their expert says that the lack of
18 healing may have been contributed to by the peripheral
19 vascular disease, but as Your Honor knows, in the pre-existing
20 condition law that you will read to the jury, as to the third
21 amputation, whether or not somebody's injury was contributed
22 to in that way is not an issue in causation.

23 So Plaintiff is entitled to a directed verdict as to the
24 causation of this amputation should the jury find that the
25 duty was a breach by Walmart.

1 THE COURT: Be glad to hear from defense.

2 MS. BOYD: Your Honor, the evidence suggests that there
3 were multiple sores on Ms. Jones's foot on the day of the
4 incident, and that's not been rebutted by Plaintiffs. In
5 fact, Dr. Player testified that he cannot definitively say
6 that the wound was not a pressure ulcer, and he indicated that
7 he based his opinion on what the plaintiff told him in
8 characterizing it as the wound from stepping on the nail at
9 Walmart.

10 Dr. Ross said the same, that you couldn't tell whether it
11 was a pressure ulcer or the wound from the nail. So we
12 believe there's of fact to go to the jury as to what caused
13 the sore that ultimately led to the amputation.

14 THE COURT: I agree and you're protected on the record.

15 MR. WILLEY: Your Honor, we would move for a verdict as
16 to the second surgery. Plaintiff's Exhibit 1-C, August 4 of
17 2015 -- and I would remind the Court that the only testimony
18 in this case about whether or not Ms. Jones stepped on a nail
19 at Walmart has been from Ms. Jones, Mr. Lane, and
20 Ms. Cooke-Simmons, the three individuals present on that day.
21 And all three of those individuals said that Ms. Jones stepped
22 on a nail in the Walmart store. As a result --

23 THE COURT: One of the things that -- even if that's the
24 case and even if that's 100 percent true, it takes more of a
25 stepping on a nail in Walmart.

1 MR. WILLEY: That's correct.

2 THE COURT: It has to be either Walmart put it there or
3 there has to be actual constructive notice.

4 MR. WILLEY: But that is -- that is as to breach. This
5 is causation once breach is determined. And you have to have
6 expert testimony from medical causation. The only medical
7 testimony in this case is that these amputations -- this
8 second amputation included -- was caused by what happened to
9 Ms. Jones at the Walmart store. That was the precipitating
10 event that led to the cascading, how Dr. Player referred to
11 it.

12 THE COURT: Very good.

13 Yes, ma'am.

14 MS. BOYD: Your Honor, I renew the same objection from
15 the prior surgery. Dr. Player testified that he made his
16 opinion based on what Ms. Jones told him at her visit, but he
17 could not definitively say it was not a pressure wound.

18 Dr. Ross testified that Ms. Jones had a history of
19 pressure wounds on her feet.

20 THE COURT: All right. I find that that's a question of
21 fact for the jury.

22 MR. WILLEY: And of course I would just -- I don't think
23 I'm required to do this but appellate counsel is not here, so
24 out of an abundance of caution, I will renew my motion as to
25 spoliation with respect to the items in Dr. Ringer's

1 deposition and the items listed in Plaintiff's Exhibit 7.

2 THE COURT: Very good. You're protected on the record.

3 I'm going to ask y'all if y'all could come forward and
4 take a look at the verdict form.

5 (Counsel conferred off the record.)

6 THE COURT: Very good. Any objection with regard to the
7 verdict forms from the plaintiff?

8 MR. WILLEY: No. The only thing I would note I did ask
9 counsel for the defendant if she had an issue with the Walmart
10 defendants being grouped and identified as Walmart, and she
11 said no.

12 THE COURT: Any objection from defense?

13 MS. BOYD: No, Your Honor.

14 THE COURT: All right. Very good.

15 Anything further?

16 Ready to proceed forward with arguments?

17 MR. WILLEY: I have some issues as to the charge.

18 THE COURT: Yes.

19 MS. BOYD: I have motions, Your Honor.

20 MR. WILLEY: Oh, she has motions. All right.

21 MS. BOYD: He kept standing, so I thought he was still
22 going. I apologize.

23 MR. WILLEY: I believed she would have motions.

24 MS. BOYD: Your Honor, Defendants renew their request for
25 a directed verdict on the issues of whether Walmart created,

1 had actual notice or constructive notice of the nail. Your
2 Honor...

3 THE COURT: You're protected on the record in that
4 regard.

5 MS. BOYD: Okay.

6 THE COURT: Anything else?

7 MS. BOYD: Yes. We would also like to renew our motion
8 for a mistrial based on Ms. Jones's improper testimony about
9 the settlement offer, Your Honor. We believe that, even with
10 your curative instruction, the jury may believe that Walmart
11 was admitting some wrongdoing or some liability by offering
12 her money, and a substantial amount of money at that.

13 And in our case, we have been arguing no liability the
14 whole time, and so it seems almost counter to the arguments we
15 have presented here today, and we believe that that may
16 negatively impact the jury's verdict.

17 THE COURT: Very good. And you're protected on the
18 record.

19 MS. BOYD: Okay. I would like to hand up just a brief
20 for the record, Your Honor.

21 THE COURT: Yes. All right. Anything further?

22 MS. BOYD: No, Your Honor.

23 THE COURT: Any requests -- additional requests to
24 charge?

25 MR. WILLEY: Just -- and I haven't seen the charge; I

1 know that's not, Your Honor's custom so it's difficult for me
2 to even know these issues are covered in there. But I wanted
3 to make sure that there was a section on the charge, charging
4 the jury that a violation of internal company policy is
5 evidence of negligence.

6 THE COURT: Do you have a proposed charge?

7 MR. WILLEY: I just said it: A violation of internal
8 company policy is evidence of negligence under the law in
9 South Carolina. Something as simple as that. I can get you a
10 charge if you give me --

11 THE COURT: You know, the -- I know you're an appellate
12 in here, but, generally, when you have a request, it has to be
13 in writing. If you write it down, I will consider it.

14 MR. WILLEY: Okay. We have not -- just to ensure that
15 there's a portion of the charge of vicarious liability. And,
16 again, I don't know if these things are in there or not. I
17 know you mentioned --

18 THE COURT: I did charge vicarious liability.

19 MR. WILLEY: And respondeat superior would be part of
20 that?

21 THE COURT: This is the charge: A corporation can only
22 act through its agents or employees; therefore, a corporation
23 is responsible for any negligent acts or omissions of its
24 agents or employees or their acumen when the scope of their
25 employment, which proximately causes injury to another person.

1 Is that sufficient?

2 MR. WILLEY: Okay. Of course I renew my request for
3 spoliation charge but understand your ruling in that regard.

4 And then here is the --

5 THE COURT: Do you have an objection to this charge?

6 MS. BOYD: No, Your Honor.

7 THE COURT: All right.

8 MR. WILLEY: And if I may just use the restroom before we
9 argue.

10 THE COURT: That's completely unreasonable. [Laughter].

11 If we can be quick, we'll be ready to roll.

12 (A brief recess was taken from 2:45 p.m. to 2:45 p.m.)

13 THE COURT: When I practiced law, I had judges limit my
14 closing arguments, and as a general rule -- I have never done
15 that as a judge, but we are close on time. How long do you
16 anticipate taking?

17 MR. WILLEY: I have no idea, to be honest with you.

18 THE COURT: Do you have an idea as to how long it will
19 take?

20 MR. WILLEY: 45 minutes reasonable? Is that reasonable?
21 I think can get it done in then?

22 MS. BOYD: Your Honor, I had three proposed jury charges.
23 You had to go to the restroom, so we stopped and --

24 THE COURT: I didn't realize that.

25 MR. WILLEY: Oh, I didn't either.

1 MS. BOYD: It's okay. I just want to make sure that the
2 instruction on duty indicates that the law is -- that the only
3 duty is to use ordinary care and keep the --

4 THE COURT: I have got it.

5 MS. BOYD: Okay. And I would -- the foreseeable risk,
6 the *Wintersteen v. Food Lion*, that although it may be a
7 foreseeable risk that will wind up on the floor of a
8 merchant's business, when there is no specific act of the
9 merchant to place the hazard on the floor, and when the hazard
10 is on the floor due to the actions of third parties, the
11 plaintiff must show that the merchant either knew, had actual
12 or constructive knowledge. That's the *Wintersteen v. Food*
13 *Lion*.

14 THE COURT: All right. That's covered -- that's covered
15 in my charge.

16 MS. BOYD: Okay.

17 THE COURT: Not necessarily in that language but it's
18 covered.

19 MS. BOYD: Okay. And then the superior knowledge of the
20 damage language, Your Honor, that the shopkeeper -- liability
21 rests on his superior knowledge of the hazard. And that is
22 *H.P. Larimore v. Carolina Power & Light*.

23 MR. WILLEY: I don't think the last one applies, but what
24 I would say is that the Court has directed a verdict as to
25 duty. So I assume the Court is going to tell the jury that

1 the Court --

2 THE COURT: I am. I'm going to charge -- I'm going to do
3 that, and I'm going to incorporate that into the charge. I'm
4 going to say I'm going to find as a matter of law that there
5 is indeed a duty.

6 MS. BOYD: Okay.

7 THE COURT: And I find that my charge adequately covers
8 each of those.

9 MS. BOYD: Okay. Thank you, Your Honor.

10 THE COURT: How long do you anticipate?

11 MR. BLAIN: About 30 minutes, Your Honor.

12 THE COURT: Could I have the foreman of the jury in?

13 (The jury foreman entered the courtroom at 2:49 p.m.)

14 THE COURT: Mr. Hayes, we are about to begin closing
15 arguments and then, thereafter, the charge. And I anticipate
16 that we're going to be later than we anticipated. These
17 matters are very important, and we can't be rushed in that
18 regard. So I'm going to ask that you notify the jurors that
19 we're going to be running a little bit late and that those --
20 those jurors who have daycare problems or anything such as
21 that to make a note of that and we'll make arrangements for
22 them to notify someone to assist them in that regard.

23 (The jury foreman exited the courtroom at 2:51 p.m.)

24 MS. BOYD: Your Honor, I just have a quick question. I
25 just ask that there be caution to all the parties about not

1 including excluded evidence in their closing for reference --

2 THE COURT: That goes without saying.

3 MS. BOYD: Okay.

4 THE COURT: It's going to be incumbent upon you to object
5 if that happens.

6 MS. BOYD: Okay. I don't want to have to object during
7 anybody's closing. I just want a cautionary reminder.

8 And will Your Honor include a refresher of that curative
9 instruction?

10 THE COURT: No.

11 MS. BOYD: Okay.

12 (The jury entered the courtroom at 3:07 p.m.)

13 THE COURT: I understand that some of y'all had to run to
14 your car. You didn't realize jury service was an aerobic
15 activity. Thank you-all, and I appreciate your patience.

16 We have heard all of the plaintiff's evidence. We have
17 heard the defense's evidence. There's no reply. And, at this
18 juncture, we'll engage in what's known as closing arguments.
19 They're very similar in form to the opening statements. The
20 lawyers will stand up in summary fashion and give you their
21 view of the case.

22 These presentations are truly argumentative in nature
23 because, at this time, you will have heard all of the
24 evidence. These very able lawyers will be able to point to
25 the evidence that supports their relative theory of the case.

1 What they have to say is not evidence but it will aid you
2 immensely in your deliberation process. Pay very close
3 attention.

4 In this forum, the plaintiff has the burden of proof.
5 They are required to open in full. Then the defense will have
6 an opportunity to give their closing argument, and the
7 plaintiff, since they have the burden of proof, will have an
8 opportunity to reply. Pay very close attention.

9 Mr. Willey.

10 MR. WILLEY: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Yes.

13 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

14 MR. WILLEY: Here we are. It's been a long week. Thank
15 you all for your attention. This is a very important case for
16 my client, and you-all have been very diligent (indiscernible)
17 all day and (indiscernible). And for the next little while,
18 I'm going to talk to you just about what's next because this,
19 for me, is always the most nervous part of the trial because
20 it's our last opportunity to address you, and given the stakes
21 for my client, I want to make sure that I don't miss anything.
22 And I hope that you'll understand that as we go through it.

23 The rules that are at play in this case are simple.
24 Walmart, like every store, has a responsibility to keep its
25 store in a reasonably safe condition for its customers.

1 Walmart has a responsibility to inspect its store for unsafe
2 conditions and to remedy them when if possible. If Walmart
3 does not, and as a result, one of its customers is injured,
4 then Walmart is responsible for the harm.

5 And you'll remember, I told you that in the beginning of
6 the case, and that hasn't changed. We're going to walk
7 through some of the other things that I told you in the
8 beginning of the case that hasn't changed. Because everything
9 that I told you in opening statement has come out in evidence,
10 and that is what was required to prove Ms. Jones's case here
11 this week.

12 Now, remember that all of the evidence in the case,
13 (indiscernible) judge by a preponderance of the evidence, and
14 the judge just told you and we accept we have the burden of
15 proof. Ms. Jones has the burden of proof in this case, and
16 she has to prove the elements of each count by 50.01 percent,
17 and that simply just means that more likely than not.

18 What is more likely than not? Not what's beyond a
19 reasonable doubt, beyond all reasonable suspicion, all these
20 things that your lawyer shows are mainly involved with
21 criminal law where we're talking about people's freedom.
22 Here, it's just a preponderance of the evidence, what is more
23 likely than not.

24 So how we got here. What the evidence shows. We got
25 here not 2,327 days ago like I told you in opening, but 2,331

1 days ago, because Walmart continues to deny the undeniable,
2 delay the inevitable, and defend the indefensible. And you'll
3 remember when we started this case I told you there were a few
4 things that we had to prove. We had to prove duty. We had to
5 prove breach. We had to prove causation. We had to prove
6 damages.

7 The judge is going to tell you that, as a matter of law,
8 he has found that Walmart had a duty to Ms. Jones despite them
9 denying it (indiscernible), which we reviewed in opening.

10 So what's left? Breach, causation, and damages. And
11 that's what we're going to walk through throughout the course
12 of this.

13 Now, on the verdict form, which, when you go back there,
14 is what Mr. Foreperson is going to be filling out, of course
15 with all of your inputs because it has to be unanimous.
16 You're going to have two verdict forms. And the term
17 "verdict" is from the Latin word which simply means to speak
18 the truth. And so this is your opportunity as representatives
19 of the Florence County community to speak the truth.

20 And you're going to have two verdict forms. You're going
21 to have a verdict form against Mr. Ringer, and it simply says
22 was the Defendant Tim Ringer negligent? And that's the
23 breach. And if so, what are the damages that were caused by
24 that negligence?

25 And then you're have a verdict form against Walmart, and

1 it's going to say the same thing. Was the defendant Walmart
2 negligent? And, if so, what are the damages that were caused
3 by the negligence?

4 And the judge is going to tell you that Walmart acts
5 through its employees, and Mr. Ringer told you, when I
6 questioned him -- that he and I never had the opportunity to
7 speak before. The first time that I ever met Mr. Ringer was
8 when he testified on that stand. And I think you can see,
9 based on all of the things that we have shown throughout the
10 course of this trial that Walmart, they didn't tell the truth
11 about, that Walmart concealed, that Walmart destroyed. We had
12 to have everybody in one room to sort it all out, because,
13 frankly, when this trial started, I had no idea what their
14 theory of the case was going to be because that's changed.

15 And what you were able to see is -- we have these
16 documents, and these will go back in evidence with you. These
17 were the verifications that Mr. Ringer signed. Plaintiff's
18 Exhibit 6, Plaintiff's Exhibit 5. And he swore under oath to
19 certain things. Those things, as we demonstrated throughout
20 the course of the trial and he actually took the stand and
21 admitted, were not true.

22 But he also told us something else important, and that is
23 that Walmart came up with the answers, and they just had him
24 to sign off on it as an employee. Their loyal, 28-year
25 employee signing this paper under penalty of perjury that's

1 not true.

2 And so, when you go back there, I want to encourage you
3 to not find a verdict against Mr. Ringer individually because
4 I don't think that would be right based upon what he told us
5 on the stand and what we have seen through this week. I don't
6 think it would be right to hold Mr. Ringer individually and
7 personally responsible for what Walmart did, what Walmart had
8 him sign as their 28-year loyal employee, which was false.

9 And so you're actually going to have one verdict form
10 that is important when you go back there, and that is the
11 verdict form against Walmart. And that's what we're going to
12 talk about.

13 In the opening statement of the case, I laid out the
14 case, telling you what the evidence will show. Tim Ringer
15 and -- as store manager and remember they sent him as
16 corporate representative today -- he agreed with everything in
17 the opening except two things: That Store No. 630 was
18 breaking Walmart policy by having pallets on the sales floor
19 and that Ms. Jones's pathway did not have wooden pallets.
20 Those were the only two things in the opening statement that
21 we used to prove our case at the beginning that he disagreed
22 with as the Walmart corporate representative.

23 But here's the thing: Ms. Jones doesn't have to prove
24 that Store No. 630 was breaking Walmart policy by having
25 pallets on the floor to win her case, to meet her burden. She

1 also doesn't have to prove that her pathway contained wooden
2 pallets. She doesn't have to prove either of those things.

3 What she has to prove is that she stepped on it at
4 Walmart, which I would submit to you all the evidence in this
5 case demonstrates. You'll remember Ms. Jones testified -- and
6 we had video -- about where she stepped on it, where she first
7 heard it, and where she felt pain. You heard testimony from
8 Ms. Ayesha Cooke-Simmons who was there that day, who testified
9 that Ms. Jones stepped on the nail, that Ms. Jones showed her
10 the nail, that Ms. Jones had a puncture wound on her foot from
11 the nail.

12 You heard from the co-manager, who is now the store
13 manager, Kevin Lane, who violated (indiscernible) corporate
14 representative. He was the manager on duty that day. And
15 what did he tell you? Ms. Jones stepped on the nail.
16 Ms. Jones showed me the nail. Ms. Jones had a puncture wound
17 on her foot from the nail.

18 And you'll recall that they never had Mr. Lane put his
19 little mark on here, right, because that would be an admission
20 on behalf of Walmart about where the wound was. But both
21 Dr. Player and Ms. Jones agree that's where the puncture wound
22 occurred, and there was no evidence to the contrary. And I
23 will submit to you because that's the truth and ask that your
24 verdict is speak (ph).

25 So, beyond that, she has to prove one of four things:

1 That Walmart knew it was there; in other words, that Walmart
2 employee actually saw it and, you know, just ignored it. Or
3 that Walmart should have known it was there; that is, if they
4 were doing reasonable inspections, if their safety sweeps were
5 being conducted, that this nail would not have been there.

6 And you'll remember, this is a rusty nail. This is not a
7 brand new nail that just dropped out of a box. And the
8 testimony in the case is, yes, they sold this kind of nail,
9 but this is a rusty one. And so if that nail had come from a
10 box in their store, it would have been on that floor for a
11 long time.

12 The only other place that a nail comes from in the
13 Walmart store, the testimony has told you, is from pallets.
14 That's good.

15 Now, what can you derive about this particular nail?
16 Does it have to be a nail used in manufacturing of pallets?
17 No. You know when palletized merchandise -- you have seen it.
18 Common sense. Your everyday experience. It comes in with
19 straps on it, straps around the top, straps around the side.
20 They will often use different types of nails to secure those
21 straps.

22 When the wrap come in, wrapped all around the pallet, as
23 the testimony was, and wraps come from -- these displays come
24 in fully -- fully wrapped. Nails could be used to secure that
25 wrap, to secure the protective wrap.

1 You heard testimony that Walmart uses watermelon bins on
2 tops of pallets. Those pallets come directly from the farm
3 that sold them the watermelon. That's the testimony in this
4 case.

5 I don't know if any of you have worked on a farm. I
6 have. And at my personal house, we have a nail bucket. If we
7 have a problem that requires a nail, the first place we go is
8 that coffee can in the utility room and we find a nail that
9 would do it, that will work.

10 This, while it ain't called a roofing nail -- there's no
11 dispute about that. That's the type of nail it is. And
12 there's all types of nails. There's roofing nails, there's
13 trim nails, there's finishing nails, just like, you know,
14 there's drywall screws. And you can use those nails for any
15 number of things. And what we know is that she stepped on
16 this nail in that store. Her foot found it.

17 And the testimony in the case is that the safety sweeps
18 that take place literally look at every corner, every crevice,
19 under every table, under every shelf. And so, if those had
20 been happening, shouldn't Walmart have known the nail was on
21 the floor, if they had been doing that?

22 Or she can prove that a reasonable inspection would have
23 detected it, and that's because Walmart has an internal
24 policy. And the judge is going to tell you that, if a company
25 violates its internal policy, then that is evidence of

1 negligence.

2 And I want you to remember -- and you'll have it back
3 there in the jury room, and you'll have all these exhibits so
4 you'll be able to go through them in more detail. And I'm
5 just doing it in a cursory fashion.

6 But you'll have this letter from July 13 of 2015, okay,
7 from Rod Jernigan, he's a lawyer who works on this case, and
8 it says, "As such, this letter is a formal request that you
9 preserve all of the following: Both tangible as well as
10 electronically stored contained information potentially
11 relevant in any way." And underlined: "All video camera
12 footage directed towards the floor area of the main grocery
13 aisle during the six hours prior to the injury and the one
14 hour following the injury." And there's other things listed
15 there, which you can look at.

16 We know that Walmart did not preserve that because
17 Ms. Wright told her that nobody from corporate ever told her
18 to pull more video aside from the one they had already
19 directed her to pull. You have to use your common sense. If
20 a party is asked to produce something that could answer --
21 could prove that they're innocent, that they didn't do it,
22 that, in fact, they had conducted those safety sweeps, and
23 then they destroyed the video and don't produce it, what is
24 more likely than not? That the video shows something good for
25 them? Again, use your common sense.

1 The fourth way that Ms. Jones wins is or that Walmart
2 created the danger by bringing it into the store on a pallet
3 or some way other than a pallet. Well, the testimony in the
4 case is there was no evidence of any nail fairy out there
5 sprinkling nails around. There's no evidence that it came in
6 any other way other than Walmart bringing it in.

7 And let me remind you of this: If somebody had brought
8 it in, in the six hours prior to the injury, and dropped it on
9 the floor, it would be on those videos that Walmart destroyed.
10 And we would be able to see that. But they destroyed it. And
11 so you just have to use your good common sense about why would
12 they do that.

13 And you'll remember we went through the videos, and we
14 looked at some of this. We have -- we know an associate at
15 the front doors, as most Walmarts do. They call them greeters
16 but I think now they have turned into more of receipt-checkers
17 it seems like. And this lady is going back and forth checking
18 folks' receipts, and we know there's an associate there. But
19 what we don't have is any associates in any of the videos that
20 were produced either in the produce area -- the initial
21 vestibule of the produce area or in the relevant area where
22 Ms. Jones gets down here and first checks the bottom of her
23 shoe because she heard the tick tick.

24 And I would submit to you the evidence shows, when you
25 step on a nail, in general, it gets lodged in there first, so

1 you're more likely to hear a noise first. And then the second
2 or third step is when it's going to go through that shoe and
3 you're going to feel it.

4 That's what happened in this case, and the video they
5 produced doesn't show any associates in the relevant area
6 conducting any safety sweeps. And if they had them, if the
7 safety sweep that had happened 20 minutes before that or an
8 hour before that or an hour and a half before that or two
9 hours before that or up to six hours before that, which is the
10 video we requested, don't you think they would have produced
11 it?

12 If you have a video that proved you did what you were
13 supposed to do and you got a letter -- remember, this letter
14 came on July 13th of 2015. This incident occurred on June 26.
15 Ms. Wright testified that the videos are kept for at least 30
16 days. First, she testified most are kept for 90, and then
17 when she realized where I was going with it, you'll remember
18 she said, Well, some are only kept for 60, some are only kept
19 for 30.

20 Well, July 13th of 2015 is within 30 days of June 26.
21 Mr. Ringer testified that letter was hand-delivered to him.
22 He passed it on to corporate. Did what he was supposed to do.

23 And you'll recall that Ms. Jones testified -- this is a
24 blow-up of the initial area here -- that those wooden pallets
25 somewhere in this area, that she recalled seeing a wooden

1 pallet displayed somewhere in that area. And when you go back
2 through it and you look closely at this video, there's a
3 camera right there. That's a Walmart camera right over that
4 area.

5 Look at all the angles of video you have, the 17 clips
6 that they gave us, and see if you find that in there, that
7 would show those displays. We'll submit to you it's not in
8 there because they destroyed that too, even for the period in
9 which she was walking through the store. And that would have
10 showed the palletized displays that Ms. Jones talked about.

11 So what's more likely than not? If you'll remember, they
12 started this case by telling us we don't use wooden pallets in
13 our stores. Everything's on a plastic pallet. Mr. Ringer
14 told us that wasn't true. And, in fact, Mr. Ringer, being
15 honest in his deposition, was able to point out wooden pallets
16 in the videos we have, albeit not in the area Ms. Jones was.
17 Convenient, then, that we don't have the video where Ms. Jones
18 said the wooden pallet was from the area she was in.

19 And I want to remind you of this: We heard from Jenny
20 Wright, Walmart asset protection manager -- and that's a
21 photograph just to remind you what she looks like from her
22 deposition. She was the lady that came in that's now the
23 manager for Palmetto Moon. She no longer works at Walmart.
24 And she told us that, during this period of time, the
25 volunteer safety team lead reported to her. Remember, Walmart

1 has this volunteer position for a safety team lead that
2 anybody can volunteer for? And that person reported to her
3 but she couldn't tell us who it was.

4 And you'll remember the store manager, Mr. Ringer, when I
5 asked him, "Well, who was the safety team lead during this
6 period of time?" He couldn't tell me who it was.

7 But when I asked her -- when I asked him who was the
8 asset protection manager, he knew that instantly. Tells you
9 little something about Walmart's priorities: Profit over
10 safety. We know who was there protecting our product. We
11 can't tell you who we have volunteering in charge of safety at
12 that particular time. But it's so important; remember?
13 Remember how important it is? We just have a volunteer that
14 we don't even know their name.

15 She also told us something else important, and that's
16 that the PTZ cameras are so good they would allow to see if a
17 coin on the floor is heads or tails and count the freckles on
18 my face. That's what she said. And she said that if she were
19 using those cameras live, in real-time, scanning the floor,
20 you'd be able to see there was a nail on the floor. You'd be
21 able to see if there was a danger on the floor.

22 But what else did she tell us? Nobody at Walmart is
23 responsible for using those cameras to look out for safety.
24 They're looking out for asset protection. They're looking out
25 for number one, as they say. And that's because Walmart puts

1 profit over safety. We have seen it time and time and time
2 again throughout the course of this case.

3 And you'll remember this video that we had. This is
4 actually one of the clearer videos, I would submit to you, if
5 you go back there and look at them all. The rest of the
6 videos are pretty grainy but this one is pretty clear. And
7 you'll notice, this is not a PTZ camera here. The ones that
8 are PTZ cameras are actually noted as PTZ cameras. Or,
9 remember, that was Ms. Wright's testimony.

10 But we went through all this. Mr. Ringer indicated there
11 was at least one palletized display. He couldn't tell us what
12 the other displays were because the camera was too grainy, but
13 he could tell us nothing was on that floor by looking at these
14 grainy photos.

15 And you'll have back there with you Ms. Jones coming
16 around the register. And, again, that's less important now
17 because the Court has directed a verdict on that and will tell
18 you that they owed her a duty as a matter of law, something
19 that didn't happen until today.

20 And you'll notice that, when Ms. Jones comes down, she is
21 favoring the one leg as if she had stepped on something, as if
22 she did have an injury, and you'll remember that that was all
23 the testimony in the case.

24 And this is all shown to you in opening. And, remember,
25 Mr. Ringer didn't disagree with any of this, as the corporate

1 representative of Walmart. There was an incident report
2 filled out that said she stepped on the nail. Everybody
3 admitted to that, that testified to Walmart that was there
4 that day. And there was a video request form put in, and, in
5 fact, the video that Ms. Wright initially pulled of Ms. Jones
6 in the store, was there. No one came back to Ms. Wright to
7 ask her to pull more video when they got that letter.

8 And remember this: When Walmart pulls video, initially,
9 they're just following Ms. Jones, and they're looking at
10 Ms. Jones. And we went through it in pain-staking detail.
11 And you'll remember we just let it play. And I know it was
12 long. The point was to show you how long she was in that
13 store.

14 And you'll remember that Walmart's liability, before
15 Ms. Jones got in the store, were they doing safety sweeps?
16 Because they can't show us a safety sweep while she was there.
17 They didn't produce any of that. There was no have request
18 form for it. No timeline by Ms. Wright. And even Ms. Wright
19 agrees, yes, she checks her right foot at 11:34:10. Ms. Jones
20 testified she heard the sound.

21 And we heard from Ayesha Cooke-Simmons. This happened at
22 the trial. I just said that in opening, but you actually
23 heard from her. And she said, Yeah, I saw the nail. I wrote
24 that it was a nail when I signed it. I took a picture of the
25 nail and developed it. And, yes, in fact, it's a nail.

1 And you'll remember what Walmart did during the course of
2 this trial. We have Dr. Player up here, respected member of
3 our community, surgeon. Records, thousands of pages he's gone
4 through and dictated out. Didn't mention screw one time.
5 Nail, hundreds of times, I think he said. And they say, oh,
6 oh, hey, there's something. Maybe it was a screw. What?
7 That was the first time we heard that. Because everybody has
8 agreed it's a nail.

9 And, again, it's just Walmart denying the undeniable,
10 just trying to find any little thing for confusion to keep
11 Ms. Jones from being compensated for what happened to her as a
12 result of her stepping on that nail in their store.

13 I think you'll remember, Ms. Cooke-Simmons was a front
14 end manager. She wasn't an associate. She was a front end
15 manager. That day she was there, she saw it. Why wasn't she
16 the representative for Walmart at this trial? Because she
17 told the truth.

18 Ms. Jones went right away to get a tetanus shot.
19 Reasonable thing to do. You step on a rusty nail, go get a
20 tetanus shot. And she went right away. And she did see her
21 doctor, Dr. Musgood (ph). You heard about him. And it was a
22 nail. Saw it. It's a nail injury in her foot. Saw it.
23 That's her doctor. It's a diabetes doctor we heard so much
24 about.

25 He'll write down, Oh, it's a -- whatever the word was.

1 Diabetic ulcer. It's a nail injury.

2 And, as a result of that injury, unfortunately, you-all
3 know -- and you'll have these back there with you -- Ms. Jones
4 went through a series of really bad events. Really bad
5 events. And the first happened in July 15th of 2015. And
6 you'll remember the testimony in the case from Dr. Player, her
7 surgeon, is that he cleaned up the tissue around the initial
8 puncture wound three days later after it was evident there was
9 a little infection in there, and that didn't work. And so,
10 eventually, he had to open it up on the top because the
11 infection -- and even their expert said this -- a lot of
12 times, the infection starts from within. Remember that? And
13 comes out. So you don't see it at first.

14 And this infection, obviously, was from within, since the
15 wound was on the bottom, and he opened it up, got the
16 infection out, cut a piece of infected bone out, and had to
17 remove her toe. And there was a lot of testimony about, Oh,
18 well, the toe, by the time it was removed, was mummified.
19 Well, again, that's why you take the toe off. You don't take
20 a perfectly healthy toe off, right? And Dr. Player said that.
21 He said that an infection had gone -- had started on the
22 inside. And he had cleaned out the bottom before. And, with
23 this procedure, he cleaned out a top and had to take the toe.

24 And their expert said -- and you can go and hear it. And
25 I would encourage you, you can re-hear any testimony in this

1 case at any time, but their expert said -- their
2 500-dollar-an-hour expert, by the way, and we'll get to that a
3 little bit later. But their expert said that the first and
4 second amputations were caused by the nail injury. He said
5 that.

6 And he said that at 12:33:03. And so if you ask to hear
7 that, they can pull it for you. The nail caused the toe
8 amputation, and the amputation in July was caused by the nail.
9 The second amputation was caused by the nail. And he had a
10 disagreement as to this amputation, the above-the-knee
11 amputation only because there was a record in there, in all of
12 those pages, one record, that said it had fully healed.

13 So there's no dispute about that. There's no dispute in
14 this case. No one has said that the first and second
15 amputations were not caused by the nail wound. Their expert
16 admitted that at 12:33:03 today. He only had an issue with
17 this one.

18 So after all of this -- and Walmart knew that. Right?
19 They hired the expert. I mean, we have Dr. Player doing --
20 going with her course of treatment the entire time. They
21 hired the expert. They talked to him before we had a chance
22 to talk to him. He told them what he was going to say.

23 They didn't do the right thing. They continued to
24 contest all of this, that she was a patron, that she passed in
25 the area of pallets, that she felt a sharp pain in her foot,

1 that she inspected her foot, that she observed a rusty nail
2 through her shoe and into her foot, that she visited the
3 hospital, that she had a hole cut into her foot to treat the
4 wound that had led to multiple surgical amputations eventually
5 resulting in losing her right leg to just above the knee.

6 The only thing that their expert disagreed with as to
7 what happened at the hospital was No. 9, was the final
8 amputation. And Walmart knew that, and they still denied all
9 that throughout the course of this trial until we got here and
10 they had to face you. And you guys can hear the actual
11 evidence.

12 And you'll remember, as you walk through in opening, and
13 you saw it all in opening, she was, in fact, a patron. And
14 like I said, the judge is going to tell you that, you know,
15 she's a patron.

16 And we went through where the pallets were. You'll
17 remember. We talked about those. We talked about you
18 couldn't see way up on the aisle, but there's a camera there.
19 They just didn't preserve it.

20 We'll talk about the bloody foot. Of course you saw the
21 nail. It's here. You actually heard this testimony from
22 Ms. Cooke-Simmons. You had the opportunity to hear from the
23 doctors.

24 And, again, after all that, they deny there are wooden
25 pallets in the store. Not in the area. That wasn't the

1 initial thing. Initially it was Defendant Walmart responds
2 that wooden pallets are occasionally used in seasonal
3 displays, but upon information and belief, no such displays
4 were in place in the subject store on the date of the alleged
5 incident.

6 That's a lie. Okay? And you know when you start
7 something and you tell a lie and then you go through the
8 course of a process and somebody says, "Well, that's not quite
9 right," and then you have to come up with another lie? And
10 then you go a little bit further and they say, "Well, the
11 other thing you said as part of that first lie is not quite
12 right either." And then you have to come up with another lie.
13 My dad called that still digging. He used to say, "You're
14 still digging" when I was a kid.

15 They're still digging. Because they knew what Mr. Ringer
16 was going to say. He was their store manager. And you heard
17 it from him: "Of course there were wooden pallets in that
18 store" (indiscernible) Walmart. I challenge you to go find a
19 Walmart without wooden pallets around the display floor.

20 And we went through these. These were the documents they
21 had him sign under the penalty of perjury, under oath, which
22 he said were not true. And, again, admitted that those
23 responsible for making (indiscernible) premise here had a duty
24 to maintain a safe environment for invitees. Denied as
25 stated. The judge is going to tell you they have a duty --

1 that duty, to maintain a reasonably safe condition for
2 invitees.

3 Admit that the placement of (indiscernible) wood pallets
4 would be dangerous. Denied. And it goes on. I don't have to
5 belabor this. You have seen it.

6 And they had him sign it under the penalty of perjury.
7 And you'll remember the Walmart lawyer got up and said, "Well,
8 Mr. Ringer, isn't it true you're not a lawyer?" No one said
9 he was a lawyer. Of course he's not a lawyer.

10 And then I asked Mr. Ringer, "I think you understand the
11 words 'deny,' 'under oath,' and 'penalty of perjury.'"

12 And he said, "Yes, of course I do."

13 And then I asked him, "Well, what happened?"

14 And he said, "Walmart corporate came up with these
15 answers and just told me to sign them."

16 And they were wrong to do that. Frankly, they were wrong
17 to make their 28-year employee, loyal employee do that. But
18 they did it. He told us. Still digging, after choosing
19 somebody else to do the grunt work. That was what he told us
20 in the deposition and he told us again. Did not follow
21 internal safety policies, safety sweeps.

22 You'll have the policy. It is their policy. Again,
23 remove pallets from the sales floor. And you'll have the
24 relevant sections. Avoid stepping on pallets. Of course.
25 Remove pallets from the floor. Stack them in a designated

1 location. And you'll have those policies.

2 And then he told us about the policy of the safety sweep
3 where they destroyed the video. Again, just one way she wins
4 in view of those weights and them doing what they were
5 supposed to do, because there's no doubt she stepped on this
6 nails in their store that day and it led to these injuries.

7 And so we know, from looking at the video, that there are
8 wooden pallets in the path in the action alley. The one he
9 pointed out was a little further down. Ms. Jones said the
10 pallet she passed was simply on the other end where she was.
11 They didn't give us that video.

12 And then you heard that these videos that are so good
13 that you can count the freckles on a face or that are so good
14 that you can see that there's nothing on the floor, he can't
15 tell now, upon second thought, where those bins in produce --
16 those watermelon bins -- whether they're bins or tables or
17 what they are. But he can tell there's nothing on the floor.
18 Still digging.

19 Policy violation, safety sweeps. What's more likely than
20 not? You'll remember -- it's pretty straightforward. When
21 the cat is away, the mice will play. Mr. Ringer was not there
22 that day. He was not walking around enforcing these policies
23 with his employees. They weren't being done.

24 You can see in one of the videos, if you watch it, the
25 associates in the grocery action alley kind of dancing and

1 playing around. And that's okay. There's nothing wrong with
2 that, as long as you're still doing your work. But we don't
3 have the video to show that it was happening. And that's
4 Walmart. And, again, it's a rusty nail, so we know it didn't
5 just get there that day.

6 Causation. So, remember, that duty that they deny, the
7 Court says no, there's a duty under the law. That breach
8 which we just went through, any of those ways -- any of those
9 ways that cause this nail to be on the floor or they get the
10 nail picked up, now we have causation. More likely than not.
11 And I have already told you, you can re-hear testimony so I'm
12 not going to do that again.

13 But I want you to also remember this, which is a very
14 important part of the charge that the judge is going to give
15 you on the law, and you have all taken an oath to follow the
16 law. And the charge says this: The defendant claims that the
17 plaintiff had a pre-existing injury or condition prior to the
18 date the plaintiff claims the defendant injured her. If you
19 find that the plaintiff received an injury as a result of the
20 negligence of Defendant and is entitled to recover for that
21 injury, the fact that the plaintiff had a pre-existing injury
22 or condition would not prevent the plaintiff from recovering.
23 The defendant is responsible for all ill effects, which,
24 considering the plaintiff's condition of health when the
25 plaintiff was injured, naturally and necessarily followed the

1 injury. The defendant takes the plaintiff as the plaintiff is
2 found, whether the plaintiff is in perfect health, in poor
3 health, or somewhere in between. A defendant's liability is
4 in no way lessened or affected because of the fact that injury
5 would not have resulted or would not have been as serious or
6 severe had the plaintiff been in good health."

7 You take them as you find them. Walmart sells diabetic
8 supplies and know they have diabetics come in the store.
9 That's why it's all the more important to have a safe
10 premises. And that's what the law says.

11 Dr. John Ross, I call him our crystal ball say-to-pay
12 expert, and you'll remember that he is the 500-dollar-an-hour
13 guy that came in from out of town that had never seen
14 Ms. Jones, that said that he had received from Walmart medical
15 records about -- about this much. When Dr. Player told you
16 that his medical records were that much, thousands of pages,
17 and he had reviewed what Walmart had selected for him, and,
18 yeah, he thought everything they gave him was the important
19 stuff. Well, of course. You're paying somebody
20 500-dollars-an hour, that's at least safe to say.

21 But you'll remember he didn't see and treat April within
22 days of the injury. He didn't actually inspect her foot and
23 the puncture wound. And he told you he gets to know his
24 patients by their first name because it's important. He
25 didn't even talk to her doctors. He didn't even call up his

1 colleagues and say, "What's going on with this case? What
2 happened? Tell me about it. Tell me your perspective."

3 And then he told us, "I do more of this than anywhere in
4 the world." In Bamberg? I mean, come on, folks. It just
5 escapes all reality.

6 He did tell us, though, that he can't say, in 2013, if
7 the diabetes was getting better or worse because he didn't
8 have the records. I asked him about records in 2012, and he
9 said, "Well, I only have the records from 2013. That's what I
10 was given, the chronology from '13 on." But he did say that
11 he couldn't say that.

12 Of course you heard from Dr. Player that the only wound
13 on her foot on this day when he saw her three days later was
14 the puncture wound, which he debrided, made larger to get the
15 tissue out, and they want you to believe -- I mean, think
16 about this logic. Here's what they're asking you to believe:
17 That this puncture wound that took Kevin Lane an hour to
18 antiseptic and wipe the blood -- he said he was wiping blood
19 out of her shoe, blood off of her foot, they were mopping
20 blood up off of the ground. You saw that, with the towel that
21 laid there forever.

22 They want you to believe that, in three days, that wound
23 did heal but then a whole new wound that had become infected
24 existed. Because Dr. Player told you there was one wound when
25 he actually saw her foot three days later, and it was that

1 wound, the green dot. How is that? How could the puncture
2 wound where so much blood came out in customer service that
3 fully healed and some other wound appeared and got infected?
4 It didn't happen.

5 Remember, they didn't ask Mr. Lane or Ms. Cooke, who
6 actually saw her foot, to mark this. Why? Because they would
7 have told the truth just like they did about the other
8 (indiscernible).

9 But their expert did tell us this, Dr. Ross. He told us
10 that Amputation 1 was caused by the nail puncture. And,
11 again, that's at 12:33. And you can hear the testimony. He
12 told us that Amputation 2 was caused by the nail puncture.

13 And so that's causation as to Amputation 1 and Amputation
14 2. The only evidence in the case is Dr. Ross and Dr. Player.
15 So when you get back there, if somebody says, "Well, I don't
16 think that this was caused by the nail puncture," you remind
17 them that they took an oath to follow the law. And the law
18 says that the evidence to be considered is the evidence
19 presented from that box and through those exhibits. And the
20 only evidence in this case as to causation, medical testimony,
21 is from Dr. Player who said all three surgeries resulted from
22 the nail puncture.

23 And the only other medical testimony is from Dr. Ross,
24 their expert, who said No. 1 and 2 didn't, but he thought
25 No. 3 was a progression of disease issue. Well, you can use

1 your common sense as to the chronology. But you get causation
2 on 1 and 2.

3 And remember Dr. Player. West Florence High School, went
4 off to Princeton, back to MUSC, back to Florence to treat
5 patients here. He's the eyewitness expert. He actually saw
6 her foot three days after this and testified, no other wounds
7 except the nail wound.

8 And he testified that, more likely than not, the nail
9 caused all three amputations because that's the burden of
10 proof. And, remember, he's the guy with the saw. Okay? He
11 did it. He looked at it. He examined it. And he told you he
12 doesn't just cut off people's parts. He diagnoses them. And
13 that's what he did after a lot of review and a lot of
14 consideration. And they were all related to the nail wound.

15 And you'll remember the testimony came in, Well,
16 Ms. Jones has been a diabetic since 1999. Yeah, exactly.
17 Controlled, non-insulin dependent. You heard that. She
18 didn't get an amputation in 1999, in 2000, 2001, 2002, '3, '4,
19 '5, '6, '7, '8, '9, '10, '11, '12, '13, '14, the first half of
20 '15. She didn't need an amputation until she stepped on the
21 nail. So just use your good common sense, even if you don't
22 want to believe either one of the doctors.

23 In fact, Dr. Player said something else, which you can
24 re-hear. You can re-hear this. So if you get back there and
25 somebody says, "Dr. Player did not say that," all the foreman

1 has to do is say, We'd like to re-hear the part where
2 Dr. Player said that he is certain -- not more likely than
3 not -- certain that the nail puncture caused all three
4 amputations. And I have got the time marked, so it will be
5 quick. We're not going to have to re-hear a whole bunch.

6 So that brings us to this: The harms and losses and what
7 you can do about them. And in this case, the harms and
8 losses, the damages, are measured by a preponderance of the
9 evidence. And I want to be real clear on something. We're
10 going to talk about -- and you'll have them back there, so,
11 frankly, I'm not going to spend any time on them other than
12 just to tell you the number. You'll have the medical bills
13 related to the three amputations back there. You'll have
14 these, which have the date of the surgeries, and so you'll be
15 able to cross-check on the front kind of how much it all costs
16 and look at it how you want. But the total of those bills is
17 \$534,935.70. Okay? That's her economic damage. What we call
18 economic damage. That's the medical damage.

19 And if you go back here, you'll see a bill from 11/27 of
20 2018, which is from Palmetto Prosthetics and Orthotics.
21 That's the prosthetics she told you that doesn't work for her
22 anymore and so she'd like to get another prosthetic. And I
23 think Dr. Player testified that sometimes that happens. And
24 you'll have an amount for that, how much that prosthetic cost
25 in 2018, about \$19,000.

1 But aside from those types of economic damages, what we
2 can actually ascertain, the judge is going to spend a lot more
3 time talking to you about the non-economic damages, and that's
4 because the law allows for recovery of non-economic damages in
5 greater proportion than the economic. In other words, there
6 are more categories of non-economic in a case like this than
7 the economic. Those damages are entirely within your purview.
8 You, as the finders of fact, as the jury, get to decide how
9 much pain and suffering is worth for Ms. Jones, how much
10 disfigurement is worth for Ms. Jones, how much the depression
11 is worth. Y'all get to decide that. Okay? Nobody can tell
12 you what that number has to be.

13 But what I'm going to do for the next couple of minutes
14 is give you a couple of ways to think about it. Okay? And
15 actual damages, as the judge will tell you, are these: Pain
16 and suffering, mental anguish, loss of enjoyment of life,
17 disfigurement, anxiety and depression, health and physical
18 impairment, psychological trauma, medical expenses.

19 And what you have to remember when you're looking at
20 damages is that all time is not equal. For example, on the
21 loss of enjoyment of life. Loss of enjoyment of life on a day
22 where you might just be sitting around the house watching TV
23 and you can still do that, is going to be far less valuable
24 than on a day where the rest of your family is going to Disney
25 World on a Make-a-Wish trip for your grandson and you can't

1 go.

2 All time is not equal. Those things are valued
3 differently. And so we're going to ask you, obviously, to
4 calculate April's loss in this case, and you're going to have
5 the opportunity to do that. And I want you to remember this,
6 that if you go back there and somebody says, "I don't believe
7 in non-economic damages," well, that's not following the law
8 and you should let the judge know because they're required to
9 follow the law. The law requires that, if you find 50.01
10 percent someone suffered -- had pain and suffering, then
11 you're required to award an amount for that as the jury, as
12 the finders of fact, as the speakers of truth.

13 And so, June 26, 2015, to November 12, 2021, is 2,331
14 days. Okay? Past medical bills, we have talked about. And
15 you'll have a few other categories back there as well. And I
16 want you to think about these as we go through as what I call
17 the human damages. Because these -- these damages -- the pain
18 and suffering, the loss of enjoyment of life, trauma, the
19 mental anguish, the anxiety, the health and physical
20 impairment, the depression, the disfigurement, those are
21 actually the damages that Ms. Jones has suffered. And you
22 heard testimony about that. She told you. Some days she just
23 says, "God, please end it." But she gets out of that because
24 she goes back to her scripture and God will find a way.

25 But she wouldn't be doing that if she hadn't lost her

1 leg, if she was still independent, if she still had her
2 freedom. And you-all know that.

3 And so you go look at past damages, those 2,331 days, and
4 you're going to come up with a number for each. And on the
5 verdict form, it's going to be one line that says actual
6 damages, but you're combining this all into one number. But
7 these are the things that you have to think about. What was
8 her pain and suffering worth over the last two hundred -- two
9 thousand -- 2,331 days? And one way to think about it is on
10 an hourly basis, because we all kind of can think of an hourly
11 basis. We get a job, it's by the hour. Okay?

12 Well, there's 55,944 hours that she's been living with
13 this injury with no help. Walmart hasn't done a thing. That
14 is 55,944 hours of loss of enjoyment of life, disfigurement,
15 mental anguish, all these past damages. And so if you look at
16 that and say -- and this is just an example -- you can put any
17 number you want on this -- but if you say, Well, I think pain
18 and suffering, on the account of losing your right leg before
19 you get to trial is worth \$15 an hour. I don't know. Seems
20 reasonable. But you get to come up with a number. But if you
21 found that, then it would be \$839,160 worth of pain and
22 suffering.

23 And the same thing for the others. Again, you can find
24 any number you might find. You might find, for example, that
25 the disfigurement is worth less than the depression or vice

1 versa. You can find however you want. This is just a way to
2 think about it.

3 And using this example, if you think about -- if you
4 thought about it this way: \$15 an hour on each category, that
5 \$839,160 plus the past medical bills, then you would get total
6 past actual damages of \$6,409,000.55. That's it. It can be
7 more. It can be less. It's totally up to you. But this is
8 one way to think about it. And I use this example because
9 everybody's familiar with \$15 an hour. And you say, "God,
10 when you do \$15 an hour over that period of time, that's a lot
11 of money for all those things." And I will submit to you it
12 is.

13 Well, let's not forget, Ms. Jones has suffered an awful
14 lot of harm over those 2,331 days. And the only thing that we
15 do in our system is money. We don't do leg for a leg justice.
16 Okay? That's barbaric. All we can do is money to fix, help,
17 and make up for the damages. And you-all decide the amount.
18 But just remember: She has suffered, she has definitely loss
19 of enjoyment of her life, and you heard from some of her
20 children -- all of her children, in fact. You have seen he's
21 disfigured. You have heard about the mental anguish, the
22 depression, the impairment, how she can't cook for herself,
23 how she can't get up to the cabinet, how she can't do this,
24 how she can't do this. She can't drive anymore, which, by the
25 way, that day, she was driving -- remember that right foot,

1 ball of the foot, gas pedal, brake pedal? There was no nail
2 in there. No nail in there before she got to Walmart. She'd
3 hurt herself. But you decide. You decide.

4 And then you're going to have the opportunity to
5 calculate her expected damages, future damages. And future
6 damages, her life expectancy is 30.90 years. Okay? And the
7 judge is going to tell you that. In South Carolina, we have
8 an actuarial table, and it says that a woman of her age is
9 expected to live 30.9 more years. Okay? Ms. Jones could live
10 longer. Ms. Jones could live less time. But that's a number
11 provided by law, and so that's what we go with. That's 11,286
12 days.

13 Ms. Jones, I don't know if you have ever heard that
14 before, but how much longer the State of South Carolina thinks
15 you have to live.

16 270,864 hours. And this is the future. This is after
17 your verdict. And so I want you to think about it this way:
18 Think about the money that you're allowing in your verdict,
19 how it will help some of these things. It's not going to fix
20 her pain and suffering, but it can help it. Part of her pain
21 and suffering is not being able to get around on her own.
22 Part of her pain and suffering is not being able to mobilize
23 around her house. Money can help that. It can't fix it but
24 it can help her.

25 Her loss of enjoyment of life. Again, you can't fix

1 that. You can't give her back the leg God gave her, but you
2 can help it. You can help it by allowing money in your
3 verdict so she can get a new prosthetic, so she can get that
4 electric wheelchair and that scooter.

5 You can help disfigurement. Again, you can't fix it but
6 you can help it. And after the verdict, the verdict speaks
7 the truth, then you will help it.

8 And so, on these damages, the thing to remember is that
9 it's a verdict for all time. Ms. Jones doesn't get to come
10 back before any other jury in any other courtroom ever to ask
11 for more money, no matter what happens. If it gets worse, she
12 cannot come back. This is it.

13 And so this is her one verdict. And so, perhaps, with
14 the money that you allow for those future expenses, you say,
15 well, the pain and suffering in the future is only going to be
16 down to \$5 an hour because we're helping it. We're helping it
17 with the money we're giving her. We're helping that.

18 And if you do that, then on the pain and suffering at \$5
19 an hour times the hour she has left to live, comes to \$1.345
20 million. Again, that's a big number, but life isn't lived all
21 at once. And as we all well know, you can't hit the
22 fast-forward button and fast-forward to the good days. Life
23 is lived moment by moment, minute by minute, hour by hour, the
24 good and the bad. Phantom pain, no phantom pain. Sitting on
25 the floor when you fall out of bed and can't get up and

1 sitting in the chair. And that's how Ms. Jones is going to
2 have to live with this. So that's why one way to look at it
3 is that leg.

4 And, again, if you go through all of those and you say
5 they're all worth \$5 an hour -- discount it because of what
6 we're giving her -- you would get 9.48 million plus the future
7 expenses that you would allow in your verdict.

8 And the thing to think about in this case is this is not
9 hitting the lottery, getting lucky. This is about what was
10 taken and putting a value on what was taken and what she has
11 to go through -- what she has gone through and will go through
12 for the rest of her life. And that's for you to decide. You
13 get to make that determination.

14 And I believe that everything happens for a reason, and
15 the 12 of you are here, that she had a positive COVID test for
16 a reason. I believe that. I really do believe that. And you
17 are here as the representatives of this community. Nobody can
18 make you not follow the law.

19 When you go back there, this is not a majority vote.
20 This is a unanimous vote. If you can't agree, you just have
21 to let the judge know. But at the end of the day, I think you
22 will agree because I think you see what has happened here, and
23 I think you know, after hearing her testimony, that Ms. Jones
24 is good woman. She's a good woman who is independent, raised
25 five kids -- good kids, I think we can all agree. Good kids.

1 Taking care of their families, working, taking care of their
2 mama now.

3 She didn't want this to happen. She'd rather have her
4 leg back, but we can't give it to her. All we can do is help
5 her. I have been helping her the best I can for a little
6 while, preparing this case. Now it's going to be up to you.
7 It's going to be up to you soon and it's going to be her
8 verdict for all time.

9 So that's what you can do about it. That's, frankly, all
10 you can do about it. If you add the actual past damages and
11 the future damages, if you did \$15 and \$5 an hour, then you
12 get the 16.7 million. And I know it's a big number. But here
13 is what I want you to think about. It's Walmart. In your
14 verdict that will speak the truth, that's the opportunity to
15 tell Walmart that, if you don't do what you're supposed to do
16 and, as a result, a member of our community is injured, when
17 you get to that courtroom and you're on equal footing, we're
18 going to do the right thing. We're going to speak the truth.
19 We're going to make sure that our neighbor, our community
20 member is helped in some measure.

21 And so think about it because it might not seem like a
22 lot, leaving a rusty nail on the floor, when it gets rusty,
23 and having catastrophic injuries. And if it does, we're going
24 to help her because that's what the law requires. The law
25 doesn't give Walmart any special right to hurt people.

1 And this is always, for me, my least favorite part. In
2 fact, it's the part that keeps me up all week because, after
3 the way that this week is done, I don't know what they're
4 going to say when they get up here. It's been different from
5 day one all the way through. I showed you some of that. It's
6 her one day. I get to come back briefly, but I hope I haven't
7 missed it -- missed something. I hope I haven't blown
8 anything. If you don't like bow ties, I hope you'll take it
9 out on me and not out on her.

10 But I want you to listen for something in their closing
11 argument. If they really cared, what's their number? What's
12 Walmart's number? What is Walmart being to do to help
13 Ms. Jones? Listen for that. Almost nothing else matters.
14 Thank you.

15 THE COURT: Defense, you're recognized. Mr. Blain.

16 MR. BLAIN: Your Honor, may it please the Court.

17 THE COURT: Yes, ma'am?

18 JUROR: Need to go to the restroom.

19 THE COURT: All right. We'll recess in just a moment.
20 Once again, do not discuss the case.

21 (The jury exited the courtroom at 4:10 p.m.)

22 (A brief recess was taken from 4:10 p.m. to 4:16 p.m.)

23 THE COURT: Mr. Blain, you're recognized.

24 MR. BLAIN: Thank you, Your Honor.

25 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 MR. BLAIN: Good afternoon. I know it's been a long
2 week. I appreciate you all -- your patience and your
3 attention.

4 When accidents happen, it's our nature to want to place
5 responsibility on someone else. Sometimes accidents happen
6 and there's just no one to blame. That's the case we have
7 here.

8 I appreciate the opportunity to be here in Florence. On
9 behalf of Ms. Boyd, Mr. Ringer, the employees of the local
10 Walmart store, we appreciate your time and your service. We
11 recognize it's been a long week.

12 You're here today because Ms. Jones and her lawyers want
13 to hold Walmart legally responsible for her incident back on
14 June 26, 2015, over six years ago, but Walmart is not
15 responsible. They're not responsible for the nail. And the
16 nail didn't cause all the injuries that they're claiming.

17 Walmart takes customer safety very seriously. We never
18 want to see our customers injured in the store.

19 Back on Monday, in the openings, you heard Ms. Boyd say
20 that this case is simple. And it's true. You have heard a
21 lot of testimony. There was a lot of things to think about.
22 When you back out and you look at the 10,000-foot view here,
23 this case is simple.

24 You have three questions -- three questions to answer:
25 Did Walmart put that roofing nail on the floor? Did Walmart

1 know that roofing nail was on the floor before Ms. Jones's
2 incident? Or was the roofing nail on the floor for a long
3 enough period of time that Walmart should have discovered it
4 and picked it up?

5 Those are the three questions that the law demands you
6 must ask in this case. The answer to all three questions is
7 clearly no. It's the plaintiff's burden of proof to answer
8 those questions to your satisfaction. Not based on
9 speculation, not based on conjecture, not based on guessing.
10 They have to answer those questions to prove their case.

11 Walmart is a corporation. You-all know that. In our
12 courts, there's no distinction between corporations like
13 Walmart and individuals. A corporation is a person in the
14 eyes of the law. The corporation is the entitled to the same
15 fair and impartial justice, the same standards that any
16 individual is entitled to. The same standard Mr. Ringer is
17 entitled to.

18 Some of you may think that whenever someone gets hurt in
19 a store, the store should be responsible for that injury. But
20 that's not the law in South Carolina. You have taken an oath
21 to uphold the law and apply the law in this case.

22 Let's talk a little bit about what the law is and how it
23 applies to retail stores like Walmart. Stores are not
24 required to guarantee the safety of their customers. They're
25 not required to prevent any possible injury or accident on the

1 premises. That's not the law.

2 Every accident -- there's not someone to blame for every
3 accident. Walmart is not legally responsible for every
4 accident that may occur in the store. Ms. Jones, her
5 attorneys, must show the store either created a hazard through
6 some act of its own or that they had knowledge, that they
7 knew, they had notice -- that they knew there was a hazard
8 like a nail on the floor and failed to address it or the nail
9 was on the floor for a long enough period of time that, if
10 they were doing reasonable inspections -- reasonable
11 inspections, they would have discovered it. They would have
12 picked it up. Reasonable.

13 Walmart is required to do reasonable inspections.
14 They're not required to find every last problem in a 220-foot
15 [verbatim] square foot store these the size of over four and a
16 half football fields. They're required to do reasonable
17 inspections. They're required to be proactive and look for
18 hazards.

19 So to carry her burden of proof, Ms. Jones has to show
20 you -- has to prove to you that Walmart put this nail on the
21 floor in some way. That floor was -- the nail was loose on
22 the floor for a long enough period of time before her accident
23 that they should have found it, they should have picked it up.

24 The law is very specific about a few key points. The
25 store's liability, Walmart's responsibility. It cannot be

1 based solely on the presence of the nail on the floor. The
2 simple fact that there may have been a nail in the store is
3 not enough. It's not enough to carry that burden of proof.

4 The mere fact that a customer is injured in the store is
5 not enough. The mere fact that Ms. Jones had an injury to her
6 foot is not enough to carry that burden of proof.

7 You must rely on the evidence. You must rely on the
8 evidence that what Walmart did or did not do. You have taken
9 an oath to uphold and apply this principle of law. So while
10 we're very sorry this happened to Ms. Jones and we hate that
11 she left the store injured back on June 26, 2015, we believe
12 that, under the law, Walmart didn't put the nail there or know
13 that the nail was there beforehand. So we're not responsible
14 for her damages.

15 You have to follow the evidence. The evidence is key.
16 The evidence is testimony from witnesses. The evidence is the
17 nail. What do we know? We know a nail is found. We don't
18 know where it came from. We don't know when it got into the
19 bottom of Ms. Jones's shoe. We don't know how it got into the
20 bottom of Ms. Jones's shoe. Even assuming she stepped on it
21 in Walmart, which we deny, we don't know how long it was on
22 the floor before she stepped on it.

23 If one customer drops a nail and the person right behind
24 them steps on it, there's no opportunity for Walmart to
25 discover a problem and pick it up and react before her injury.

1 So you have to know -- you have to know -- they have to show
2 that it was on the floor for a long enough period of time for
3 Walmart to have the opportunity to discover it and pick it up.
4 We don't know that. We don't know how long it was on the
5 floor, if it was even in the Walmart store.

6 We have no evidence to indicate how it got on the floor
7 or whether it was through any act of Walmart. Any argument to
8 the contrary is just speculation. Ask yourself -- we heard a
9 lot this week about pallets. We heard a lot about roofing
10 nails. Do y'all have any idea where this nail came from? How
11 long it was on the floor? If you don't, then you agree with
12 me. That's the plaintiff's burden to show. The plaintiff is
13 guessing, and guessing is not enough to meet that burden of
14 proof.

15 Let's talk a little bit about pallets. You have heard a
16 lot of about pallets. We know Ms. Jones didn't step on a
17 pallet. She didn't trip on a pallet. The reason we heard
18 about pallets is because the plaintiff is guessing. The
19 plaintiff is guessing that, well, we got a nail, we got to
20 come up with some -- some theory of where it came from.
21 That's what's led us to this pallet theory.

22 Let's talk about that. We know from Mr. Ringer, this is
23 not a pallet nail. It's a roofing nail. He's never seen a
24 nail like this in a pallet. There's no reason for a nail like
25 this to be in a pallet. He's deconstructed hundreds of

1 pallets. Never seen a nail like this, a roofing nail.

2 You have heard from Kevin Lane, he's never seen a nail
3 like this on the floor. Never seen anything like this in a
4 pallet.

5 You heard from Alan Pavlovich from Walmart's distribution
6 center. This was his job. That was his livelihood. He works
7 on pallets all the time. This isn't a pallet nail. There's
8 no reason this would be in pallet.

9 Walmart's got standards they enforce with their vendors.
10 Those pallets have to comply with standards. To speculate
11 that some farmer somewhere may have used an unauthorized nail
12 that he pulled out of his coffee can to hammer into a pallet
13 to risk a contract -- to violate the standards that Walmart
14 has given this vendor, this farmer, to risk the contract that
15 he has with Walmart is just speculation. It's just a guess.
16 It's nothing more.

17 Is there any reason to think this came from a pallet?
18 It's a nail and pallets are wood. That's really all we're
19 dealing with here.

20 Let's look at the nail. It's a roofing nail. It's less
21 than an inch long. Now, we don't know where it came from. We
22 don't know how long it was in her shoe. We don't know how it
23 got to be in her shoe. But even for the sake of argument
24 let's say she stepped on it in Walmart. Let's explore that a
25 little bit. I'm going do a science experiment. I know we

1 have some educators on the jury, so my hypothesis is that, if
2 I drop this nail, it's going to land on its side. It's not
3 going to land point up. It's going to land on its side.
4 Let's discuss that theory.

5 (Dropping nail.) That's one. You got to have a good
6 sample size. (Dropping nail.) Two. (Dropping nail.) Three.
7 (Dropping nail.) Four. (Dropping nail.) Five.

8 I can keep doing this but I invite y'all to go back in
9 the jury room. What does this tell us? If this nail was on
10 the floor at Walmart, it's not going to be point up. It's
11 going to be flat. It's going to be on its side. The chances
12 of it being point up like that is slim to none. Use your
13 common sense.

14 If this nail was on its side and Ms. Jones stepped on
15 it -- I'm going to use a flip-flop. This is the one we have.
16 Ms. Jones testified that this wasn't the flip-flop that she
17 was wearing. She was wearing a thicker flip-flop. Whether it
18 was an inch thick, inch and a half, she guessed. I'm not
19 going to hold her to that number, but she was certain it was
20 thicker than this.

21 So the nail is on its side and she stepped on it. It
22 will get stuck in the bottom of her shoe. (Demonstrating.) It
23 will get stuck in the bottom of her shoe on its side. And it
24 will make that tap, tap, tap noise like she testified about.
25 She didn't feel it in the foot. She heard it.

1 If the nail is embedded in the bottom of her shoe, here
2 on its side --

3 MR. WILLEY: Your Honor, may we approach?

4 THE COURT: Yes.

5 BENCH CONFERENCE

6 (A bench conference was held off the record and outside the
7 hearing of the jury and others.)

8 (Open court resumes as follows:)

9 MR. BLAIN: Ladies and gentlemen of the jury, we have a
10 roofing nail. There's no basis to think this roofing nail was
11 ever in a pallet -- was ever in a pallet that was in Walmart.
12 They arguing that it was in a pallet is just speculation.
13 It's just guessing. And guessing is not what you can rely on.

14 We're talking about pallets. We have watched a lot of
15 video over this week. Mr. Ringer has hosted you an in-store
16 narrating the videos. Mr. Ringer identified two displays that
17 may contain wood pallets.

18 Now, it's important to understand Mr. Ringer's testimony
19 about wood pallets. There are two different types -- there's
20 different types of wood pallets. There's wood pallets that
21 they use overnight to move merchandise around the sales floor.
22 That's all done overnight. Then they clean up. They come
23 through and they sweep, they scrub. They're cleaning floors
24 so they can do that and restart again. Those pallets are not
25 allowed to be on the floor. Those pallets -- it would be a

1 policy violation if left on the sales floor.

2 You have watched the video. There's none of those
3 pallets left on the sales floor. The other type of pallets
4 are the PDQs that we heard Mr. Lane and Mr. Ringer talk about.
5 Pretty darn quick. Those displays have a wood base on them.
6 They're built into the display, those PDQ displays. They're
7 palletized displays.

8 Mr. Ringer identified on the video two PDQs that has
9 wood-based pallets based on the video, and one all the way at
10 the end of the grocery action alley at the base of the S'mores
11 display. 64 feet, he estimated, was the closest Plaintiff
12 ever got to that pallet.

13 The second one, I wasn't sure. Even for the sake of
14 argument, let's say this pallet -- wood pallet in the produce
15 department, the watermelons. Y'all watched the video. The
16 plaintiff never approached that pallet either.

17 So we have seen the path through the store. Really only
18 three minutes -- less than three minutes she's in the store
19 before she hears that tap, tap, tap of the nail embedded in
20 her shoe. At no point in her path through the grocery
21 department, through produce, into the grocery action alley and
22 into the detergent aisle, at no point was she ever close to
23 one of those wooden PDQs.

24 Mr. Ringer said there's no nails -- there's no roofing
25 nails in those PDQ displays. Mr. Ringer told us, he looked at

1 the video, that store is clean. It's so clean he wishes he
2 could show his boss how clean it was that day. There's
3 evidence that the store was doing safety sweeps. They were
4 doing visual inspections. The employees were walking the
5 floor, looking for hazards. Those are safety sweeps.

6 The overnight staff, when they move merchandise around,
7 they did the sweeps. They cleaned the floor and restarted the
8 day again. But it doesn't mean they just leave things at 8
9 a.m., and, you know, sit back and check their cellphones or
10 whatever. Those employees are walking the sales floor.
11 Mr. Ringer said he walks four to six miles a day, according to
12 his pedometer on his phone, according to his step counter.

13 And he wasn't there but Kevin Lane was and so were dozens
14 of other Walmart employees who were all trained. They were
15 trained in safety is a priority. They were trained to walk
16 around the store with their head up, looking for hazards.
17 They're picking up paper, they're picking up tissues, they're
18 picking up gum. They're picking up stuff on the floor.

19 We know there's a safety team. We know these CBLs,
20 that's computer-based learning modules are instilled in these
21 employees on a repetitive basis.

22 Let's talk about the PTZ cameras. Pan tilt zoom. When
23 you're in live action -- Ms. Jenny Wright, you remember
24 Ms. Wright who testified. Those PTZ cameras, you know if
25 you're in live action, sitting in front of a camera, you can

1 pan, you can tilt, you can zoom. Those are predominantly used
2 to deter theft. It's not reasonable -- it's not reasonable
3 for Walmart to pay someone to sit behind that camera and scan
4 the 220 [verbatim] square foot store looking for nails on the
5 floor. No, the employees -- they had associates who were out
6 walking the floor, looking for hazards, helping the customers.
7 That's a way more reasonable, more effective way to control
8 the store, control a huge store of products.

9 You wouldn't even know what you were looking for if you
10 were trying to sit behind a PTZ camera and scan around.
11 You're not looking at the freckles on a customer's face or a
12 coin on the floor. You're looking for theft with that PTZ
13 camera.

14 But the customers who are walking the floor -- I'm sorry,
15 the associates who are walking the floor, they have heads-up.
16 They have eyes looking. They are looking to pick up things
17 that could pose a hazard.

18 Let's talk about the incident. June 26, 2015. Ms. Jones
19 entered the Walmart store about 11:30 a.m. We know Ms. Jones
20 came in the store about 11:30 a.m. through the grocery
21 entrance. She walked past the watermelon display on the right
22 side. She walked past the produce department.

23 Y'all can see these videos. Y'all can draw inferences
24 from these videos. Does the store look neat? Does it look
25 tidy? Does it look orderly? Those are all inferences that

1 might suggest to you the associates were doing what they
2 should have been to keep the store in good shape.

3 We know Ms. Jones walked through the produce, walked down
4 the grocery action alley where she heard a tap, tap, tap of
5 metal on her foot. She checked her shoe. If you checked your
6 shoe and saw a nail in there, would you have stopped
7 immediately and addressed that situation, try to pull it out,
8 or would you have kept walking? Ms. Jones kept walking.

9 She talked to -- who knows? She doesn't remember. She
10 doesn't remember who she talked to. She doesn't remember what
11 they talked about.

12 She did tell us that she remembered seeing a wood pallet
13 somewhere on that grocery action alley. Now, Tim Ringer
14 didn't see a wood pallet in that area where she was. But ask
15 yourself: Ms. Jones doesn't remember who she talked to that
16 day but she says she remembers seeing a pallet? Why would she
17 be looking for a pallet? Was that just a convenient story
18 that's come up after the fact?

19 Ms. Jones talked with a few people, she turned down the
20 detergent aisle, and you saw her pull the nail out of her shoe
21 and place it on the shelf. She didn't jump up in pain. She
22 didn't scream or shout. She didn't (indiscernible).

23 After she found her bleach, she came back to retrieve the
24 nail, and she went and checked out. It wasn't an emergency
25 medical situation. She was -- she scanned her coupons when

1 she went through the customer service -- went through the
2 self-checkout area.

3 After she bought her bleach, she went to customer service
4 and reported the incident. Now, the store isn't busy that
5 day. Y'all can see that. Walmart reacted appropriately when
6 he heard about the accident.

7 We heard from Ms. Ayesha Cooke who did the incident
8 report. The incident report -- Ms. Cooke's job is to write
9 down what the customer tells her about the incident; that she
10 stepped on a nail. That's what she put down. That was it.
11 That is Walmart policy on how to respond to a customer
12 accident.

13 You heard from Kevin Lane. Kevin Lane wanted to help
14 Ms. Jones. He got her a first aid kit. Y'all can see that.
15 Put on the gloves, he got gauze. He used peroxide and
16 antiseptic wipes to do his best to help Ms. Jones with her
17 need.

18 Now, Kevin Lane, I mean, he's no EMT or -- he's just
19 doing his best to try to help a situation. He's doing his
20 best to render customer service, not medical treatment. He's
21 not a medic.

22 Now, the plaintiff maybe wanted to make a big deal about
23 how long Ms. Jones was in the customer service area. But
24 Walmart's customer service is not on trial. What's on trial
25 is whether we put that nail on the floor somehow or whether we

1 failed to do our job, inspect the floor in a reasonable way to
2 discover the nail. So how long she's at customer service
3 really has no bearing on this.

4 Ms. Jones left Walmart, she went to the hospital. She
5 got a tetanus shot. Three days later, she's back in the
6 hospital with Dr. Player. Now, Dr. Player, he treated
7 Ms. Jones. That's right. Her goal -- his goal is to make her
8 better. His job is not to figure out why there's an ulcer on
9 the bottom of her foot. His job is not to do some forensic
10 analysis about how the ulcer got to be on the bottom of her
11 foot. His job is to treat her to figure out how to make her
12 better. He's forward thinking. He's not trying to figure
13 out -- he's not trying to confirm or deny her story. Her
14 story is that she stepped on a nail. Okay. Fine. That's
15 your story. So be it.

16 But she showed him the screw. I don't know why.
17 Dr. Player doesn't need to know why, but he notes it in his
18 records. He knows what a screw looks like. Y'all know what a
19 screw looks like. This isn't a screw. I don't know why she
20 showed him a screw.

21 Dr. Player debrided the wound because it was gangrenous.
22 It was gangrenous, it was gangrene. Just a few days after,
23 she was normal. It was gangrenous at the toe.

24 Now, there's been some discussion about Ms. Jones's
25 wound. We have a couple of different sources of evidence

1 about the wound.

2 MR. WILLEY: Your Honor, may we approach?

3 BENCH CONFERENCE

4 (A bench conference was held off the record and outside the
5 hearing of the jury and others.)

6 (Open court resumes as follows:)

7 MR. BLAIN: There's a couple of different sources of
8 evidence about the wound on Mrs. Jones's foot. Now, we have
9 this toy foot here. I think it's a good demonstrative that we
10 have used throughout the trial. The source of the evidence is
11 the plaintiff herself. Kevin Lane was on one knee, helping
12 her, saw her foot.

13 So let's look at the plaintiff. What did the plaintiff
14 say? Well, at trial, you know, on Wednesday, she drew this X
15 where she thought the puncture wound was in her foot. Now,
16 you remember Ms. Boyd was talking with her about whether this
17 X matched her story from her deposition. The deposition was
18 taken September 28, 2018. Over three years ago.

19 Now, ask yourself: Is your memory going to be better
20 closer in time to the incident or the further you get in time
21 from that incident? Is her memory aware of the puncture going
22 to be better in 2018 or is it going better on Wednesday?

23 Ms. Boyd asked her -- they read it together. They had
24 this back and forth question and answer what was read in the
25 record. In that deposition, in that 2018 deposition, Ms. Boyd

1 asked Ms. Jones, "And when you stepped on the nail in Walmart,
2 what part of your foot was punctured?"

3 Ms. Jones answered: "It was towards the -- it was, like,
4 in the middle but kind of towards the back. It was, like, in
5 the middle of the foot."

6 A little bit further down, Ms. Boyd asked: "So in the
7 middle of the foot? So is that kind of where your arch is, in
8 that area?"

9 Ms. Jones answered: "A little further back."

10 The deposition continues. Ms. Boyd asked: "It kind
11 of -- right below the arch? Right below the arch? Yes?"

12 Ms. Jones answered: "I guess so. I don't have an arch,
13 though."

14 "Oh, okay." Ms. Boyd asks: "You've got a flat foot?"

15 Ms. Jones answered: "Right."

16 Ms. Boyd said: "Slightly below the center?"

17 Ms. Jones answered: "Yes."

18 Now, is this X that Ms. Jones put on this foot, is that
19 in the middle kind of towards the back? Is that X a little
20 bit further back from where the arch is? Is that X slightly
21 below the center? I would submit to you that, in looking at
22 what Dr. Player says the ulcer was, Ms. Jones may have changed
23 her story.

24 In Walmart, she was dealing with a puncture wound that
25 was slightly below the arch. Dr. Player is treating an ulcer

1 up here, in the base of the second toe, in the same location
2 that Dr. Ross told us that's where diabetic patients have a
3 serious risk of foot ulcers -- a serious risk of pressure
4 ulcers on the foot. That's where the ball of your foot --
5 that's where you put all your pressure.

6 Kevin Lane saw her foot. He said there were sores on her
7 foot. He treated a pinprick, but he said he saw sores on her
8 feet.

9 Now, Dr. Ross educated us all about Ms. Jones's
10 pre-existing health conditions: Hypertension, diabetes,
11 vascular disease, renal failure. He said, in his diabetic
12 patients that he sees, this green dot, that's about where
13 pressure ulcers are likely to form. He said the diabetic
14 patients have a high risk of ulcers in that spot.

15 He said that, based on the size of the wound that
16 Dr. Player treated, the size, 1.8 centimeters by 1.0
17 centimeters. Now, is that -- that size of that wound, is that
18 more likely to be an ulcer, or is that more likely to be a
19 pinprick that Kevin Lane saw from this nail -- from the tip of
20 this nail?

21 That location, that size, that's more likely to be an
22 ulcer. If that's more likely to be an ulcer, that helps us
23 understand and clarifies what Dr. Ross was saying about these
24 amputations.

25 Now, Mr. Willey invited you to listen to what Dr. Ross

1 said about the causation. Maybe Dr. Ross was asked about
2 whether the nail caused this -- this second toe amputation,
3 but his testimony was that the second toe amputation was
4 caused by the wound. It was caused by the wound. He didn't
5 see the nail. He didn't see her that day. He doesn't know
6 about the nail.

7 Dr. Ross is saying the wound, you know, the wound caused
8 this amputation -- this second toe amputation on July 15th.
9 So if you think she had a pressure ulcer on the base of her
10 second toe, then you got to -- then Dr. Ross's opinion is that
11 that pressure ulcer caused this amputation.

12 Same thing here with the transmetatarsal amputation in
13 August. Dr. Ross is saying the wound caused this
14 transmetatarsal amputation. The wound is an ulcer. It's a
15 pressure ulcer on the ball of her foot. It wasn't resolved by
16 the first amputation so they had to do this transmetatarsal
17 amputation. She had poor perfusion. She had poor
18 circulation. It couldn't heal. The wound couldn't heal, the
19 pressure wound. The pressure ulcer couldn't heal.

20 But, thanks to Dr. Cunningham who did the procedure up in
21 her leg, to get the blood flow moving, to get the blood down
22 into her foot, she healed that second -- that transmetatarsal.
23 And that's key. That's key.

24 Walmart didn't cause her vascular disease in her leg.
25 Walmart didn't cause her poor circulation. But -- so the

1 procedure that Dr. Cunningham did had nothing to do with
2 Walmart. Nothing to do with it. It was addressing the
3 vascular issues in her leg that pre-existed Walmart.

4 Remember Dr. Player was talking about clean out the
5 pipes. That's what Dr. Cunningham did. He cleaned out the
6 pipes so the blood can get to her foot to heal the foot. And
7 it healed. And it healed. And you can walk on a
8 transmetatarsal amputation. You heard that. You heard that
9 from the doctors. You can walk on a transmetatarsal
10 amputation.

11 What's the quality of life if you can walk? That's going
12 to change a lot. The transmetatarsal amputation healed, but,
13 six months later, seven months later, in February, the
14 vascular disease in her leg progressed to the point that it
15 was not enough blood getting back down there. There was not
16 enough blood going back to her foot. That's not Walmart's
17 fault. The vascular disease is not Walmart's fault. The
18 vascular disease -- the poor circulation, Dr. Ross said, the
19 poor circulation is what caused the above-knee amputation.
20 The poor circulation is what caused Ms. Jones's above-knee
21 amputation.

22 You know she's got this history of pre-existing disease:
23 Diabetes, vascular, renal failure. Walmart didn't cause any
24 of that. Those diseases is what caused her above-knee
25 amputation.

1 Ask yourselves, at what point in her treatment, at what
2 point are you no longer treating a puncture wound that Kevin
3 Lane saw as a pinprick, at what point are you treating the
4 underlying symptoms that she had, which she had for decades.
5 Uncontrolled. She wasn't taking her medications. She wasn't
6 going to see the doctor.

7 At what point does whatever happened in the store that
8 day, at what point does that end and at what point does her
9 health take over as the proximate cause, as the cause of her
10 medical treatment? Dr. Ross says it's clear. It took over
11 long before that above-knee amputation.

12 The law says that Walmart has to use ordinary care to
13 keep the store reasonably safe. It doesn't have to prevent
14 every possible injury. It doesn't have to prevent every
15 possible harm that can ever happen to a customer. They have
16 to do -- they have to take ordinary care to keep the store
17 reasonably safe. And to show that Walmart did not meet that
18 standard, it's the plaintiff's burden of proof to show that
19 Walmart either put the nail on the floor or the nail was on
20 the floor long enough that Walmart should have found it,
21 should have discovered it and picked it up. And there's just
22 no evidence of that. There's just no evidence of that.

23 Bad things sometimes happen to good people. Ms. Jones is
24 a good person. I have no doubt about that. I have a lot of
25 empathy for her. She's clearly been on an emotional journey.

1 I feel for her family. I have heard that Ms. Jones is a
2 wonderful mother, grandmother, community member. And what
3 happened to her is terrible, but sometimes accidents happen to
4 good people. But it's not always someone's fault. We have to
5 apply the law. You have taken an oath to apply the law.

6 The law here says Walmart didn't do anything wrong. The
7 law says we have to use ordinary care to keep the store
8 reasonably safe. Y'all have looked at those videos. Does the
9 store look safe to you? I submit to you that it does. The
10 store looks safe. The mere presence of a nail is not enough.
11 It's not enough. The mere fact that Ms. Jones suffered an
12 injury is not enough. We don't know where that nail came
13 from. We don't know how it got to be in the bottom of her
14 shoe. That's the plaintiff's burden to prove.

15 While I understand, ladies and gentlemen of the jury, you
16 may have sympathy for Ms. Jones and her family, sympathy is
17 not the law. You have to follow the law. The judge is going
18 to charge you on the law. He's going to tell you what the law
19 says.

20 You know -- you have heard from Walmart associates. You
21 know they take customer safety as a priority. It's important.
22 They never want to see bad things happen to their customers.

23 You heard Mr. Ringer on the stand. You heard his remorse
24 about what happened with Ms. Jones. He didn't do anything
25 wrong in this case. He wasn't even there. Even in his

1 absence, that store looked spotless.

2 Now, the plaintiff has thrown a lot of guessing and
3 speculation about the source of the nail, the pallets, you
4 know, a watermelon farmer may have, you know, hidden it in a
5 pallet that snuck in in the dead of night sometime. It
6 doesn't make any sense. It's just a guess. Y'all know that.

7 Ask yourself how that nail got to be in the store, if it
8 even was in the store. If you don't know, then that supports
9 Walmart's case. If the evidence hasn't told you where the
10 nail came from, that supports Walmart's case. If you don't
11 know how long the nail was on the floor, that supports
12 Walmart's case. If there wasn't an opportunity for Walmart to
13 find the nail, discover it, and pick it up, that supports our
14 case.

15 And so I would ask you, ladies and gentlemen of the jury,
16 thanks again for your time. We appreciate your serious
17 deliberation of the facts, of the evidence, your serious
18 application of the law. We appreciate your time all week.
19 Please consider the evidence, apply the law, and I would
20 submit to you that it shows Walmart didn't do anything wrong.
21 Walmart didn't do anything wrong that day, June 26, 2015.
22 Walmart kept that store in great shape.

23 Even if the plaintiff can somehow convince you that
24 Walmart did do something wrong, which we deny, then at what
25 point does the causation of her medical treatment, at what

1 point is it no longer related to her -- to a puncture relate
2 and related to her pre-existing conditions? At what point is
3 it related to the vascular disease that inhibited her
4 circulation and caused her to need an above-knee amputation?
5 Was Dr. Player even treating a puncture wound or was it an
6 ulcer?

7 If you apply the law, we would ask that you find in favor
8 of Walmart and render a defense verdict. The defense verdict
9 might be hard in an emotional case like this. It's hard to
10 look at Ms. Jones and understand what she's gone through, but
11 that's why we have entrusted you with this decision. It's a
12 hard decision. But you have to apply the law. You have to
13 consider the evidence. Sometimes you have to make hard
14 decisions. Sometimes bad things happen to good people.
15 Sometimes there's no one to blame.

16 That's the situation here. We're not blaming Ms. Jones.
17 But Walmart is not to blame either. Thank you.

18 THE COURT: Thank you, Mr. Blain.

19 Reply?

20 REPLY CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

21 MR. WILLEY: "Not blaming Ms. Jones. Even assuming she
22 stepped on the nail in Walmart, which we deny."

23 They're still denying that she stepped on the nail in
24 Walmart. You'll have back there with you Plaintiff's Exhibit
25 13, which their employee filled out. There was no nail

sideways in her shoe.

And, by the way, they can't have it both ways. Do they want us to believe that it's sideways in her shoe before she got in the store and she drove with it and then walked around with it sideways? I mean, come on. That's ridiculous.

But what does their own form say that they filled out? "Punctured skin on right foot. Stepped on a" nail.

"Even assuming she stepped on a nail in Walmart, which we deny," come on. I mean, you know, we're still here because Walmart continues to deny the undeniable.

And I'm going to go through a few of these things. We did a little experiment where you can't have it both ways. They see her pull the nail out of her shoe. It wasn't on there sideways. We got the form that says punctured skin in the right foot. Ayesha, who you heard from, she had a puncture wound from the nail. Kevin, who you heard from, she had a puncture wound from the nail. And then they want to get up here and say, "Oh, well, yeah, but here's the thing. Even if she had a puncture wound from the nail, it didn't cause any of these injuries because she didn't have blood flow to that foot."

Did y'all see the same video I saw? They're out there with towels. They come in, the maintenance man, with a mop, mopping up blood from customer service. Go back and watch it. The towel stayed up here for seven minutes or so until

1 somebody comes by and kicks them over. Cleaning up the blood.
2 He testified to that.

3 And I think Ms. Jones, after she found the nail, left the
4 store, tells you all you need to know about her. She found
5 the nail in her foot and realized it had punctured her foot.
6 She didn't even think about doing anything. Her first thought
7 was put the nail on the shelf, go on down and get my bleach.
8 She felt a little more pain so she grabbed the nail and she
9 came back. She got it situated in her purse.

10 And then by the time she got to the front and paid for
11 the bleach, it was bleeding more. She went to customer
12 service, waited for an incident report. This isn't a case
13 where a lady comes in and, like, pretends to trip over
14 something. She didn't run up front even when she realized she
15 had a nail in her foot. That wasn't her first concern.

16 It wasn't her concern until, obviously, she went to the
17 hospital right away to get a tetanus shot. She didn't go to
18 the hospital and say, Hey, you know, what's going on down
19 here? The doctor at the hospital that day, you didn't hear
20 that they needed to debride anything. You didn't hear that
21 there were sores on her foot that were causing blood. You
22 didn't hear any of that.

23 It was only after the infection set in that, three days
24 later, she went back to Dr. Player and did that. And why
25 didn't they ask Mr. Lane and Ms. Cooke to draw on the foot

1 where the puncture wound is? What's more likely than not? I
2 didn't even know that was a theory. I mean, the theory now --
3 I thought we were just denying the undeniable, delaying the
4 inevitable, and defending the indefensible. And now we move
5 on to defame the plaintiff.

6 I mean, I think the point at closing is she made it all
7 up, and I don't know if what they're trying to say is she put
8 it in there. I mean, I have no idea. What are they saying?

9 We went back to the screw. We all know it's not a screw.
10 She said -- and then they said, Well, you got the wound wrong.
11 Well, I think she and her doctor would know where the wound
12 was, and they could have asked their employee, who treated and
13 saw the wound that day, if it was different. They didn't do
14 that.

15 And let me show you this. You'll have this back there
16 with you. This is Plaintiff's Exhibit 2-A, just to give you a
17 little bearing to look at. This is where you enter the store.
18 This is produce. Down here is the bleach. This blow-up,
19 which is going to be Plaintiff's Exhibit 2-B, this is the
20 entrance. Okay? And, basically, this is a blown-up portion
21 of this. Does that make sense? Part of the store at issue.

22 And if you look up here, you'll actually see here laundry
23 detergent and bleach. Okay? Look down here in the produce.
24 You'll remember she came in here for the produce, stopped over
25 here, then walked down. There's some watermelon bins back

1 here. Look right there. What does it say? It's display
2 pallets. Right past where she walked.

3 So not only is it a situation where they start the case
4 denying they use wooden pallets in the store, they have got
5 display pallets on their floor plan, right in the produce
6 section, right where she walked.

7 And you'll remember the video -- I want to show you this
8 too. Ms. Wright testified, just in case there's any doubt,
9 Ms. Wright testified about the cameras, and you'll remember we
10 didn't get a good camera here. There was a sign blocking it.
11 Remember we could only see her just barely when she came off
12 said produce? Think about why that is. Why do we get the
13 camera over here? That would have shown us the pallets that
14 are on the floor plan that they produced and said was a floor
15 plan of the store that day.

16 I mean, it just goes on.

17 He kept saying, well, he could see the associates not in
18 the area she's in but in other areas. They're walking around
19 with their head up. Well, that's all good and well, but
20 that's not how Mr. Ringer told us how you conduct a safety
21 sweep. If you're conducting a safety sweep for dangerous
22 items on the floor, you better be walking around with your
23 head down looking under things, looking around things.

24 And they keep missing one. I want you to listen to this
25 when the judge instructs you on the law. He says there's

1 three ways she can win, pick one. I want you to listen when
2 the judge says that violation of company policy is evidence of
3 negligence. That's important. They don't want to talk about
4 that one because they destroyed the videos that showed --
5 would have shown whether or not they actually complied with
6 their company policy.

7 And of course there's not a nail in the floor after
8 Ms. Jones stepped on it. There's no allegation that Walmart's
9 riddled with nails. It was in her shoe.

10 And they announce this theory about, oh, this thing's all
11 different. We don't know in the deposition, sitting here, how
12 they would holding the foot, what was used, whether it was a
13 photograph, a real foot, what. They could have taken a
14 photograph and said, "Here, mark on this where the wound is."
15 Instead, they tried to confuse the issues.

16 What we do know -- and you can come in here. He doesn't
17 say wound cause Amputation 1 and Amputation 2, their expert.
18 He doesn't say that. He says the nail wound caused Amputation
19 1 and Amputation 2. Period. No dispute about that.

20 And I don't know if y'all heard all the paper shuffling
21 and the sighs and you probably heard a big sucking sound in
22 Arkansas when he said it, but he said it. It was at 12:33.
23 And you can hear it again if you'd like to.

24 I want to remind y'all something. That's what this case
25 is about. And at the end of this case, you are going to

1 render a verdict, and Ms. Jones has been waiting for that
2 verdict. She has been lied to, lied about, and now called a
3 liar. Are have seen the evidence. You've seen the evidence.
4 Is there any doubt in your mind she stepped on the nail in
5 that Walmart store after their own employees said it? You
6 have seen it.

7 And at the end of the day, all that we ask is that your
8 verdict speak the truth. And if there's anything I have done,
9 if I have seemed angry at times or Mr. Jefferies has seemed
10 angry at times about the way that Walmart has treated her,
11 please, please, please hold that against me. Don't hold that
12 against her. She, I think, as you saw, is a God-fearing
13 woman, full of forgiveness that really just wants to have her
14 needs taken care of so that she can get some freedom and
15 independence and not have to rely on her kids for everything.
16 So if there is anything we have done in this case, please
17 don't hold that against her. Hold it against me.

18 But she's proved her case. She's proved her case, and
19 she can't afford not to get damages. And you have the
20 opportunity to fix, help, and make up for this, what she's
21 gone through. You do, with your verdict.

22 And so I just ask that, when you render a verdict in this
23 case, make them hear it in Arkansas. Make Walmart corporate,
24 none of whom bothered to come, know that, in Florence County,
25 if you don't do what you're supposed to do and one of our

JURY CHARGE

808

ELECTRONICALLY FILED - 2022 Feb 10 10:23 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

1 neighbors gets injured, we're going to take care of her.

2 Render a verdict for the plaintiff in this case against
3 Walmart, decide the damages that Ms. Jones is entitled to for
4 the loss of her leg. Decide it fairly, but remember, this is
5 her verdict for all time. She doesn't get to come back. She
6 doesn't get to go anywhere else. It's you. This is all up to
7 you. Please do justice in this case. Thank you.

8 THE COURT: Mr. Foreman, ladies and gentlemen of the
9 jury, I'm going to ask if you could stand and stretch for just
10 one moment.

11 (Pause in the proceedings.)

12 THE COURT: Is everybody all right with regard to
13 restroom breaks? We're about to begin the jury charge, and
14 we're kind after as they say in the back fields, we're in the
15 short rows. So it's -- what we're fixing to do is important.
16 And I know that it's getting late, and I'm going to ask that
17 you pay very close attention. Please have a seat.

18 JURY CHARGE

19 THE COURT: Ladies and gentlemen of the jury, you have
20 heard all of the evidence, you have heard the closing
21 arguments. In order for you to fulfill your sworn duty, you
22 have to listen to the evidence, determine what the truth is,
23 and apply it to the law. And in order for you do that, you
24 have to understand what the law is. I wish there was an easy
25 way or an entertaining way to do it. There's not. It's late

1 in the afternoon. This is an important case. It's an
2 important case to the plaintiff, it's an important case to the
3 defendant, and it's an important case to you. Pay very close
4 attention.

5 Mr. Foreman, ladies and gentlemen of the jury, I'll
6 remind you that, during this trial, you and I have certain
7 duties to perform. As the trial judge, it is my
8 responsibility to preside over the trial, and I also have the
9 duty to rule on the admissibility of evidence offered during
10 trial. You are to consider only the evidence before you. If
11 there was evidence ordered stricken from the record during
12 this trial, you must disregard that testimony. You are to
13 consider only the testimony which has been presented from this
14 witness stand, any exhibits which have been made a part of the
15 record, and any stipulations of counsel.

16 I have the additional duty to charge you the law. It is
17 your duties as jurors to accept and apply the law as I now
18 state it to you. If you think you have any idea as to what
19 the law is or what the law ought to be and does not agree with
20 what I tell you the law is, you must forget that idea because
21 you are sworn to accept the law and apply the law exactly as I
22 state it to you.

23 In every case tried before a jury, the jury becomes the
24 sole and exclusive judge of the facts. A trial judge cannot
25 comment on or make any statement about the facts. Since you

1 are the sole judges of the facts, do not think by anything I
2 have said during the trial that I have any opinion about the
3 facts. The law simply does not allow me to have an opinion
4 about the facts.

5 The burden of proof in this case is by a preponderance of
6 evidence. A preponderance of evidence simply means the
7 greater weight of the evidence. It is the evidence which, as
8 a whole, shows that the facts sought to be proved is more
9 likely true than not true. This can be illustrated by
10 imagining a set of scales. When the case begins, the scales
11 are even. After all the evidence has been presented, the
12 scales remain even, or if they tip even slightly in favor of
13 the defendant, then the plaintiff has failed to meet the
14 burden of proof and would not be entitled to recover in this
15 case.

16 If, on the other hand, the scales tips even slightly in
17 favor of the plaintiff, the plaintiff will have met their
18 burden of proof and you should return a verdict for the
19 plaintiff.

20 The preponderance of evidence is not determined by the
21 number of witnesses. Instead, it must be determined by the
22 greater weight of all of the evidence.

23 There are two types of evidence generally presented
24 during a trial: Direct evidence and circumstantial evidence.
25 Direct evidence is the testimony of a person who claims to

1 have actual knowledge of a fact, such as an eyewitness. It is
2 evidence which immediately establishes the main fact to be
3 proved.

4 Circumstantial evidence is proof of a chain of facts and
5 circumstances indicating the existence of a fact. It is the
6 evidence which immediately establishes collateral facts from
7 which the main fact may be inferred.

8 Circumstantial evidence is based on inference and not on
9 personal knowledge or observation. It is proof that does not
10 actually establish the fact in question but that asserts or
11 describes something else from which you may either reasonably
12 infer the truth of the fact or at least reasonably infer an
13 increase in the probability of the fact that the fact is
14 indeed true.

15 For circumstantial evidence to be sufficient to warrant
16 the finding of a fact, the circumstances must lead to that
17 fact with reasonable certainty. The facts and circumstances
18 should be considered in light of ordinary experience and
19 common sense. The existence of a fact cannot be based on
20 speculation, surmise, or conjecture.

21 The law makes absolutely no distinction between the
22 weight or value to be given to either direct or circumstantial
23 evidence nor is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence.

25 Ladies and gentlemen of the jury, necessarily you must

1 determine the credibility of witnesses who have testified in
2 this case. Credibility simply means believability. It
3 becomes your duty as jurors to evaluate the evidence and
4 determine which evidence convinces you of its truth.

5 In determining the believability of witnesses who have
6 testified, you may believe one witness over several witnesses
7 or several witnesses over one witness. You may believe a part
8 of the testimony of a witness and reject the remaining part of
9 the testimony of that same witness. You may believe the
10 testimony of a witness in its entirety or reject the testimony
11 of a witness in its entirety. You may consider whether the
12 witness has an interest in the result of the trial, whether
13 the witness is prejudiced towards either the plaintiff or the
14 defendant, the opportunity for the witness to have seen the
15 matters and things about which the witness may testify, and
16 the way the witness acts on the witness stand, their demeanor.

17 Ladies and gentlemen of the jury, the Rules of Evidence
18 ordinarily do not permit witnesses to testify to opinions or
19 conclusions. An exception to this rule exists for witnesses
20 we call expert witnesses, a witness who, by education and
21 experience, has become expert in some art, science, or
22 profession may give an opinion as to the subject the witness
23 claims to have an expert in, may also give the reasons for the
24 opinion. You should consider any expert opinion given by a
25 witness, and like any other evidence, give it the weight you

1 think it deserves. If you decide that an expert witness's
2 opinion is not based on sufficient education and experience,
3 if you decide that the reasons given in support of the opinion
4 are not sound, or that the opinion is outweighed by other
5 evidence, you may disregard the opinion in its entirety.

6 An expert witness's testimony is to be given no greater
7 weight of the evidence than that of other witnesses. Simply
8 because the witness is an expert, you do not -- and you do not
9 have to accept an expert's opinion even though it is
10 uncontradicted.

11 There has been evidence presented that witnesses have
12 made prior statements which are not consistent with the
13 witness's present testimony. You may use this evidence to
14 decide whether to believe the witness. You may also use
15 evidence of earlier contradictory statements to determine the
16 truth of those statements. It is up to you to decide whether
17 to believe the earlier statements or the testimony given at
18 trial. If a witness is shown to have knowingly testified
19 untruthfully concerning any material matter, you may consider
20 this in determining whether to trust the witness's testimony
21 as to other matters. You may reject all testimony of a
22 witness or give all or part of the testimony the weight you
23 think it deserves.

24 In our courts, no distinction is made between
25 corporations and individuals. A corporation is a person in

1 the eyes of the law. A corporation is entitled to the same
2 fair and impartial consideration, the justice by the same
3 legal standards as an individual.

4 A corporation can only act through its agents or
5 employees. Therefore, a corporation is responsible for any
6 negligent acts or omission -- omissions of its agents or
7 employees while they are acting within the scope of their
8 employment, which proximately causes injury to another person.

9 Plaintiff claims that an unsafe condition on the
10 defendant's premises injured the plaintiff. In order to
11 recover damages for this injury, the plaintiff must first
12 prove by preponderance or greater weight of the evidence that
13 an unsafe condition existed on the defendant's premises.

14 Next, the plaintiff must show that the unsafe condition
15 was caused by an agent or employee of the defendant or that
16 the defendant had actual or constructive notice of the unsafe
17 condition. Constructive notice may be proven by showing that
18 the unsafe condition had existed for a long enough time for
19 the defendant to have discovered and fixed it. Just because
20 an unsafe condition existed, this is not enough in and of
21 itself to show that the defendant had notice of unsafe
22 condition.

23 Next, the plaintiff must show that the defendant failed
24 to use reasonable care to fix the unsafe condition. The
25 defendant does not ensure its customers' safety but owes the

1 customer a duty of ordinary care in keeping the premises in a
2 reasonably safe condition. The parties stipulate and I find
3 as a matter of law that Mrs. Jones was an invitee and that
4 Walmart owes her a duty of ordinary care in keeping the
5 premises in a reasonably safe condition.

6 An invitee is a person who enters the property of another
7 at the expressed or implied invitation of the owner. The
8 defendant owes an invitee or business visitor the duty to
9 exercise reasonable, ordinary care for the invitee's safety.
10 This degree of care must be proportionate with particular
11 circumstances involved, including the age and capacity of the
12 invitee. The defendant has the duty not to injure an invitee
13 but unreasonably dangerous conduct. In addition, the
14 defendant has a duty to use reasonable care to discover
15 unreasonably dangerous conditions on the premises and either
16 correct the condition or warn the invitee of the danger.

17 Finally, the plaintiff must prove that the defendant's
18 negligence proximately caused the plaintiff's injury.

19 Proximate cause is something that produces a natural chain of
20 events which, in the end, bring about the injury. It is the
21 direct cause of the injury. To prove that the defendant's
22 negligence proximately caused the plaintiff's injury, the
23 plaintiff must first prove causation and fact. This is proven
24 by showing that the injury would not have occurred but for the
25 defendant's negligence.

1 The plaintiff must also prove legal cause. Legal cause
2 is proven by showing that the injury was foreseeable. This
3 means that the injury occurred as a natural and probably
4 consequence of the defendant's negligence. The plaintiff must
5 prove that some injury from the defendant's negligence was
6 foreseeable. It does not have to prove the particular injury
7 that occurred was foreseeable. However, the defendant cannot
8 be held responsible for things which could not be expected to
9 happen.

10 Proximate cause does not mean the only cause. The
11 defendant's act can be a proximate cause of the plaintiff's
12 injury if it was at least one of the direct, concurring causes
13 of the injury. It is not required that the exact manner in
14 which the injury occurred was foreseeable. It is enough if
15 there was a reasonable general range of greater than ordinary
16 danger of injury and that the injury suffered by the plaintiff
17 was within this range.

18 Violation of a company policy is evidence of negligence.
19 The assertion that the defendant violated company policy is a
20 question of fact for the jury to resolve.

21 The plaintiff must prove that expenses caused by the
22 injury were necessary and reasonable. Actual damages for a
23 plaintiff who has been physically injured include pain and
24 suffering, both past and future, as well as mental anguish,
25 impairment of health or physical condition and disfigurement.

1 In determining the amount of compensation for personal
2 injury, it is proper to consider past and present aspects of
3 the injury. This would include physical and mental pain and
4 suffering, expenses incurred for necessary medical treatment,
5 the loss of enjoyment of life suffered as a result of the
6 injury, and any other losses which are reflected by the
7 character of the injury.

8 The injured party may recover for those future damages
9 that are reasonably sure to result from the injuries. The
10 principal underlying compensation for future damages is that
11 only one action can be brought and, therefore, only recovery
12 had. It is proper to include in the estimate of future
13 damages compensation for future medical expenses and pain and
14 suffering which will, with reasonable certainty, result.
15 Future damages must be reduced to their present monetary
16 value.

17 The plaintiff is never entitled to recover conjectural or
18 speculative damages, but if you find the plaintiff is entitled
19 to a verdict for actual damages, your verdict should include
20 an amount to cover any past, present, and future damages which
21 were proximately caused by the defendant.

22 Any future damages must be reasonably certain to occur in
23 the future as a result of the defendant's acts.

24 Actual damages need not be proven to a mathematical
25 certainty, be based on evidence of the precise amount of the

1 damages the plaintiff has suffered. Instead, the evidence
2 must allow you to determine what amount of damages is fair,
3 just, and reasonable.

4 Pain and suffering compensates the plaintiff for physical
5 discomfort and emotional response to the sensation of pain
6 caused by the injury itself. There's no definite standard by
7 which to compensate the plaintiff for pain and suffering. You
8 have the authority to determine the amount, if any, to be
9 allowed for pain and suffering, using calm and reasonable
10 judgment, to ensure that the damages are just and reasonable
11 in light of the testimony and the evidence presented in this
12 case.

13 Loss of enjoyment of life compensates the plaintiff for
14 limitation of the plaintiff's ability to participate in and
15 derive pleasure from the normal activities of daily life.
16 Mental suffering, apprehension, shock, fright, emotional
17 upset, humiliation, and anxiety, either present or expected in
18 the future, can be properly considered as an element of
19 damages. The amount of damages for mental suffering cannot be
20 exactly measured.

21 If you find that the plaintiff was permanently injured as
22 a result of defendant's actions, you must then decide how, if
23 at all, that injury will affect the rest of the plaintiff's
24 life. A person's life expectancy is determined by a life
25 expectancy table which is a part of the laws of this state.

1 Life expectancy table is only an estimate of the probable
2 average remaining length of life of all persons in our state
3 of a given age.

4 Plaintiff is a 52-year-old female with a life expectancy,
5 according to the life expectancy table, of 82.9 years. This
6 fact is to be considered by you along with any other facts and
7 circumstances in evidence bearing on the plaintiff's life
8 expectancy, including habits, health at the time of the injury
9 in citing the amount of damages to be awarded to the
10 plaintiff.

11 The defendant claims the plaintiff had a pre-existing
12 condition prior to the date that the plaintiff claims the
13 defendant injured her. If you find that the plaintiff
14 received an injury as a result of the negligence of the
15 defendant, it is entitled to recover for that injury. The
16 fact that the plaintiff had a pre-existing condition would not
17 prevent the plaintiff from recovering.

18 The defendant is responsible for all ill effects which,
19 considering the plaintiff's condition of health when the
20 plaintiff was injured, naturally and necessarily followed the
21 injury. The defendant takes the plaintiff as the plaintiff is
22 found, whether the plaintiff is in perfect health, in poor
23 health, or somebody in between. A defendant's liability is no
24 way lessened or affected because of the fact that the injury
25 would not have resulted and would not have been as serious or

1 severe had the plaintiff been in good health or that the
2 injuries were aggravated and rendered more difficult to cure
3 by reason of the fact that the plaintiff was not in good
4 health.

5 In other words, if the presence of a pre-existing
6 condition aggravates and prolongs the injury and increases the
7 damages, the plaintiff should be compensated for the increased
8 or added damages.

9 A person with a pre-existing condition is not, however,
10 entitled to compensation for the pre-existing condition
11 itself. In addition, if problems are the result of the
12 natural progression of a worsening -- or the worsening of a
13 pre-existing condition, then the plaintiff would not be
14 entitled to be compensated for those problems.

15 I'll come forward and speak to y'all here momentarily.

16 Mr. Antonio Montes, I want to ask that you remain here in
17 the courtroom when I release the jury. You will not go back
18 into the jury room and deliberate. I'll speak with you
19 momentarily.

20 Mr. Foreman, I'm going to ask that you stand. I'm going
21 to go over these verdict forms with you. There are two
22 verdict forms. One is: "As to Walmart, we, the members of
23 the jury, find" -- and there's only cause of action:
24 Negligence. Has Plaintiff prove the defendant, Walmart was
25 negligent? The two possibilities: Yes or no. If no, do not

1 proceed forward. Obviously, if there's no negligence, there
2 would be no damage. If yes, proceed to the second: "We find
3 actual damages in the amount of dollars." And of course if
4 you, in your collective wisdom, reach that point where
5 there's, you know, the award of damage, you are to write down
6 the numerical amount here, then you'll write down in cursive
7 here. You know, nowadays, people don't write in cursive.
8 Some of them print. And you can print it if you want to, but
9 I have specifically ordered cursive, if you can do it. And
10 that way -- and that will avoid any decimal point problem if
11 that might be the case.

12 And there's an identical form -- verdict form as to the
13 defendant Tim Ringer. It goes through the same questions.
14 And there are two individual verdict forms that define
15 individual consideration.

16 You'll see on the back there's a place for you sign.
17 There's also a note that the verdict must be unanimous. It
18 can't be 11 to 1 or 6 to 6, 8 to 4. Each of you are going to
19 have to agree. I'm going to ask that you notify the plaintiff
20 upon reaching your verdict and then sign and date it on each
21 of those. I'm going to ask you, if you could, to have a seat.
22 And I'll leave those verdict forms with you.

23 Mr. Foreman, you are charged with the responsibility of
24 presiding over the deliberation process. Essentially that
25 means that you make sure that everybody's voice is heard. If

1 someone gets up to use the restroom during your deliberations,
2 stop deliberations, because everyone is required to
3 participate in all of the deliberation process.

4 If there are questions that develop during your
5 deliberations -- and I don't anticipate that being the case
6 because y'all paid very close attention to the testimony and
7 you heard the law as I have charged it to you. You have all
8 the tools necessary to resolve the case.

9 If there's a question regard to the facts you have heard,
10 well, I can't resolve those. That's left up to you. If
11 there's a question with regard to the law, I'll be happy to
12 that. If there's some question as to whether it's a law or
13 fact, write it down. If it's something I can help you with, I
14 will.

15 I'm going to tell you to go back to the jury room. And
16 every time I send you-all back, I tell you not to begin
17 deliberations. And once again, I'm going to tell you that
18 again, because I'm going to have to take with these very fine
19 lawyers to determine whether or not they have an objection as
20 to the manner in which I have charged the law. If there's
21 some clarification that I need to make, if I incorrectly
22 stated something, you'll come back and resolve those issues.
23 We'll gather up the documentary evidence. And if there is no
24 occasion to bring back in, the bailiff will bring the
25 documentary evidence to the jury room to tell you to begin

1 deliberations.

2 Do not, under any circumstance, begin deliberations until
3 I give you instructions to do so either personally or through
4 the bailiff.

5 Everyone remain seated as the jury exits the courtroom.

6 (The jury exited the courtroom at 5:42 p.m.)

7 THE COURT: Mr. Montes, you have performed a very
8 valuable service for you. You know, we had to activate one of
9 the alternate jurors, and if we had lost another or two more
10 jurors, we'd have to start all over again. So you were sort
11 of like our insurance policy, and for that, we're grateful. I
12 know you feel as though you were invited to a dance and didn't
13 get to dance. But if you would like to -- this is a public
14 forum. I know this is the weekend. You might want to head on
15 out. And if that's the case, you can call the clerk's office
16 if you have an interest in the result of the matter. You can
17 do that. Or you're welcome to stay with us.

18 You have earned a three-year exemption if you're called
19 to this court. Not that it doesn't apply to federal court,
20 magistrate's court, or municipal court, but, this court, you
21 have earned a three-year exemption. You'll be paid handsomely
22 for your service, and you're free to leave at this time.
23 Thank you very much.

24 JUROR: Thank you.

25 THE COURT: And I have reviewed you from your order not

1 to discuss the case. You can discuss it with anyone you would
2 like to. In the event someone wants to talk to you about it
3 and you don't want to talk to them, tell them that. If they
4 persist, report that to me. Good luck to you. Thank you.

5 JUROR: Thank you.

6 THE COURT: Is there any objection from the plaintiff
7 with regard to the jury charge?

8 MR. WILLEY: Just the objection previously made.

9 THE COURT: Very good.

10 Any from defense?

11 MS. BOYD: No, Your Honor.

12 THE COURT: All right. And I'm going to ask each of you
13 to come forward as we gather up the documentary evidence, and
14 we're going to put it all in one pile, and I'm going to ask
15 each of you on the record if everything in the pile is in
16 evidence or if there's anything in the pile that's not in
17 evidence.

18 (Pause in the proceedings.)

19 THE COURT: All right. Mr. Willey, is everything in that
20 pile in evidence?

21 MR. WILLEY: Yes, sir.

22 THE COURT: Is there anything in the pile that's not in
23 evidence?

24 MR. WILLEY: No, sir.

25 THE COURT: All right. Ms. Boyd, is everything in the

1 pile into evidence?

2 MS. BOYD: Yes, Your Honor.

3 THE COURT: Is there anything in the pile that's not in
4 evidence?

5 MS. BOYD: No, Your Honor.

6 THE COURT: I'm going to ask the bailiff if y'all could
7 take the documentary evidence to the jury room and tell them
8 to begin deliberations.

9 Anything before we stand in recess? From the plaintiff?

10 MR. WILLEY: Her depo was not in evidence?

11 MS. BOYD: It was.

12 MR. WILLEY: It was? The deposition --

13 MS. BOYD: I entered it --

14 THE COURT: Hold on just one minute. You marked it as an
15 exhibit, but it was never -- it was never introduced into
16 evidence. And if it had been offered as an exhibit, it's not
17 admissible. But you can -- you can publish it.

18 MS. BOYD: Okay.

19 THE COURT: It was never offered. Is that your
20 understanding, Mr. Blain?

21 MR. BLAIN: Yeah, it was offered --

22 THE COURT: As a general rule, you just can't
23 introduce -- you can use it for impeachment, you can publish
24 portions of it or all of it, but the deposition itself never
25 goes into evidence, is my understanding. And Mr. Blain agrees

1 with me in that regard.

2 MR. BLAIN: Thank you.

3 THE COURT: All right. Tell them to begin deliberations.

4 (A discussion was held off the record.)

5 THE COURT: And I'm going to ask if y'all could remain
6 here, remain close, because if they have a question, I don't
7 want to have to run down lawyers. And it's getting kind of
8 late. So let's stay real close. Very good. All right.

9 Madam Clerk, will you come get me if they have a
10 question?

11 (A recess was taken from 5:47 p.m. to 7:26 p.m. awaiting
12 verdict.)

13 THE COURT: -- the verdict?

14 MR. WILLEY: No.

15 THE COURT: Anything from defense?

16 MS. BOYD: No, Your Honor.

17 THE COURT: All right. We're ready for the jury.

18 (The jury entered the courtroom at 7:26 p.m.)

19 VERDICT

20 THE COURT: Mr. Foreman, have you reached a verdict?

21 MR. FOREMAN: Yes, sir.

22 THE COURT: Is it unanimous?

23 MR. FOREMAN: Yes, sir.

24 THE COURT: I'm going to ask if you could give the
25 verdict form to the clerk.

1 The verdict form seems to be in order. I'd ask that you
2 publish it.

3 THE CLERK: State of South Carolina, County of Florence,
4 in the Court of Common Pleas for the Twelfth Judicial Circuit,
5 April Jones, plaintiff, versus Tim Ringer, individually and as
6 an employee/agent of Walmart Store No. 630; Walmart Stores,
7 Incorporated; and Walmart Stores East, LP, defendants; Case
8 No. 2017-CP-21-1375.

9 As to the defendant, Tim Ringer, we, the members of the
10 jury, find the plaintiff has not proved the defendant, Tim
11 Ringer, negligent. Signed, Foreperson Gary Hayes. November
12 12th, 2021.

13 As to the defendant Walmart, we, the members of the jury,
14 find the plaintiff has proved the defendant, Walmart, was
15 negligent. We find actual damages in the amount of
16 \$10 million. Signed, Foreperson Gary Hayes. November 12th,
17 2021.

18 Foreperson and members of the jury, if this is your
19 verdict, please raise your right hand.

20 THE COURT: Any additional requests for polling?

21 MR. WILLEY: No.

22 MS. BOYD: No, Your Honor.

23 THE COURT: All right. Mr. Foreman, ladies and gentlemen
24 of the jury, I want to -- the law doesn't allow me to comment
25 as far as the verdict. I'm ethically prohibited from doing

1 that because, as I explained to you, the law doesn't allow me
2 to have an opinion about the facts.

3 I can thank you for your time. Y'all have worked very
4 hard this week and, for that, I'm grateful. I have given you
5 an order not to discuss the case amongst yourselves or with
6 anyone else; however, I'm going to release you from that
7 order.

8 If someone were to try to talk to you about this case and
9 you don't want to talk with them, tell them that. And if they
10 persist, identify them as best you can and report them to me,
11 and I'll deal with them accordingly.

12 You have earned a three-year exemption. In the event
13 you're called to serve in this court within the next three
14 years, you can exercise that exemption. You won't be required
15 to serve. You'll be paid handsomely for your service.

16 I think it's how much, Madam Clerk?

17 THE CLERK: It's \$10 a day, and I believe it's 20 cents
18 per mile.

19 THE COURT: All right. That's hardly a compensation for
20 your service, but it's a token of appreciation on behalf of
21 the State of South Carolina.

22 Does anybody have any questions?

23 You're free to leave. Thank you very much.

24 (The jury exited the courtroom at 7:31 p.m.)

1 THE COURT: All right. I'd be happy to entertain motions
2 at this time.

3 MS. BOYD: Defense moves for a judgment notwithstanding
4 the verdict, Your Honor, as no reasonable jury could have
5 reached this verdict given the evidence in this case, the lack
6 of liability or notice by Walmart. And so we're moving for
7 judgment notwithstanding the verdict.

8 THE COURT: All right. I tell you what I'm going to do.
9 Given the nature of this case is I'm going to give -- I'm
10 going to give each side ten days to prepare their motions, and
11 we'll set up a time to argue those at a later date and time.

12 MS. BOYD: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. WILLEY: Thank you, Your Honor.

15 THE COURT: All right.

16 (At 7:32 p.m., the above trial concluded.)
17
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

CASE/NO.: April Jones v. Tim Ringer/Walmart

2017-CP-21-01375

DATE OF PROCEEDING: November 12, 2021 (Day 4 of 4)

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording and supporting information**, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.



_____/s/ Bobbi Fisher_____

Bobbi J. Fisher, RPR

NCRA Registered Professional Reporter (RPR)

Prepared: December 31, 2021

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

RECEIVED
Mar 15 2022
SC Court of Appeals

ELECTRONICALLY FILED - 2022 Mar 16 3:36 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas, Twelfth Judicial Circuit
Hon. Michael G. Nettles, Circuit Court Judge

Case No. 2017-CP-21-01375

April Jones, ... Respondent,

v.

Tim Ringer, individually and as employee/agent of
Wal-Mart Stores Inc. d/b/a Wal-Mart Store #630; Wal-
Mart Stores, Inc; and Wal-Mart Stores East, L.P Defendants,

of whom

Wal-Mart Stores, Inc; and Wal-Mart Stores East, L.P. are Appellants

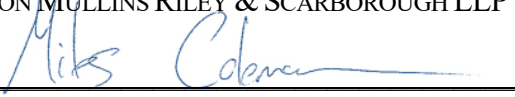
NOTICE OF APPEAL

Appellants Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P. (collectively “Walmart”), appeal from Judge Nettles’ oral rulings of November 12, 2021 denying Walmart’s renewed Motion for Directed Verdict and renewed Motion for New Trial or Mistrial; from the Form 4 Verdict and Judgment filed on November 15, 2021; and from Judge Nettles’ Order Denying Walmart’s post-trial Motion for Judgment Notwithstanding the Verdict or for a New Trial.

Judge Nettles’ Order denying Walmart’s post-trial Motion was filed on February 15, 2022 and was received by Walmart by electronic service that same day. This Notice of Appeal was timely served within 30 days after receipt of that Order. An excerpt from the trial transcript containing the oral rulings appealed from, a copy of the Form 4 Judgment, and a copy of the February 15, 2022 Order are attached hereto as required by Rule 203(d)(1)(B)(ii), SCACR.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Miles E. Coleman
SC Bar No. 78264
E-Mail: miles.coleman@nelsonmullins.com
Abigail L. Wood
SC Bar No. 105426
E-Mail: abigail.wood@nelsonmullins.com
2 W. Washington Street / Fourth Floor
Greenville, SC 29601
(864) 373-2352

GAFFNEY LEWIS, LLC

Nashiba Boyd
SC Bar No. 78376
E-Mail: nboyd@gaffneylewis.com
Robert C. Blain
E-Mail: rblain@gaffneylewis.com
SC Bar No. 100024
3700 Forest Drive, Suite 400 Columbia, South
Carolina 29204
(803) 790-8838

*Attorneys for Appellants Wal-Mart Stores, Inc. and
Wal-Mart Stores East, L.P.*

Greenville, South Carolina
March 15, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas, Twelfth Judicial Circuit
Hon. Michael G. Nettles, Circuit Court Judge

RECEIVED
Mar 15 2022
SC Court of Appeals

Case No. 2017-CP-21-01375

April Jones, ... Respondent,

v.

Tim Ringer, individually and as employee/agent of Wal-Mart Stores Inc. d/b/a Wal-Mart Store #630; Wal-Mart Stores, Inc; and Wal-Mart Stores East, L.P Defendants,

of whom

Wal-Mart Stores, Inc; and Wal-Mart Stores East, L.P. are Appellants

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR and Section (d)(1) of the Supreme Court's Order dated August 25, 2021, undersigned counsel hereby certifies I have served a copy of Appellants' Notice of Appeal on counsel of record by electronic mail (see attached sent email):

Counsel Served:

Lane D. Jefferies, Esquire
cld@akimlawfirm.com
Roy T. Willey, IV, Esquire
roy@akimlawfirm.com
Eric M. Poulin, Esquire
eric@akimlawfirm.com
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

By: Miles Coleman
Miles E. Coleman

Attorney for Appellants Wal-Mart Stores, Inc. and Wal-Mart Stores East, L.P.

March 15, 2022
Greenville, South Carolina

Miles Coleman

From: Miles Coleman
Sent: Tuesday, March 15, 2022 4:41 PM
To: cld@akimlawfirm.com; roy@akimlawfirm.com; eric@akimlawfirm.com
Cc: Nashiba Boyd; Robert Blain; Abigail Wood
Subject: Jones v. Walmart -- Notice of Appeal
Attachments: 2022.3.15 -- Jones v. Walmart -- Notice of Appeal.pdf

Counsel — please find attached for electronic service a copy of the Notice of Appeal in the above-referenced matter. We will be filing this document, along with a Proof of Service and filing fee, with the Court of Appeals shortly.

Miles Coleman



MILES COLEMAN **PARTNER**
miles.coleman@nelsonmullins.com

GREENVILLE ONE | SUITE 400
2 W. WASHINGTON STREET | GREENVILLE, SC 29601
T 864.373.2352 F 864.373.2925
NELSONMULLINS.COM **VCARD** **VIEW BIO**



Miles E. Coleman
T 864.373.2352 F 864.373.2925
miles.coleman@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

2 W. Washington Street | Fourth Floor
Greenville, SC 29601
T 864.250.2300 F 864.232.2925
nelsonmullins.com

March 15, 2022

Via electronic mail and hand delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
Mar 15 2022
SC Court of Appeals

RE: *Jones v. Ringer et al.*
Case No. 2017-CP-21-01375
Our File No. 013782/01651

Dear Ms. Kitchings:

Enclosed please find the original and one copy of a Notice of Appeal in the above-referenced matter. Also enclosed is a Certificate of Service and copies of the Orders being appealed. We ask that you file the original Notice of Appeal and return a clocked-in copy to us at your convenience. A hard copy of this letter, accompanied by a Firm check in the amount of \$250 for the filing fee, will be delivered to you by courier today as well.

We are awaiting receipt of several transcripts in this matter, including the transcript of the hearing on the post-trial motion. Copies of correspondence with the court reporter will be furnished to the Office of Court Administration and all parties' counsel pursuant to Rule 207(a)(1), SCACR. We will alert the Court when we have received the transcripts and, therefore, have established the date on which Appellants' Initial Brief will be due pursuant to Rule 208(a)(1), SCACR.

Very truly yours,

Miles E. Coleman

CC: (by U.S. Postal Mail)
South Carolina Office of Court Administration
1220 Senate Street, Suite 201
Columbia, SC 29201

Jones v. Ringer et al.
Notice of Appeal—filing letter
March 15, 2022
Page 2

CC: (by electronic mail)
Nashiba Boyd, Esq.
Robert Blain, Esq.
Lane D. Jefferies, Esq.
Roy T. Willey, IV, Esq.
Eric M. Poulin, Esq.

Attachment One

Excerpt of trial transcript containing oral rulings of November 12, 2021 denying Walmart's renewed Motion for Directed Verdict and renewed Motion for New Trial or Mistrial

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF FLORENCE

RECEIVED

Mar 15 2022

SC Court of Appeals

4 -----x
5 APRIL JONES,)

6 Plaintiff,)

7 vs.)

Transcript of Record
2017-CP-21-01375

8 TIM RINGER, WALMART STORE)

9 NO. 630, WALMART STORES,)

10 INC., and WALMART STORES)

EAST, LP,)

11 Defendants.)
-----x

12 Monday, November 8, 2021

13 JURY TRIAL - VOLUME 1 of 4

14 B E F O R E:

15 The Honorable Michael G. Nettles, Presiding Judge; and jury.

16 A P P E A R A N C E S:

17 Roy T. Willey, IV, Esq.

18 Lane Jefferies, Esq.

19 Kenneth Thomas, Esq.

Eric Poulin, Esq.

Vanisa Siler, Esq.

Attorneys for the Plaintiff

20 Nashiba Boyd, Esq.

21 Robert Blain, Esq.

22 Regina Lewis, Esq.

Attorneys for Defendants

23
24 Recorded by: Court Monitor/DCRP

25 Transcribed by: Bobbi Fisher, RPR

1 deposition and the items listed in Plaintiff's Exhibit 7.

2 THE COURT: Very good. You're protected on the record.

3 I'm going to ask y'all if y'all could come forward and
4 take a look at the verdict form.

5 (Counsel conferred off the record.)

6 THE COURT: Very good. Any objection with regard to the
7 verdict forms from the plaintiff?

8 MR. WILLEY: No. The only thing I would note I did ask
9 counsel for the defendant if she had an issue with the Walmart
10 defendants being grouped and identified as Walmart, and she
11 said no.

12 THE COURT: Any objection from defense?

13 MS. BOYD: No, Your Honor.

14 THE COURT: All right. Very good.

15 Anything further?

16 Ready to proceed forward with arguments?

17 MR. WILLEY: I have some issues as to the charge.

18 THE COURT: Yes.

19 MS. BOYD: I have motions, Your Honor.

20 MR. WILLEY: Oh, she has motions. All right.

21 MS. BOYD: He kept standing, so I thought he was still
22 going. I apologize.

23 MR. WILLEY: I believed she would have motions.

24 MS. BOYD: Your Honor, Defendants renew their request for
25 a directed verdict on the issues of whether Walmart created,

1 had actual notice or constructive notice of the nail. Your
2 Honor...

3 THE COURT: You're protected on the record in that
4 regard.

5 MS. BOYD: Okay.

6 THE COURT: Anything else?

7 MS. BOYD: Yes. We would also like to renew our motion
8 for a mistrial based on Ms. Jones's improper testimony about
9 the settlement offer, Your Honor. We believe that, even with
10 your curative instruction, the jury may believe that Walmart
11 was admitting some wrongdoing or some liability by offering
12 her money, and a substantial amount of money at that.

13 And in our case, we have been arguing no liability the
14 whole time, and so it seems almost counter to the arguments we
15 have presented here today, and we believe that that may
16 negatively impact the jury's verdict.

17 THE COURT: Very good. And you're protected on the
18 record.

19 MS. BOYD: Okay. I would like to hand up just a brief
20 for the record, Your Honor.

21 THE COURT: Yes. All right. Anything further?

22 MS. BOYD: No, Your Honor.

23 THE COURT: Any requests -- additional requests to
24 charge?

25 MR. WILLEY: Just -- and I haven't seen the charge; I

Attachment Two

Form 4 Verdict and Judgment filed November 15, 2021

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2101375

April Jones
PLAINTIFF(S)

Tim Ringer et al
DEFENDANT(S)

RECEIVED

Mar 15 2022

SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The jury rendered a verdict in favor of the Plaintiff, April Jones, against the Defendant, Walmart, only, in the amount of Ten Million dollars and no/100 (\$10,000,000.00).

The jury rendered a verdict in favor of the Defendant, Tim Ringer. No monetary damages.

The parties have 10 days to file post trial motions.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/15/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

RECEIVED ELECTRONICALLY FILED -- 2022 Nov 16 10:36 AM -- FLORENCE -- COMMON PLEAS -- CASE#2017CP2101375



Florence Common Pleas

Case Caption: April Jones VS Tim Ringer , defendant, et al
Case Number: 2017CP2101375
Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-11-15 09:20:00 page 3 of 3

ELECTRONICALLY FILED -- 2022 Nov 15 10:36:51 AM -- FLORENCE -- COMMON PLEAS -- CASE# 2017CP2101375

Attachment Three

Order Denying Walmart's post-trial Motion for Judgment Notwithstanding
the Verdict or for a New Trial, filed February 15, 2022

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2101375

April Jones
PLAINTIFF(S)

Tim Ringer et al
DEFENDANT(S)

RECEIVED

Mar 15 2022

SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant has moved this court for a judgment notwithstanding the jury's verdict, and, alternatively, a new trial nisi remittitur.

The court has reviewed the transcript from the trial of this case along with all of the related materials. Based upon the briefs submitted by the parties, along with oral arguments – the Defendant's request for relief is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/15/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 APR 15 10:35 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375



Florence Common Pleas

Case Caption: April Jones VS Tim Ringer , defendant, et al

Case Number: 2017CP2101375

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2022-02-15 09:17:27 page 3 of 3

ELECTRONICALLY FILED - 2022 Feb 15 10:35 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS NONJURY
COUNTY OF FLORENCE)

APRIL JONES,) TRANSCRIPT
)
 PLAINTIFF,) OF
)
 vs.) RECORD
)
 TIM RINGER, INDIVIDUALLY AND AS)
 EMPLOYEE/AGENT OF WAL-MART STORES,)
 INC. D/B/A WAL-MART STORE #630,)
 WAL-MART STORES, INC. AND WAL-MART)
 STORES EAST, L.P.,) 2017-CP-21-1375
)
DEFENDANTS.)

November 5th, 2021
 Florence, South Carolina

B E F O R E :

THE HONORABLE MICHAEL G. NETTLES, Judge.

A P P E A R A N C E S :

ROY WILLEY, IV and LANE JEFFERIES
 ESQ.
 Attorneys for the Plaintiff

NASHIBA D. BOYD and ROBERT CANNA BLAIN
 ESQ.
 Attorneys for the Defendant

Transcribed by Pamela E. Green, from
 DCRP, Digital Courtroom Recorder Project

I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

THE COURT: All right. I understand we're gonna entertain the motion with regard to Doctor Durig.

MS. BOYD: Yes, Your Honor.

THE COURT: I'll be glad to hear from you.

MS. BOYD: Thank you, Your Honor.

My name is Nashiba Boyd and I am appearing on behalf of Tim Ringer and the Wal-Mart defendants, both Wal-Mart Stores, Inc. and Wal-Mart Stores East L.P.

This matter involves a plaintiff, Ms. April Jones, who alleges that she stepped on a nail while walking through the Wal-Mart Store in Florence, South Carolina located on Beltline Drive. She indicated that, during her walk through the store, she passed several pallets and she assumed that the nail she stepped on came from one of the pallets. However, there's no other evidence in the record at this, this point about the origins of the nail that she allegedly stepped on, and plaintiffs has proffered the expert testimony of Doctor Bryan Durig to support plaintiff's contention that the nail came from a pallet in the subject store.

Doctor Durig plans to proffer five opinions. The first being that the subject nail was about approximately seven-eighth of an inch in length, and it, it -- the

1 flathead suggests it is a typical roofing nail, and it's
2 used to attach wooden roof -- wooden roof decking materials
3 to wooden rafters, and that is similar to the construction
4 of a wooden pallet.

5 Second, that some Chinese companies market their
6 fasteners as 15 degree pallet roofing coil nails and the
7 nails are advertised with both pallet and roofing in their
8 name. They have similar design and numerous lengths.

9 Third, that although the recommended length for a
10 pallet nail is typically longer than seven-eighth inches in
11 length, there's nothing that would prevent someone from
12 using a seventh inch long nail similar to the one that Ms.
13 Jones alleged she stepped on in making a repair of a
14 existing pallet.

15 Fourth, after reviewing photos of pallets from
16 Wal-Mart, not all the wall -- pallets in Wal-Mart are
17 maintained in perfect or industry standard condition, and,
18 fifth, is -- it's the most probable source of the, the
19 seventh-eighth inch nail was from a pallet in the aisle of
20 the subject store because, if a pallet gets broken, a short
21 nail such as this one would fall out onto the floor.

22 And it's our argument, Your Honor, that Doctor Durig's
23 opinion should be excluded because the evidence that he's
24 proffering has no basis in expert -- in expertise. He has
25 no specialized knowledge in the construction of pallets, and

1 he has not established any type of methodology or basis for
2 his opinions.

3 South Carolina requires that expert opinion be
4 specialized and is outside the realm of all the ordinary
5 knowledge of a jury. So, it must be knowledge that a -- an
6 ordinary jury wouldn't have on its own. I'm sorry, Your
7 Honor.

8 In order for expert testimony to be admitted, the, the
9 judge must find -- Your Honor must find that that subject
10 matter is beyond the ordinary knowledge of the jury.
11 Second, that the expert has some expertise in the area, and,
12 third, the subject matter or the opinion is reliable.

13 In here, Doctor Durig's opinions don't meet any of
14 those criteria.

15 First, he has no specialized training in pallet
16 construction. In fact, in his deposition, he testified that
17 he's had no experience with pallet construction and he
18 hasn't had a case involving the construction or
19 deconstruction of a pallet in 29 years, and, second, his
20 opinions that now may come from wood is not outside of the
21 ordinary knowledge of a jury.

22 A jury can make a determination about whether there's
23 wood -- a, a nail in a wooden pallet. There's no need for
24 specialized or expert testimony such as Doctor Durig's.
25 And, third, Doctor Durig has not established any type of

1 methodology for his opinions.

2 In fact, when -- during his deposition, he testified
3 that he's conducted no testing on the pallets, that he had
4 no information or no prior testimony or reviewed any
5 evidence that wal-Mart or anyone associated with wal-Mart
6 used seventh-eighth inch nails in the construction or repair
7 of their pallets. He did not attempt to deconstruct a
8 pallet from wal-Mart to see if a seventh-eighth inch nail
9 was in any of the pallets, and, lastly, he indicated he's
10 never read any type of research or findings -- finding that
11 seventh-eighth inch nails were in industry -- used within
12 the industry as for nail pallet repair, Your Honor.

13 So, his opinion that is possible or nothing would
14 prevent someone from using a seven-eighth inch nail to
15 repair a pallet is not based on any type of research or
16 expertise about pallet constructions or repairs because he
17 simply doesn't have that expertise and he didn't cite any
18 sources that would help him form that expertise.

19 The -- at most, he establishes that the nail could of
20 come from a wooden pallet. Simply because there's wooden
21 pallets in the stores that, in his opinion, were not perfect
22 or didn't meet industry standards based on photos that were
23 not taken at the time of the alleged incident, and that
24 alone isn't sufficient to establish what the pallets looked
25 like on the day of Ms. Jones' incident to, to even make an

1 opinion about the state -- the, the state or the condition
2 of the pallets in the store at the time where she -- when
3 she walked through the store.

4 And, further, there's no methodology to get reliable
5 conclusions. Like he didn't perform no testing that could
6 be duplicated or, or shown to the jury. He simply saying
7 it's possible that some party, wal-Mart or someone else,
8 could of used this nail that admitted -- he admittedly
9 stated was not a pallet nail, not a, a nail typically used
10 for a pallet construction, or pallet repair. But someone
11 could of used it, it was possible, and, if they did, the
12 nail was likely to fail because it was short.

13 That's speculative, Your Honor. There's no evidence to
14 suggest any of that happened and plaintiff deposed
15 wal-Mart's corporate representative, and they explained that
16 when -- at the -- the processes, that wal-Mart doesn't
17 repair pallets in the store or even at its distribution
18 center.

19 wal-Mart has proffered expert opinions of Doctor White,
20 Marshal White, who is a pallet construction expert who has
21 opined that there would be no utility in using this type of
22 nail in a pallet because it simply would not be strong
23 enough for the intended purpose of keeping the pallet
24 together and these opinions are based on well-established,
25 documented testing, and methodologies for pallet

1 construction and repair unlike Doctor Durig.

2 So, we're asking Your Honor to exclude these
3 speculative opinions because it may unduly influence a jury
4 in this matter. Specifically the opinion about a Chinese
5 manufacturer having the same name pallet and roofing nails.

6 Doctor Durig, during his deposition, he indicated that
7 he simply was pointing out both names were in the marketing.
8 He made no opinions. In fact, he said he had no opinions on
9 whether the nails were being advertised for use in pallets.
10 He said I never said that. That's not what I contended. I
11 simply indicated that both names were used in the
12 advertising.

13 And when defense counsel specifically asked him if it
14 was possible that the word pallet was being used as the unit
15 of measure for the sale of those nails on those Chinese
16 websites, he admitted that that was possible.

17 So, Your Honor, the testimony that indicates that
18 Chinese marketers used the word pallet in roofing nails to
19 sale a certain kind of nail could unduly influence a jury
20 into believing that those nails are being marketed for both
21 uses and Doctor Durig provided no evidence to that effect.
22 In fact, he said he had no opinion as to whether that was
23 true.

24 So, we're just asking Your Honor that you exclude
25 Doctor Durig's test -- his opinions in their entirety

1 because they're based on his inex -- his inexperience with
2 pallet construction. They're not based on any reliable
3 methodology, methodology and they may unduly influence a
4 jury to be prejudicial against the defendants.

5 THE COURT: Be glad to hear from the plaintiff.

6 MR. WILLEY: Thank you, Your Honor.

7 Roy Willey for the plaintiffs and I think what this
8 boils down to is whether or not expert testimony is helpful
9 in determining whether or not this particular nail could be
10 used in pallet repair or construction and let me remind the
11 Court of this.

12 At the last summary judgment hearing, which was denied
13 in August of 2020, we had already taken the defense expert's
14 deposition but they had not yet taken Doctor Durig's. And
15 so to the extent there was a scintilla that existed then
16 there is now.

17 With respect to this opinion, what did their expert say
18 in the deposition that we took?

19 Here's what he said.

20 This is on Page 32 of his deposition and I asked him
21 your opinion in this case is what?

22 A. That nail that I saw in the photographic images is
23 not used in pallet assembly.

24 Okay.

25 Q. And is that your position, that it could never be

1 used in pallet assembly or just that it should not be used
2 in pallet assembly?

3 A. Anything's possible. But that type of nail is
4 never used in pallet assembly.

5 Now, that's how he started. But let's go through the
6 deposition because later I asked him explain it to me and he
7 said, this was on Page 34, that nail is not even long enough
8 to penetrate a deck board on a pallet. Therefore, you can't
9 use it to fasten it to any other member.

10 That's important.

11 He says that nail, that seven-eighths inch nail, is not
12 long enough to penetrate a deck board on a pallet. That's
13 their expert.

14 Later in the deposition, on Page 36:

15 Q. And so if I took a half inch deck board and went
16 and got an inch long nail and nailed it into that wall over
17 there, your position is it wouldn't fasten it to the wall?

18 A. It would be extremely easy to pull off.

19 Q. Right. Extremely easy to pull off but it would be
20 fastened, right?

21 A. It would be connected, yes.

22 And we went on and I asked him, the bottom of Page 37,
23 and it would be possible that once that board and stringer
24 then fell with the nail in it, that nail could become
25 dislodged from the board, right?

1 A. It's possible.

2 Okay. And you have no way of saying that that did not
3 happen in this case, right?

4 A. It, it could have happened in this case.

5 That's what their expert said to me in May of 2019.

6 And so what did we do?

7 We went out and found an expert, a mechanical engineer,
8 who refutes vehemently the first point and that is this,
9 that pallets used in Wal-Mart, particularly whitewood
10 pallets from vendors, are constructed of nominal half inch
11 deck boards, and, of course, Your Honor knows that nominal
12 half inch board means that it could be just over half inch
13 or just under half inch, and that that nominal half inch
14 board could be fastened with a nominal seven-eighths inch
15 nail.

16 Now, why is that important?

17 That's important because, when I took Allen Pavlovich's
18 deposition, who is Wal-Mart's distribution guru up in North
19 Carolina who deals with the inspection of this -- these
20 pallets, what did, what did he tell me?

21 I asked him, on Page 55 of his deposition, and with
22 respect to those pallet requirements, do you require your
23 vendors to use brand new pallets?

24 Is that a requirement?

25 A. I can not answer that, sir.

1 And we went through the deposition and I asked him
2 several times is there any, or Lane asked him, excuse me,
3 several times, is there anything in your distribution center
4 where you inspect the vendor pallets to see what kind of
5 nails they're using and he said no, we don't do destructive
6 testing. We don't look into the vendor pallets.

7 And why is that important?

8 That's important because not every pallet in a wal-Mart
9 store is a wal-Mart pallet. For example, in the produce
10 section, we just got through Halloween. When wal-Mart puts
11 pumpkins on the floor on Halloween, they are in a bin on a
12 pallet. That pallet is not a wal-Mart pallet. It is a
13 pallet that came from the vendor, that came from the farm,
14 and Mr. Pavlovich says in his deposition that they don't do
15 destructive testing to see what types of nails are in the
16 vendor pallets.

17 And so I asked him here, on Page 71, I said that vendor
18 prepared display arrives at your distribution center from
19 the vendor on a truck and this is the first interaction with
20 wal-Mart. wal-Mart hasn't inspected this thing at all so
21 far?

22 It just came from the vendor, right?

23 A. Yes, sir.

24 Page 72. Mr. Jefferies asked him all right. And then
25 y'all perform an inspection?

1 You do that visual inspection for damage and you go
2 through those five things we talked about, and let's say
3 the -- that pallet passes, everything is good, right?

4 A. Yes, sir.

5 And he goes through what happens next. It goes to the
6 store.

7 And he asks him, does anybody check to see what type of
8 nail is used in the repair or assembly of that pallet and he
9 says no.

10 And so here's what Doctor Durig says.

11 Doctor Durig, very simply, in his deposition, which, of
12 course, is on the record, he's a mechanical engineer dealing
13 with design, safety, and failure analysis, and he was asked
14 in his deposition, on Page 16, what percentage of his study
15 of his work specifically deals with the failure of fasteners
16 like nails or screws?

17 A. Probably 10 percent.

18 Not zero. Probably 10 percent.

19 And so what is his opinion in this case?

20 His primary opinion in this case is that a average
21 whitewood pallet, which is the type that would of came from
22 these vendors, had nominal half inch deck boards. Not
23 something that a lay person knows. In his opinion, is that
24 with a nominal half inch deck board, it could be fastened or
25 repaired with a nominal seven-eighth inch nail like the one

1 that we have in this case and he, he goes farther than that
2 because, and if I could share my screen, I can show you the
3 photos, but there are coiled nails sold as pallet nails that
4 are -- that appear exactly like the nail in this case, and
5 more than that, he has a photograph where the whitewood
6 pallet, which is not a Wal-Mart pallet, it's a vendor
7 pallet, but it's in a Wal-Mart Store, you can see the head
8 of the nail in the wood and it looks like the nail at issue
9 in this case.

10 Now, that's only one part of the case, of course, is
11 whether or not it came from a pallet. We don't have to
12 prove it came from a pallet to win the case. But their
13 expert's opinion, they named an expert first, is that you
14 could not use this nail in assembly or repair of a pallet
15 until -- I talked to him enough and he finally realized how
16 ridiculous that was and that I actually knew what a nominal
17 half inch board was, and I asked him this, whether or not it
18 would be connective, and he says it would be connected, yes.

19 And that's the issue in the case is could you use --
20 if -- this part of the case. Could you use a nominal
21 seven-eighths inch nail to connect a half -- nominal half
22 inch deck board to a pallet in a repair and the answer is
23 yes and Doctor Durig also says this.

24 There's very little other way that a nail could ever
25 get into a Wal-Mart because they don't use roofing nails on

1 the roof. They don't have shingles or anything like that.
2 And so the store, you can go in and see it, it's a metal
3 beam store, and he is an expert in manufacturing facilities.
4 He's been in them and there's only one other possible way,
5 which, of course, we've submitted as a photograph, which is
6 the little spaces between the wood and the tile, they use
7 nails to fasten down those thresholds.

8 But as to Doctor Durig, there's no dispute he's a
9 mechanical engineer. Ten percent of his work deals with
10 failure analysis on fasteners. That's what this part of the
11 case is about. They named an expert to say that you
12 couldn't fasten a board with that nail. Doctor Durig simply
13 says you can. And so it's a battle of the experts as to
14 that issue, which is all -- which is but one issue in the
15 case but that's it.

16 He does take issue with a few other things that their
17 expert, Doctor White, says. Doctor White, for example, says
18 that pallets are made only of waste wood and Doctor Durig
19 says that's not true in South Carolina because he's been an
20 expert for pallet manufacturing facilities. He knows that
21 they buy logs. That's on Page 26 of his deposition and he
22 says so I disagree with him on that. That goes to the
23 credibility of Doctor White, what he actually knows about
24 pallet manufacturing.

25 Doctor White's a professor by the way. This is not a

1 guy who spent a career -- he's a forestry guy. He's not --
2 you know, he doesn't own a pallet company or anything like
3 that. He has only worked for Wal-Mart, I believe, on one
4 other case as an expert. And so he's not particularly
5 familiar with, with what they do.

6 what he does say is oh, well, Wal-Mart pallets follow
7 the ANSI standards. Doctor Durig also offers an opinion
8 there. He says no, they don't.

9 I've seen photographs of pallets in Wal-Mart Stores and
10 I know it's a Wal-Mart. I took it into account in my
11 opinion because you can see the signs that Wal-Mart uses and
12 those pallets do not comply with ANSI standards. And so,
13 therefore, what Doctor White says about Wal-Mart always
14 complying with ANSI standards is false.

15 And so, again, on that point, it's a battle of the
16 experts and that is really the basis of what we have here.
17 It's not a question of pallet manufacture. There's not --
18 there's not a dispositive issue on pallet assembly. It
19 could be pallet repair and it's not dispositive as to
20 Wal-Mart pallets. In fact, this nail most likely came from
21 a different type of pallet that Wal-Mart carried into its
22 store from a vendor because what happens is, on these vendor
23 prepared displays like the pumpkins I talked about, is they
24 come in from the farm that way. They go onto the truck.
25 Wal-Mart forklifts them in at night and just puts them on

1 the floor.

2 They're not Wal-Mart pallets. It's not Wal-Mart's bin
3 until they take possession of it but it's not the check
4 pallet, which is what Doctor White talks about all
5 throughout his and Mr. Pavlovich, who's Wal-Mart's employee
6 that deals with distributions, admitted as much with respect
7 to that.

8 He also said that the reason that they don't use the
9 whitewood pallets is cause they're not as good as the check
10 pallets that Wal-Mart typically uses. And so they know that
11 but they take them into their store anyway and I---

12 THE COURT: Let me ask you---

13 MR. WILLEY: I am---

14 THE COURT: Let me ask you this, Mr. Willey.

15 MR. WILLEY: Yes, sir.

16 THE COURT: One of the things that he's gonna attempt
17 to testify to is the most probable source for a nail sitting
18 on the floor of a Wal-Mart store adjacent to a main display
19 aisle that displays merchandise on a wooden pallet is the
20 wooden pallets.

21 wooden decking on wooden pallets get broken, damaged
22 frequently during shipping, moving, and handling.

23 Short -- if a shorter than typical length nail was used
24 to make repairs to a wooden pallet is more likely it would
25 fall out of a wooden base timber when the decking gets

1 damaged, split, compared to a 2 or a 3-inch long nail, and
2 then he goes on to say -- what do you think about -- let me
3 ask plaintiff's counsel with regard to that particular
4 aspect that it's (sic) most likely comes from the pallet.

5 Do you think that he---

6 MR. WILLEY: Sir?

7 THE COURT: Yes.

8 MR. WILLEY: So, Your Honor, what he does there is
9 essentially goes through a process of elimination and what
10 he's able to tell the jury is that Wal-Mart Stores do not
11 use roofing nails. They don't have shingles. And so it
12 couldn't come from that source.

13 He says that their shelving in the stores are metal and
14 that they're not nails used and he can rely on the store,
15 Mr. Ringer's deposition, where he specifically says that --
16 it's either Ringer or Pavlovich. I'd have to go back and
17 look to be sure. I believe it's Ringer who says that their
18 associates are not permitted to use nails and hammers in the
19 store. And so there are not open packaging of nails in the
20 store.

21 And so---

22 THE COURT: Well, do you need a---

23 MR. WILLEY: ---the issue---

24 THE COURT: Do you need an expert to say that it most
25 likely comes from the pallet?

1 I mean it's a factual dispute that lawyers can talk
2 about and I don't know how an expert can really add anything
3 to that. I mean it's a factual dispute.

4 MR. WILLEY: Well, as, as to that opinion, you know,
5 the ultimate opinion, perhaps it is a factual -- he can say
6 in his opinion the most likely source is. But I think he
7 has to give some basis for that and the basis for that is
8 walking through all of the evidence in the case which he
9 reviewed.

10 There's no other possible source for this nail to
11 appear in a Wal-Mart other than, by the way, somebody coming
12 in with a hand full of these nails and scattering them
13 around the floor, which we've got issues on that and
14 defenses on that with respect to their camera system and
15 asset protection. That's obviously not what happened here.

16 THE COURT: Did, did Durig go to this particular store?

17 MR. WILLEY: He did not. No, Durig, Durig was not---

18 THE COURT: All right. That presents, that presents
19 another problem because the photographs that he looked at or
20 have been -- there's -- I, I think, if I'm understanding it
21 correctly, is there's a motion to exclude them because they
22 were not obtained pursuant to the Rules of Civil Procedure.

23 MR. WILLEY: Well, okay. I didn't realize that's where
24 you were going with it. So---

25 THE COURT: Well, I wasn't originally but you said that

1 he---

2 MR. WILLEY: He has been to the---

3 THE COURT: Based on the examination of evidence --.

4 MR. WILLEY: No, he, he has been to this store. He was
5 not at the store at the time of the incident or near the
6 time of the incident. And so, you know, with -- I thought
7 you were asking me typically, you know, experts, if
8 something just happened, they go out right away and they'll
9 gather evidence.

10 THE COURT: Right.

11 MR. WILLEY: He testified in his deposition that he had
12 been to this store before. I believe his in-laws live near
13 there. And so he has been to the store to---

14 THE COURT: So he based it -- he based his opinions on
15 those pictures that were taken.

16 Is that correct?

17 MR. WILLEY: In part.

18 THE COURT: All right.

19 MR. WILLEY: Yes, in, in part.

20 THE COURT: But, you know, you have made very
21 convincing arguments about the nails and the length of the
22 nail, the length -- the depth of the wood.

23 Why do you need an expert to testify to that?

24 MR. WILLEY: Here's, here's why, Your Honor, because
25 it's not within a lay person's knowledge how a pallet---

1 THE COURT: How much of a nail needs to go through a
2 piece of wood?

3 MR. WILLEY: Well, that is but think about this.

4 How do I get my measurements in?

5 I have to have somebody testify that a standard
6 whitewood pallet is constructed of nominal half-inch
7 stringers, deck boards, which are attached to the runners.
8 That is not within a lay person's knowledge and there's
9 nobody else that I -- my plaintiff obviously can't -- I mean
10 I guess she could testify to that but it would just be
11 because I told her. You know, most people don't go and just
12 measure pallets.

13 So, that -- that's where the mechanical engineering
14 piece comes in that there's actually a methodology of
15 looking at these things and being able to say that. I
16 now---

17 THE COURT: What do you think about---

18 MR. WILLEY: ---can say---

19 THE COURT: What do you think about his -- first of
20 all, he says that the nail is not a pallet nail but it's a
21 roofing nail to start with, and how can he render an opinion
22 that -- that that nail that was in your client's foot came
23 from the pallet?

24 MR. WILLEY: So, with respect to the pallet nail verse
25 roofing nail verse trim nail, finishing nail, hanging nail,

1 those are technical terms, and, technically speaking, this
2 is not a pallet nail. This is a technical roofing nail but
3 that doesn't mean it can't be used on pallets. It's just
4 like when my wife---

5 THE COURT: Well, why do you -- why -- that's my point.
6 Why do you need an expert to say that different nails
7 can't be used on pallets?

8 MR. WILLEY: Well, because of the length. Because,
9 because of the failure analysis piece of his expertise to be
10 able to say if you used this nail in repair or assembly of a
11 pallet it would hold the deck board on. Their expert says
12 it wouldn't initially. Their expert's opinion is you could
13 not use a nominal seven-eighths inch nail to attach a
14 nominal half inch deck board to another piece of wood.

15 Now, I do get him to back track on that eventually. It
16 took some doing. I believe I was in Blacksburg for better
17 than seven hours by the point he finally conceded that. But
18 that's the piece that expert testimony is needed on and
19 there's no, there's no other way to get it with respect to
20 the measurements of a pallet and what you could use.

21 Now, I suppose we could all stand there and do an
22 experiment. I could bring a nominal half-inch board and a
23 seven-eighths inch nail and get somebody to nail it. But he
24 refutes that specific point of their expert's testimony.

25 He's an expert in it under watson. There's no dispute

1 about that. They, they seem really to have -- I guess to
2 have an issue just because he takes the opposite position of
3 their expert but I didn't move to exclude their expert. His
4 opinion is basically just the opposite. He says it couldn't
5 happen. My expert says it could happen.

6 THE COURT: Well, how can---

7 MR. WILLEY: Most probably.

8 THE COURT: How can -- how -- how can, how can this be
9 reliable, this statement in Number 5, the most probable
10 source for a loose nail sitting on the floor of a Wal-Mart
11 store adjacent to a main display aisle that displays
12 merchandise on wooden pallets is the wooden pallet?

13 How can you say that?

14 I mean how can an expert say that?

15 MR. WILLEY: With respect to that opinion, he goes
16 through the process of elimination.

17 where else could it come from in the Wal-Mart aisle?

18 It couldn't come from the shelves. They're made of
19 steel. So they don't use hammers.

20 It couldn't come from the roof because they don't have
21 shingles. So, they're not using roofing nails.

22 It couldn't come from the associates or the manager.
23 Even if it did, that would still prove that part of the case
24 but because they say they don't utilize hammers and nails in
25 their store.

1 And so it -- that is a process of elimination statement
2 which I suppose, you know, if he couldn't opine on that, we
3 could get there anyway. I could ask him all the questions
4 and then just make the conclusion. But I think, as an
5 expert, he's entitled to offer his opinion on the ultimate
6 cause and what it goes to is the weight of the opinion.

7 They could argue before the jury that his process of
8 elimination is wrong because a nail could of come from
9 somewhere else. They'd be entitled to do that. But I
10 think, as an expert under the rules, he can offer an opinion
11 on the most probable cause of the nail being in the, in the
12 floor and her stepping on it.

13 MS. BOYD: If I may respond to that, Your Honor?

14 THE COURT: Yes.

15 MS. BOYD: First of all, that methodology is listed no
16 where in Doctor Durig's report that he eliminated other
17 sources in coming to this ultimate opinion. And, second of
18 all, there's -- there's no indication it didn't come in from
19 a customer or a third party. You can't simply eliminate
20 every possible source by saying wal-Mart has a metal roof
21 and so there's no roofing nails or they have metal shelving,
22 which would not be a roofing nail involved anyway, and say,
23 based on the lack of those things, it had to only have come
24 from a wooden pallet.

25 That's speculative -- that's speculative at, at best.

1 It's not circumstantial. It -- and to the point that --
2 about the whiteboard pallets being a typical, a typical
3 length, Doctor Durig never came into the store and said hey,
4 let me inspect this pallet, that pallet, that pallet, these
5 whiteboard pallets that they're alleging are the most
6 probable source to pull it apart to find whether these third
7 party vendors utilized seven-eighth inch nails. That simply
8 did not happen. It -- or even to measure and say hey, these
9 vendors, these third party vendors, did, in fact, use these
10 smaller sized boards than your manufacturer would of used.

11 None of that was done to substantiate or corroborate
12 these speculative opinions. There's no process involved.
13 Simply eliminating a roofing source or eliminating a metal
14 shelf does not get you automatically to it had to only have
15 come from the wooden pallet, and that's the opinion that
16 Doctor Durig has offered.

17 In -- as far as the opinions of, of Doctor White,
18 plaintiff's counsel was free to file whatever motion they
19 wanted regarding his opinions. We stand by them. This
20 isn't simply us saying we don't like Doctor Durig's
21 opinions. This is defense counsel saying there's no basis
22 in the law, in the evidence for those opinions.

23 You can't just come in and say what's possible. You
24 must have evidentiary support or some type of methodology to
25 get there and, and that's what's lacking here.

1 The plaintiff's counsel has given more detail than
2 Doctor Durig did in his opinions about the basis of -- where
3 those opinions came from. He's talked about whiteboards.
4 That's not listed anywhere in the five opinions that Doctor
5 Durig proffered.

6 He talks about the methodology of a -- of eliminating
7 other sources. That's not listed anywhere in these
8 opinions and defense counsel asked Doctor Durig, do you have
9 any other opinions that you wish to proffer. He did not.

10 And so now, at this stage, he wants to offer other
11 evidence or, or documentation that wasn't -- that he didn't
12 even attempt to offer at the time of his deposition or in
13 his written report.

14 And so we, we're just offering -- we're just asking,
15 Your Honor, that, you know, these opinions not be allowed
16 into evidence because there's no basis for them.

17 MR. WILLEY: So, so, Your Honor, briefly.

18 We're not in Federal Court. So he didn't have to give
19 a report. He did give a report. He was examined in part on
20 it in his deposition and wasn't asked to explain the full
21 methodology. However, I will point out one thing that is
22 incorrect.

23 He did go through what Ms. Boyd just spoke about. Page
24 53 of his deposition.

25 Okay. It's Line 11.

1 So other than Ms. Jones assertion this nail was on the
2 floor in Wal-Mart, do you have any other evidence to support
3 that seven-eighth inch nails are used or could be used to
4 repair pallets?

5 I don't know how those two are related but I mean it's
6 her testimony she stepped on a nail while walking through a
7 center aisle of a Wal-Mart Store and then becomes a
8 question, if that is the facts and what she's testified to,
9 then where could the nail come from?

10 I mean its typical shelving is metal. They're not --
11 they don't have roofing nails or seven-eighth inch long
12 nails used to secure shelving. The type of roof on a
13 Wal-Mart does not use typical roofing nails. If they have
14 styrofoam up there for insulation, they're longer. They're
15 not seven-eighths. That's got multiple nails in the end of
16 it. Looks like at least eight different nails and through
17 and through.

18 So, she didn't ask him to expand on that. The next
19 question was and you don't know when the photos were taken?
20 So we get off of that.

21 Now, if she had asked him to expand on his methodology
22 he could have but he gave her part of it in response to a
23 question that she asked with respect to the elimination
24 theory. With respect to the whitewood pallet theory, there
25 would be no possible way and Mr. Pavlovich says this. There

1 is no standard whitewood vendor pallet.

2 Okay. What happens -- and, and I actually had to load
3 watermelons for a summer. So I know this.

4 What happens when you're on the back of the flatbed
5 with the watermelon bins that are going to the store with
6 the pallets on them is that you throw the watermelons up.
7 You put them on the bin. They get lifted off and put on the
8 semi and then carried to the store. It's whatever pallet is
9 available.

10 Those aren't Wal-Mart pallets. Mr. Pavlovich admits
11 that. They belong to individual vendors.

12 So those vendors could be any number of entities,
13 companies, et cetera securing those pallets. And so there's
14 not some standard way you could go into Wal-Mart and say
15 okay, this is a whitewood vendor pallet but here is what we
16 do know about this.

17 What we do know about those is that they don't meet
18 ANSI standards. They don't always have the correct two
19 nails on each. They are sometimes broken in the floor of
20 the Wal-Mart store and we have photographs where the
21 nailheads in this particular Wal-Mart store match this nail
22 and that's what Doctor Durig says is simply that.

23 And so I understand the idea that, you know, this is
24 not a typical situation in that we're looking at the
25 strength resistance of the pallet or this, that, or the

1 other thing. We're actually looking at a pretty
2 straightforward issue.

3 THE COURT: Let me ask. Let's talk about the opinions
4 in Number 4 --

5 MR. WILLEY: Okay.

6 THE COURT: -- that -- specifically about the
7 photographs that were taken outside of the Rules of Civil
8 Procedure, defense lawyers weren't there, and that sort of
9 thing.

10 MR. WILLEY: So, yeah, that -- they're not taken
11 outside the Rules of Civil Procedure. The Rule of Civil
12 Procedure 34 says may. It's a permissive rule where it's
13 required to be used. If -- you're not required to use Rule
14 34 on publically accessible premises.

15 I mean the -- what defense counsel would have us do --
16 I mean we -- we've sued a lot of the wal-Marts in this
17 state. We'd have to file a Rule 34 request every time my
18 wife wanted me to go pick up something from wal-Mart.

19 That's not the rule, and the rule is, if you need that
20 to gain access to something in the possession or control,
21 then you may use Rule 34 and they have to produce it. With
22 respect to a publically available space, it's not required
23 and we provided, in our memo with respect to that, several,
24 several citations from around the country where this has
25 come up and candidly we don't have any appellate law on it

1 in South Carolina and I think it has a lot to do with our
2 collegial bar and just a rule of common sense, which is you
3 don't have to file Rule 34 request to go to a big box store
4 even if who -- you're suing them and it's, it's that simple.
5 And, you know, with respect to this, anything used as a
6 third party, which obviously can come in and testify about
7 it.

8 So, it's not a situation where, you know, anything was
9 done wrong or anything like that, and, in fact, the
10 defendant in the case, Mr. Ringer, there's no -- there's not
11 even a Wal-Mart policy against taking photos in their store.
12 They find it unusual. And so he flagged it and asked about
13 it. But there's no policy against it. It's certainly not
14 illegal. It's a publically available place and you're not
15 required to use Rule 34 for that.

16 Rule 34 is for things that you would otherwise not have
17 access to.

18 THE COURT: Well, let me hear from the defense on that.

19 MS. BOYD: Well, Your Honor, while Wal-Mart welcomes
20 customers or invitees to come and shop in its stores, it
21 does not welcome third parties to come in and perform
22 inspection during active litigation and that's the
23 difference in this case.

24 We understand that the Wal-Mart is open to the public
25 but not for inspections especially where there are

1 questionable behaviors that are involved. A person carrying
2 around any, you know, equipment, you know, nails, hammers,
3 gloves, that -- that's questionable behavior as to someone
4 who's just simply walking through the Wal-Mart to take
5 photos.

6 So, we don't believe that this was a proper inspection
7 even though our stores are open to the public.

8 THE COURT: What---

9 MS. BOYD: It just leads to---

10 THE COURT: What did he do with the nail -- I mean with
11 the hammer?

12 MS. BOYD: I mean we, we don't know, Your Honor. We,
13 we saw the pallet shaking. We got pictures of a broken
14 pallet. That's all we can proffer to the Court. We can't
15 say that we zoomed in on any actual behavior.

16 But why would he need a hammer to simply take photos?

17 MR. JEFFERIES: Your Honor, if I may respond---

18 MS. BOYD: It's a---

19 MR. JEFFERIES: ---briefly on this one point.

20 We deposed the care -- the custodian of those photos.
21 When -- she looked at every single photo. She looked at
22 every single video and I specifically asked her do you see
23 anything being done with this hammer other than the
24 gentleman carrying it around?

25 She says no, all I see is him carrying it around. So,

1 they can speculate---

2 THE COURT: Well, were you there where this inspection
3 took place?

4 MR. JEFFERIES: Your Honor, I was inside that Wal-Mart.
5 I was not with the -- I was not physically with the
6 gentleman that, that is pictured in the video with the
7 hammer but I was in the Wal-Mart.

8 THE COURT: What did he do with the hammer?

9 MR. JEFFERIES: Well, I didn't see him. All I saw -- I
10 see, I see the same video of him carrying it around is all I
11 see.

12 THE COURT: You didn't ask him what he did with it?

13 MR. JEFFERIES: No, I didn't even learn of it, Your
14 Honor, until afterwards when I saw the video of him carrying
15 it around.

16 THE COURT: That's what my question is.

17 You've seen the video and who was the gentleman that
18 was carrying it?

19 MR. JEFFERIES: The gentleman's name is Joe Conlin,
20 Your Honor.

21 THE COURT: All right. And you have not talked to Joe
22 about what he was doing with the hammer after this became an
23 issue in the case?

24 MR. JEFFERIES: No, I did not, I did not ask him, Your
25 Honor. I mean I suppose I could but I, I did not. I saw

1 the video and I didn't see anything wrong. So I did not.

2 MR. WILLEY: The issue, the issue with respect to that
3 part of the case, Your Honor, is we got a letter which was
4 notarized, which, by the way, is not an affidavit under the
5 rules. So, that -- we'll set that aside for a minute.

6 But we went through with the asset protection manager
7 each of the clips she provided and here's what we asked her,
8 which was very important.

9 We asked her is there a Wal-Mart camera covering every
10 inch of the store and she said, stationary cameras, there's
11 deadzones. However, we have PTZ cameras which pick up all
12 of the deadzones which we can move -- we can zoom after the
13 fact and that's what we did in this case.

14 And so we asked her well, how good are those cameras
15 and you know -- Your Honor, we said -- this was the
16 question.

17 we said if somebody drops some coins on the floor,
18 would you be able to see them and she said those cameras are
19 so good, not only could I see the coins, I could tell you
20 what coins they were and whether they were on heads or tails
21 when they hit the floor.

22 So, let me tell you, Your Honor, if there was a video
23 on that system that showed this gentleman, Mr. Conlin, doing
24 something wrong with a hammer, we would of known about it
25 because the asset protection---

1 THE COURT: Have you asked him what he did with the
2 hammer?

3 MR. WILLEY: I've not spoken with him about it. The
4 asset protection manager that went back and pulled all of
5 the video, followed them all the way through the store until
6 the time they left, said there was no evidence in any of the
7 videos that she saw of any vandalism or anything going wrong
8 with the hammer, anything untoward.

9 Now, what else were we doing that day?

10 what else were we doing that day is they were coming
11 back to the office and we were deconstructing some pallets
12 to see if my theory was right about whether or not a
13 seven-eighths inch nail could hold a half-inch deck board.
14 Now, not wal-Mart pallets. Other pallets that we obtained.

15 But here why that -- here's why the wal-Mart piece is
16 important because -- and this is on -- and we filed a memo,
17 of course, in opposition to this specific motion. On Page 8
18 we asked wal-Mart whether or not they had wood pallets in
19 their store and what they said is this.

20 Defendant wal-Mart responds that the pallets in the
21 area of the subject store where the alleged incident
22 occurred, the grocery area action alley, are plastic and do
23 not contain nails. We now know that's a lie not because we
24 just went there, but also because, when we deposed their
25 general manager who looked at the videos of that day, he

1 pointed out a whitewood pallet in the grocery action area
2 that watermelons were sitting on top of.

3 But that's what they told us in formal discovery
4 responses. We don't use wooden pallets in that area of the
5 store.

6 So, that was the---

7 MS. BOYD: And actually---

8 MR. WILLEY: And---

9 MS. BOYD: Sorry. I apologize.

10 MR. WILLEY: That's, that's an interrogatory response.
11 Later there was a RTA response where they claim oh, we only
12 denied it because it said our maintain pallets and we don't
13 use our maintain pallets. We know that's a lie too cause we
14 have photographs of it but---

15 THE COURT: Mr. Jeff -- Mr. Jefferies, you -- I've seen
16 a few of the clips and you had on gloves.

17 What were you wearing gloves for?

18 MR. JEFFERIES: I, I respectfully -- Your Honor, I, I
19 didn't have on gloves in any of those or in that video or at
20 all in the, in the store.

21 THE COURT: You did not?

22 MR. JEFFERIES: No. No, Your Honor. If you were to,
23 you know, blow it up real big live---

24 THE COURT: Who was it, who was it that had gloves on?
25 Somebody had gloves on.

1 MR. JEFFERIES: I think there was somebody carrying a
2 pair of gloves around. It wasn't me.

3 All I had -- and you can see it in the videos and the
4 still, I had my phone out. I was taking pictures. I was
5 taking video.

6 Tim Ringer approached me and asked me what I was doing.
7 I told him I was taking pictures and video. I asked if
8 there was any policy against that. He said no, there's not
9 and he permitted me to continue taking pictures and video
10 and -- until I left the store.

11 So, I didn't see anybody -- myself in the store with,
12 with hammer or gloves. I've only seen that on the videos
13 later.

14 THE COURT: All right. All right.

15 MS. BOYD: Rob, you're muted.

16 MR. BLAIN: Your Honor, if I may chime in. I think
17 we've bled into the motion in limine regarding that, that,
18 that, that unauthorized inspection we're dealing with.

19 I have the video cued up. I'd be happy to show it to
20 you so you can draw your own inferences about what
21 Mr. Jefferies and his two companions were doing there that
22 day but it's clear.

23 THE COURT: Let me, let me see it.

24 MR. BLAIN: All right. I'd be happy to show it to you.
25 should be able to now.

1 Now, I might have to -- am I able to share my screen or
2 is it able --?

3 THE LAW CLERK: You should be able to. You're, you're
4 now a host.

5 MR. BLAIN: Okay. Bear with me one moment, Your Honor,
6 as I'm getting oriented to the technology here.

7 (Pause.)

8 MR. BLAIN: Well, this video clip starts with
9 Mr. Jefferies and his two companions walking into the
10 Wal-Mart Store. You see them right here.

11 Just for, for brevity, this clip has been sped up
12 briefly. Mr. Jefferies and his companions are now inside
13 the store -- forgive the audio cause I'm belated.

14 Mr. Jefferies and his companions are now in a different
15 area of the store than Ms., Ms. Jones was and -- but here
16 they are, Mr. Jefferies and his two companions kneeling down
17 to inspect pallets in the general merchandise area of the
18 store, not the grocery area of the store where Ms. Jones was
19 located.

20 MR. JEFFERIES: Your Honor, if I just may point out,
21 Mr. Jefferies is not in this video.

22 MR. BLAIN: At this very moment, that, that -- that's
23 correct. This would be Mr.---

24 (WHEREUPON, there was an indiscernible statement made
25 at this time by some unidentified party.)

1 MR. BLAIN: -- is kneeling down here looking at -- take
2 a close inspection of the pallets with -- here are the two,
3 two companions for Mr. Jefferies on the right side of the
4 screen.

5 As they turn back, you can see that they're holding a
6 hammer and one -- if I could pause it, they're holding a
7 hammer in one hand and gloves in the other. I'll just
8 rewind that real quick.

9 Handing -- Mr. Conlin's handing gloves in, in Ms.
10 Franklin's hands and here's Mr. Conlin with a hammer again
11 circling this, this display in the lower left. Here are the
12 two of them walking in the store still carrying gloves,
13 still carrying a hammer. Mr. Conlin appears to be bending
14 down looking at a display here and you'll see him tapping
15 the hammer on his hand in a moment.

16 And, you know, as Mr. Willey said, you know, Wal-Mart
17 is not asking for a Rule 34 request to go shopping with his
18 wife on Sunday afternoon for groceries. But if parties are
19 in the Wal-Mart Store, doing destructive testing, taking
20 photographs and videos that they intend to use as evidence
21 or as exhibits in, in depositions in litigation -- here,
22 here they are, the companions kneeling down, and that is
23 certainly something defense counsel must be notified of so
24 that they can appear and attend, and, and, you know,
25 authenticate what is -- what exactly is being done.

1 I mean absent notice to defense counsel, it's just a
2 complete violation of the Rule 34 Rules of Civil Procedure.

3 Here are the---

4 MR. JEFFERIES: Once again, Your Honor, we haven't seen
5 any destructive testing in this video. We've seen two
6 people walking around taking pictures.

7 MR. BLAIN: This gentleman's holding a hammer. She's
8 holding gloves. At numerous points you can see them
9 appearing to take photographs. Those photographs have not
10 been produced in discovery although certain photos, a hand
11 full of photos were used during the, as exhibits, during the
12 expert deposition of Mr. White.

13 We don't know if that's all the photos they took. We
14 don't know if they took video. We don't know what, what,
15 what evidence they may have gathered while they're in the
16 store. It's just not the, the, the type of trial by ambush
17 that, that South Carolina Rules of Procedure -- Civil
18 Procedure should, should endorse.

19 Here's, here's an up-close, sharp photo of, of him
20 holding the hammer in one hand and gloves in, in Ms.
21 Franklin's hands here walking through the store carrying a
22 hammer that they picked up at Wal-Mart. Here they are
23 talking with Mr. Jefferies down here in the blue shirt and
24 khaki pants.

25 You know, Your Honor, you can draw your own inferences

1 but they appear to be showing Ms. Franklin with a cellphone,
2 perhaps photos on the cellphone that they've taken. And all
3 this is done without any notice to defense counsel during
4 active litigation.

5 Perhaps Mr., Mr. Jefferies may be looking at his
6 cellphone at this point.

7 You know, this is not a Sunday afternoon shopping trip.
8 This is a, this is a, a trip to the Wal-Mart Store to gather
9 evidence. It's what should have been notified -- here's
10 Mr. Jefferies. It's what should have been notified as a
11 Rule 34 inspection. Plaintiff's counsel just simply didn't
12 do that. They did it in secret without any notice to
13 defense counsel, and I liken it to, you know, a, a, a, a
14 criminal law doctrine, the Fruit of the Poisonous Tree
15 Doctrine.

16 That's gonna exclude any evidence that's illegally
17 obtained through an improper search and seizure and the same
18 principles apply here. You know, evidence obtained through
19 an improper inspection without notice to defense counsel.
20 It can't be authenticated. It can't be used as evidence and
21 it's just simply -- you know, it's not probative of the
22 condition of the store at the time.

23 Now we get into a really key point here, Your Honor.
24 They're gathered around this, this, this display in the
25 lower left side and Mr. Jefferies and his companions are

1 gathered here looking at a cellphone at 2:56.

2 Now I've circled back to 2:38 and you'll see the two
3 companions circle around this display with a hammer and
4 you'll see the display move. You'll see the display shake
5 as if somebody is, is manipulating it or, or doing some
6 destructive testing and that is particularly important
7 because photographs of the base of this very same display
8 showing, you know, an allegedly damaged pallet were used as
9 exhibits in the deposition of Doctor White.

10 Now, was the display damaged beforehand?

11 we'll never know. But the fact that they are moving
12 and manipulating the display with a hammer and then
13 attempting to use that as exhibits---

14 MR. WILLEY: There's no evidence of that.

15 MR. BLAIN: ---in, in, in Doctor White's---

16 MR. JEFFERIES: Your Honor, again, he's speculating
17 about things that may or may not have happened before these
18 folks come into the screen. There's nothing in this video
19 showing that this -- what he's speculating about.

20 MR. BLAIN: well --.

21 MS. BOYD: And, Your Honor, defense counsel proffers
22 that if we had been given ample, ample notice and allowed to
23 be present, the same alleged defects presumably that they
24 thought they uncovered would of been there and we wouldn't
25 have these questions. But we weren't allowed on notice or

1 an opportunity to be present, and there is -- even our own
2 witness who Mr. Willey has taken great length to say she
3 denied any wrongdoing, she said these actions were
4 suspicious and they raised -- they were suspicious behavior
5 in the store.

6 And so we're simply saying we -- you're right. We
7 don't know. We are speculating but we weren't allowed the
8 opportunity to be present and you proffered this evidence as
9 a result of this improper inspection that should not be
10 admitted into evidence because we don't know. And had we
11 been allowed to be there, we would all know and this would
12 be a moot point.

13 MR. WILLEY: And the problem is that, unlike the Fruit
14 of the Poisonous Tree Doctrine, which is actually a doctrine
15 in the law, there's nothing in Rule 34 or otherwise in the
16 rules of discovery re -- requiring a Rule 34 request to
17 access publically available premises and we can dislike the
18 rule but that's the rule.

19 There's nothing requiring a driver who sues DOT because
20 of a dangerous intersection to notify DOT when they go out
21 to take photographs of that intersection. Nothing.

22 THE COURT: But if they saw -- if they manipulate the
23 road they do.

24 MR. WILLEY: Well, that's true and I will agree with
25 you and that's why we took Mr. Wright's deposition. And we

1 asked her specifically is there any evidence in any video
2 that you saw of any vandalism, of anything being done with
3 that hammer other than be carried around.

4 She said no.

5 And, more importantly, and you see it in the beginning
6 of these clips, there was a PTZ camera trained---

7 THE COURT: well, what she---

8 MR. WILLEY: ---on that space.

9 THE COURT: what she has to say about it is not
10 really---

11 MR. WILLEY: But she---

12 THE COURT: ---operative.

13 MR. WILLEY: She's the asset protection manager. So
14 she's the person that Wal-Mart hires to make sure this isn't
15 happening in their store and she told us that the---

16 THE COURT: well, what do you think about---

17 MR. WILLEY: ---PTZ camera---

18 THE COURT: ---what I have to think about that, and,
19 you know, the fact that there was a hammer there and that
20 the merchandise was moved?

21 we don't have it but that's certainly circumstantial
22 evidence there was some manipulation of the pallet.

23 MR. WILLEY: Can, can we -- can we do -- I can't see---

24 MR. BLAIN: I can.

25 MR. WILLEY: Okay.

1 MR. BLAIN: I'd like to be more technologically savvy
2 here but, you know, I can, I can play it again or go back.

3 MR. WILLEY: I don't, I don't need the video. I just
4 can't see the judge.

5 MR. BLAIN: All right.

6 MR. WILLEY: Can we stop the screen share?

7 MR. BLAIN: I'd like to. If Mr. Hofferth is able to
8 help I'd appreciate it.

9 THE COURT: Okay.

10 MR. WILLEY: So---

11 THE COURT: Mr.---

12 MR. WILLEY: What I would say about that Honor -- Your
13 Honor, is two things.

14 First, there is a PTZ camera trained on that display.
15 You saw it in the beginning of these clips. It's the little
16 letters down at the bottom, PTZ.

17 If there was any manipulation of that display or pallet
18 by these two individuals, it would be caught on camera by
19 Mrs. Wright's deposition who was the individual responsible
20 for the camera system, the manager responsible for the
21 camera system at the time. They haven't produced that and
22 here's what's more troubling to me.

23 They haven't produced the video of the other side of
24 that pallet either way and the circumstantial evidence there
25 is they spoliated it because it's not good for the inference

1 they want the Court to draw. Ms. Wright told us in her
2 deposition, under oath, those PTZ cameras, you could see
3 every dead spot in that store. There is no dead spot.

4 There is a camera that shows the opposite side of that
5 display. She was asked to pull all of the videos, she told
6 us in her deposition, of those individuals in the store and
7 they didn't produce them all.

8 THE COURT: What do you have to say about that,
9 Mr. Blain?

10 MR. BLAIN: Your Honor, we've produced I believe 30
11 videos of Mr. Jefferies and his two companions in the store.
12 Those are all the videos that were retained by the store.
13 There are no other camera angles.

14 There are dead spots. You know, the, the surveillance
15 cameras in Wal-Mart are not intended to catch opposing
16 attorneys up to mischief. They're intended to stop
17 shoplifting. They're intended to keep an eye on, on the,
18 the hotspots in the store where, where customers are
19 checking in and out of registers. They don't cover every
20 last inch. It's a 150,000 square foot store and -- that,
21 that can not possibly be covered by, by -- every inch by a
22 camera.

23 We've produced everything we have in, in compliance
24 with the Rules of Discovery. We want to act in good faith
25 because really that's, that's the hand we've been dealt

1 here. We've been caught by surprise by, by the plaintiff's
2 counsel that did not notify us of, of a, a Rule 34
3 inspection. This simply---

4 THE COURT: Mr. Blain, what do you think about---

5 MR. BLAIN: ---is not---

6 THE COURT: What do you think about---

7 MR. WILLEY: Let me, Judge---

8 THE COURT: ---a public -- no, hang on a second,
9 Mr. Willey.

10 Mr. Blain, what do you think about whether it's proper
11 for a person simply just to walk through Wal-Mart and take
12 pictures?

13 MR. BLAIN: Your Honor, I think we're, we're dealing
14 with a, a, a entirely different situation.

15 But to address your question, if, if Mr. Willey or Mr.
16 Jefferies want to go shopping in the grocery store and use
17 their cellphone to take a picture of, you know, a -- some
18 merchandise to text your wife of do I have the right brand
19 of cereal, no issue. But if they are taking evidence that
20 they will contend is material to an ongoing litigation, then
21 defense counsel needs to be notified, needs to be present.
22 Otherwise it's a violation, a clear violation of the spirit
23 of Rule 34 and, and that's what's going on here.

24 They had at one point---

25 THE COURT: He says that Rule 34 is not mandatory but

1 discretionary.

2 MR. BLAIN: Well, if, if -- Rule 34 -- that---

3 MR. WILLEY: So what's the violation?

4 MR. BLAIN: The, the violation is, is not notifying
5 defense counsel and, and obtaining evidence that they
6 intended to introduce into Doctor White's as, as exhibits to
7 Doctor White's deposition, and they've, they've proffered
8 that as exhibits showing allegedly damaged pallets. We, we
9 don't know how those pallets got damaged. I think there's a
10 circumstantial evidence that---

11 MR. WILLEY: Well, you're comparing (indiscernible)
12 that you have to do that.

13 MR. BLAIN: Pardon me, Mr. Willey.

14 There's, there's circumstantial evidence that they were
15 manipulating that very same display with the hammer and
16 gloves. I, I think there's certainly circumstantial
17 evidence that that very pallet was damaged by the
18 plaintiff's counsel at the time they took those photos, at
19 the time we're looking at the surveillance video, and, and
20 absent that, there's no other -- you know, so, so I think
21 the, the fact that they are in the store without notice to
22 defense counsel and obtaining photographs, videos, who knows
23 what, without, without prior notice and then attempting to
24 use that in depositions and perhaps at trial is, is a clear
25 violation of the spirit of the rules of discovery, and, and,

1 and that information is simply not been produced. It's not
2 been produced to, to us in discovery.

3 We don't know what photos they took. We don't know
4 what video they took. We don't know what evidence they
5 collected cause it hasn't been produced.

6 The only way we've seen it is it was used a -- a, a few
7 photos were used as exhibits to Doctor White's deposition
8 and, and it's just trial by ambush. That, that, that can
9 not be the way we practice law here in South Carolina.

10 MR. JEFFERIES: Your, Your Honor, if I may?

11 THE COURT: Yeah.

12 MR. JEFFERIES: Just two points very briefly.

13 It's not just Mr. Willey that says that Rule 34 is
14 permissive. This is in our brief. So I won't recite it
15 all.

16 It's every Court that has looked at this, and we cite
17 these cases, in, in department stores even, has said it's
18 permissive, that it's not against the rules in a public
19 place and even -- in full candor, there are some Courts that
20 take a weakly opposite view and say well, it doesn't violate
21 the letter but it violates the spirit, but, nonetheless, we
22 will not exclude.

23 That is all in our, in our, in our memo and I just
24 commended that to the Court's attention that that is, to the
25 extent any authority is available, it all favors allowing

1 these photos into evidence.

2 The second thing is just to create a -- to clarify a
3 factual misstatement that I'm sure Mr. Blain did not intend
4 to make. There are no dead zones according to the woman who
5 is in charge of running the video, asset protection. We
6 asked her, Page 23 of her deposition, and she said very
7 specifically no, PTZs cover dead zones. That's what I don't
8 think you get.

9 She was very clear when I was pressing her as to
10 whether there were any dead zones. No, there are not. The
11 PTZ cameras cover them. But Your Honor can read that
12 deposition for yourself. It's on Page 23.

13 So, it's very, very clear that, were there video of
14 anything bad happening on the far side of that display,
15 Wal-Mart has it because there are no dead zones.

16 MS. BOYD: And I would proffer, Your Honor, that Mr.
17 Jefferies knows that that's simply not true as the store
18 manager, Tim Ringer, told him when we were at the deposition
19 in, in a casual conversation that Wal-Mart does not cover
20 every aspect. They're not cameras everywhere.

21 We had a conversation about that, and, and, and
22 Ms. White may have been mistaken because PTZs are live
23 cameras. So you can zoom and pan and move them around.
24 That's the hand tilt, zoom feature of them. They are
25 movable during live action.

1 That's not the case recorded because a, a rep -- when
2 you record something, it's recorded. The data is recorded.

3 How, pray tell, would you go back five hours and then
4 pan till zoom -- the zoom to another area when it's been
5 recorded?

6 That's not even technologically possible. That's an
7 impossibility and a, and a total misstatement or a, a -- she
8 didn't understand, misunderstanding of what was being asked
9 of her and it's -- so that's just not technological.

10 I mean, if we use common sense, you can not pan, tilt,
11 zoom a camera over recorded information. So you can't go
12 back and then go look left or look right or look behind you
13 cause that is what those PTZ stands -- stand for, Your
14 Honor.

15 So it's simply there are -- if a camera is facing left,
16 it can not see what's happening on the right. You can't go
17 back 10 hours later and say hey, let me change my mind over
18 this recorded data and now look left. That's not
19 technologically possible, and had, you know, that it's --
20 it's just not. That's a misstatement or a misunderstanding
21 of the technology.

22 THE COURT: Ms. Boyd, did you attempt to take the
23 deposition of the man with the hammer?

24 MS. BOYD: I did not, Your Honor. At the time that we
25 located this information we were subject to trial the next

1 week. And so we simply deny -- he's never been identified.
2 we didn't know his name until it was disclosed today to this
3 hearing. And so we did not -- we did not attempt to depose
4 him but we've provided this information and this motion.

5 This is our second time filing this. We withdrew it.
6 And so plaintiff's counsel has never provided us with any
7 information related to our motion either.

8 MR. WILLEY: Your Honor, if I didn't have 14 pages that
9 we've submitted to the Court, a spreadsheet where Wal-Mart
10 has been sanctioned everywhere for simply not telling the
11 truth, what just happened would surprise me but here's what
12 just happened.

13 During Mr. Blain's presentation he identified both of
14 those individuals as Mr. Conlin and Ms. Franklin before
15 their names -- Ms. Franklin's never been mentioned.

16 So, if they didn't have the information, how did he
17 know it?

18 Number one.

19 Number two, the representation was just made that oh,
20 well, Mr. Ringer said that there are dead zones in an
21 offhand communication.

22 well, certainly the asset protection manager of
23 Wal-Mart, during a under oath deposition, would not have
24 perjured herself?

25 Here was the question so there's no confusion.

1 well, except to like see what's in a dead zone or
2 what's out of the camera angle or something like that?

3 A. No, PTZs cover dead zones. That's what I don't
4 think you get.

5 But here's the point. In the video we saw both sides
6 of that display. It's a kite display according to Ms.
7 wright in her deposition yesterday. We saw both sides of it
8 in the clips but we didn't see, conveniently, the opposite
9 side when it was moving just a little to see if somebody
10 bumped a cart into it or somebody fell into it or somebody
11 pulled a kite off and it moved. These are flimsy cardboard
12 displays.

13 I don't know what happened and Ms. Wright testified
14 that she was recording live. Only in the beginning did she
15 have to go back and pull because, as soon as Mr. Ridger told
16 her that that was Mr. Jefferies, he texted her and she went
17 on right away and started pulling live but here's the bigger
18 point.

19 THE COURT: Mr. Blain, Mr. Blain, do we know that the
20 pallet that shows some destruction -- there's a picture that
21 shows destruction of a pallet and---

22 MR. BLAIN: Yes, sir.

23 THE COURT: Do we know that that is the pallet that was
24 shaking?

25 MR. BLAIN: Yes, sir, one of the, one of the pallets

1 that was used -- a photograph of a pallet used in Mr.
2 white's deposition is the pallet that was shaking and I'll
3 show it, it to you just briefly.

4 THE COURT: Okay.

5 MR. BLAIN: Here we go, Your Honor.

6 THE COURT: All right.

7 MR. BLAIN: Your Honor, I believe I may be sharing my
8 screen at this point.

9 Are you able to see that?

10 THE COURT: Yes.

11 MR. BLAIN: This is a kite display that would -- in
12 Wal-Mart that was shown on video that was shaking. These
13 are exhibits from -- this is Exhibit 16 from Doctor White's
14 deposition and now, Your Honor, I think it's important to
15 our motion in limine, in addition to the Rule 34 issue, to
16 recognize that the photos, the video, any evidence that was
17 obtained during this improper inspection is, is, is also
18 inadmissible under a Rule 401 and Rule 403 analysis.

19 These photos, these videos were taken May of 2019.
20 They're simply not probative of the condition of the pallets
21 in June of 2015 when Ms. Jones is in the store. They're
22 simply not probative.

23 THE COURT: Four, four years later?

24 MR. BLAIN: Yes, sir, these, these photos and, and, and
25 Mr. Jefferies inspection was four years after Ms. Jones was

1 there.

2 They're also of a different area of the store. Ms.
3 Jones was in, in, in the grocery action alley. These photos
4 are over -- this kite is in the general merchandise area of
5 the store.

6 It's a very large store. It's 150,000 square feet.
7 And, and so it's -- they -- they've gone outside. They've
8 gone into the garden center. They've gone into the general
9 merchandise area.

10 Mr. Jeffery -- Jefferies and his companions have
11 inspected the entire store to look for, you know, something
12 that they could use as evidence without notice to us, and
13 it's simply not probative of, of what the condition of the
14 pallets were when Ms. Jones was in the store and it's not
15 probative of where the nail may have come from cause it's an
16 entirely different area of the store.

17 And they, they can't authenticate those photographs.
18 We didn't know Mr. Conlin's name until just now. I've met
19 Ms. Franklin. I've litigated cases with her. I recognized
20 her on video. I, I'm -- you know, that -- that's, that's a
21 whole different matter.

22 And so our argument on the motion in limine is, is, is
23 three fold. This is a violation of the Rules of Civil
24 Procedure to be in the store. They didn't follow Rule 34.
25 The, the photographs, the evidence obtained is, is not

1 probative of, of anything, any material question for the
2 jury to decide in this case. It's, it's a violation of Rule
3 41. Oh, I'm sorry, Rule 401 of the rules of, of evidence
4 and it's a violation of Rule 403.

5 It's gonna create a, a highly prejudicial impression on
6 the jury to ask them to speculate about where -- what, what
7 2010 pallet conditions have to do with Ms. Jones 2015
8 injury. It's, it's asking them to infer things that are
9 simply entirely based on speculation and---

10 THE COURT: Mr. Blain?

11 MR. BLAIN: Yes, sir.

12 THE COURT: I, I have not read the entire deposition
13 but I assume, in the deposition, the expert's deposition,
14 they were -- they showed them these pictures and now I'm
15 asking all of you is there any way that you can exclude
16 these photographs and how that will affect the testimony of
17 the experts?

18 MR. WILLEY: Well, Your Honor, two things.

19 One, these -- we've lost -- they've lost on 34 cause
20 the rule doesn't say what it wanted to say. So now we're on
21 401 and 403 and here's the problem with 401 and 403.

22 These pictures were not shown and are not being shown
23 as probative on what pallets looked like in 2015. Their
24 expert's testimony is that wal-Mart pallets, pallets in a
25 wal-Mart, complied with ANSI standards in 2015 and today.

1 we know, and he admitted, that's not true and we also
2 know that that pallet that we just looked at is exactly the
3 type of pallet that I was telling you about. It's a
4 whitewood vendor pallet, not a blue check pallet. Seasonal
5 display came in on that pallet and was placed on the line
6 without an inspection against Wal-Mart's guidelines.

7 So, that's how those photos are used in the trial of
8 the case. Not to show what a pallet looked like in 2015.
9 That would be ridiculous. I mean I'm not---

10 MS. BOYD: Well, Your Honor---

11 MR. WILLEY: I'm not even, I'm not even -- you know,
12 I'm not even wanting to make that stretch but their expert
13 says no, Wal-Mart's pallets comply with ANSI standards and
14 all I can testify to are about the nails used pursuant to
15 the ANSI standards and a seven-eighths inch nail isn't.

16 And so we say well, there's a lot of pallets in
17 Wal-Mart that don't comply with the ANSI standards. Oh, I
18 don't know. I don't know about that.

19 So he starts showing pictures. He says well, looks
20 like a Wal-Mart. You know, you can see a rollback sign.
21 So, yeah, that's what the pictures are for. It's
22 impeachment, which, by the way, let me point this out.

23 Even if they had asked for it, they didn't. We have no
24 duty to disclose impeachment evidence ever under any rule.
25 It's a black letter law and, in fact, think of this. Think

1 of what Wal-Mart does. Think of what defense counsel does
2 when they go and surveil our clients when our clients say
3 oh, I can't do the things that I use to do and they go to
4 publically available streets and sit outside of their house
5 and videotape them and say oh, they can ride bikes. They
6 can get up and down the stairs.

7 They don't send Rule 34 requests to take video of our
8 client's in a publically accessible place because they're
9 not---

10 MS. BOYD: But that---

11 MR. WILLEY: ---required to and---

12 MS. BOYD: I would assert---

13 MR. WILLEY: ---because it's impeachment evidence. 401
14 and 403 don't matter. It goes to the credibility of the
15 witness' testimony, which is what these photographs are
16 being used for.

17 MS. BOYD: I disagree, Your Honor.

18 Doctor Durig, in his deposition on Page 26, testified
19 the photographs are the primary, primary thing to look at at
20 the condition of the pallet. So, he's used -- utilizing
21 that to talk about the, the pallets or what they would of
22 looked like at the time.

23 There's, there's no indication that he's not improperly
24 relying on these -- the pallets. In his opinion, he says
25 if -- that there -- the, the main -- the pallets aren't

1 maintained in perfect condition. And so that's evidence
2 that, that the pallets are broken and that's the probable
3 source of the pallet.

4 Those are necessary connections. They're -- he's
5 drawing an inference from these photos and he admits it's
6 based on the photos. He says I have reviewed the photos.

7 THE COURT: All right.

8 MS. BOYD: And he's making a, a, a -- an opinion about
9 the state of the pallets. But all of that is irrelevant
10 because there's no indication -- plaintiffs have made great
11 weight about whiteboard pallets.

12 Plaintiff never said she walked next to a whiteboard
13 pallet. She never indicated that she saw a nail protruding
14 or anything else. That doesn't establish what was happening
15 in 2015 and their, their own expert's relying on these
16 videos im, improperly.

17 And, as far as surveilling plaintiff, one, there's no
18 indication any of that was done in this case, and, two,
19 there's no inspection. The Wal-Mart PPI or whatever didn't
20 go on their property and peek in their window and film
21 inside their home or inside their garage. That is the, the
22 impropriety.

23 They didn't stand somewhere and just look. They did
24 a -- an actual inspection of touching merchandise where it's
25 moving. They're really closed down, up one, zooming in.

1 That's the inference, Your Honor. We're saying that's the
2 impropriety of this and they should not be rewarded by
3 allowing this evidence into the -- to the detriment of
4 the -- of defense counsel when we could of---

5 THE COURT: All right.

6 MS. BOYD: ---have been notified and just---

7 THE COURT: I am gonna ask---

8 MR. WILLEY: Briefly---

9 THE COURT: ---Mr. Blain that you draft an order
10 stating that, that, in theory, I think that it might be
11 acceptable for a person to go into a publically access --
12 publically accessible place of business and simply take a
13 video or take pictures. However, it's different when
14 there's, when there's destructive testing and I find,
15 regardless of what the employees of, of Wal-Mart say, I find
16 there's circumstantial evidence that there indeed was
17 destructive testing of this particular pallet.

18 The picture of the destructed pallet is gonna be
19 excluded and it's excluded because I think it -- there's
20 substantial circumstantial evidence to indicate that there's
21 destructive testing that, that brought about that
22 photograph.

23 I also believe that it's not probative in that it was
24 some four years after the accident, and I'm not gonna allow
25 that. I'm not gonna allow Doctor Durig to testify with

1 regard to that particular photograph of the destroyed, the
2 destroyed pallet.

3 Is there any other pictures that are gonna be offered
4 other than the one that's destroyed that's at issue here
5 today?

6 MR. WILLEY: Yes, we offered other photographs of other
7 pallets in the store that are not compliant with ANSI
8 standards from that, from that wal-Mart. And, again, you
9 know -- well, you -- you've made your ruling. So I'll let
10 it lie on that but there were a few factual things wrong
11 with Ms. Boyd's last arguments but we'll just --

12 THE COURT: All right.

13 MR. WILLEY: -- file those on a reconsideration.

14 THE COURT: All right.

15 MR. BLAIN: Your Honor?

16 THE COURT: Yes.

17 MR. BLAIN: I would just note that we are aware of 17
18 photographs that were taken during that 2010 -- May, 2019
19 inspection. Those 17 photographs were used in the
20 deposition of Mr. White.

21 Based on my reading of Mr. Durig's affidavit, it
22 appears that he is relying on at least those, those 17
23 photographs of, of the store, of pallets in and round the
24 store in May, 2019. If I understand your ruling correctly,
25 none of those photos are probative of the condition of the

1 pallets in the store in 2015, and, therefore, I would ask
2 that your ruling apply to any and all photographs taken
3 during the May, 2019 improper inspection.

4 MR. WILLEY: And, Your Honor, that's not why they're
5 being offered, and even if it was, it would still go to
6 punitive damages. So -- but that's not why they're being
7 offered. They're not being offered to show the condition of
8 pallets in 2015.

9 They're being offered to show that what their expert
10 says, that Wal-Mart always used ANSI compliant pallets, is
11 false and Doctor Durig rebuts that.

12 THE COURT: All right. Even though I think that the
13 inspection was improper, I don't think the South Carolina
14 appellate entities have addressed that issue. This is
15 squarely -- this question can be squarely put -- be put
16 before the appellate entities and I think it ought to be.

17 I think the spirit of the rule requires that, when
18 there's litigation going on, that you follow the Rule 34 in
19 that the -- and that lawyers are there to prevent any
20 allegations of destructive testing and we wouldn't be in
21 this predicament had that been done.

22 And, and I am gonna allow the pictures of, of the --
23 and I will review them again, but preliminarily, I am -- and
24 I will take a look at all 17 when it comes time to introduce
25 them. But, preliminary, if there's clearly no destructive

1 testing that's been performed, I'm gonna allow, allow those
2 to be referred to but there's gonna be a limiting
3 instruction that there -- this is not -- this was taken four
4 years after the accident and that it's offered for the
5 limited purpose of whether or not the pallets are up to ANSI
6 standards.

7 MR. BLAIN: Thank you, Your Honor.

8 THE COURT: All right. I'm gonna allow Durig to
9 testify with regard to the fact that the nail in question
10 was indeed a roofing nail. That's his opinion. He's gonna
11 be able to testify as to that.

12 I think I'm gonna allow him to testify that many
13 different fastener manufacturers sell pallet nails that
14 start around one and a fourth inch long and go up to
15 3-inches long, and I'm gonna allow him to testify that the
16 longer the nail the stronger the connection.

17 I'm not gonna allow him to testify with regard to
18 Chinese companies and this advertising labeling of pallet
19 roofing coil nail. I think that is not very probative as to
20 the issues at hand here today.

21 I'm not gonna allow him to opine that there's nothing
22 that would prevent someone from using a seven-eighth inch
23 long nail similar to the one shown in the photograph that
24 injured Ms. Jones. I'm not gonna allow that.

25 All right. I'm not gonna allow him to testify with

1 regard to the pallet with the missing nail and the fact that
2 it was broken away, and, as a general rule, the showing of
3 pallets some four years later, the fact they might be
4 broken, is not what you're offering them for. And so I'm
5 not gonna allow those. However, to the extent that the
6 photographs might show that they don't comply with ANSI
7 standards, those photographs can be admitted.

8 And I know that, Mr. Willey, you disagree with this but
9 I think it's inappropriate to allow Durig to say the most
10 probable source for a loose nail sitting on the floor of a
11 Wal-Mart store adjacent to a main display aisle that
12 displays merchandise on wooden pallets is, is the wooden
13 pallets. This is different than a doctor in a medical
14 malpractice case looking at the surgical notes and making a
15 determination as to what the negligence is.

16 This is, is pure conjecture. However, Mr. Willey, what
17 you're wanting Durig to say certainly you are gonna be able
18 to say in your closing argument. That's a factual dispute.

19 You can elicit from them what kind of roof they have,
20 the fact that they don't use nails there, and then, in your
21 closing argument, you can indeed say exactly what Durig is
22 trying to say here. It's a factual thing. You don't need
23 an expert to say that. It's a factual dispute and I don't
24 think that Durig can look into a crystal ball and say that.
25 That's just not his role. That's not what an expert is for.

1 And that's almost akin to these DSS people asking
2 whether or not the child's telling the truth or not. I mean
3 this -- that's the ultimate question for the jury to decide
4 is to where and if the pallets contributed to this accident.

5 So, does everybody understand that?

6 (WHEREUPON, there was no audible response.)

7 THE COURT: All right.

8 All right. And what's the next motion that we have?

9 MR. WILLEY: Well, we did Durig. We did the motion in
10 limine and for sanctions. We have left, for defendants,
11 their omnibus motion in limine, which is a bunch of motions
12 in limine in one, and a motion for summary judgment.

13 THE COURT: All right. With regard to sanctions, I
14 think excluding the photograph in question that shows
15 damaged -- a damaged pallet is sanction to some extent. I
16 think it's im, improper the way it was conducted. I would
17 not recommend that but I don't think the rule specifically
18 prohibits. But I think it is a violation of the spirit of
19 the law, and I would hope that, at the conclusion of this
20 case, regardless of the, regardless of the outcome of it,
21 that they would have an opportunity to address that issue.

22 All right. Now let's go through the omnibus list of
23 motions. I haven't seen that yet. Let's go through them
24 one at a time.

25 MR. BLAIN: Well, thank you very much, Your Honor.

1 May it please the Court.

2 The defendant's omnibus motion in limine really lays
3 out six categories that we would like to put before the
4 Court as, you know, evidence or, or, or potential evidence
5 that should be excluded from trial and I'll just run through
6 those one at the time consistent with what was filed in our,
7 our, our motion yesterday.

8 The, the first one is the defendants would request that
9 any physical or photographic evidence of the alleged nail be
10 excluded, and the basis for this motion is really the -- a
11 factual dispute about what the nail is and looks like and
12 the chain of custody of, of this alleged nail.

13 Just to run through the facts, what we do know is the
14 plaintiff says she stepped on something in the wal-Mart
15 store, you know, back in June, 2015.

16 THE COURT: You know, that has never been made real
17 clear to me because I haven't read all the depositions.

18 I assume that whatever punctured her foot was recovered
19 by her or the doctor or what?

20 MR. BLAIN: Yes, Your Honor. I'll, I'll gladly explain
21 what we know about that. She, she recovered it from her
22 shoe. She presented it for a visual inspection to the
23 wal-Mart employees but the plaintiff retained it herself.

24 THE COURT: That does look like a roofing nail as I
25 know a roofing nail. It sure does.

1 MR. BLAIN: And, and her, and her medical expert --
2 her, her -- I'm sorry. Her treating surgeon looked at the,
3 the same object that she stepped on, according to her, three
4 days after this incident in Wal-Mart and he described it as
5 a screw.

6 Now, Mr. Willey, Mr. Willey was kind enough to just
7 hold up an object and, and, and we've provided a photograph
8 of, of the same object --

9 THE COURT: Right.

10 MR. BLAIN: -- as far as we know it and, and it's
11 simply not a screw. I mean any, any lay person can, can
12 distinguish it. There are no threads on that object. You
13 wouldn't describe it as a screw.

14 And, and so what happens from that point becomes a
15 little bit of a mystery. I think -- no, I don't think.
16 Ms. -- the plaintiff explains she gave the object to her
17 counsel, and, years later, during litigation, the object was
18 made available for defense counsel to, to inspect and take
19 photographs. That's the photograph I just showed you a
20 moment ago.

21 That's really -- that photograph that defense counsel
22 took is the only visual evidence we have of the object, and
23 it gets really hinky when we get close to the first time
24 this case was, was called for trial back in 2019.

25 A, a, a status conference -- well, defense counsel made

1 a Rule 34 request to inspect -- to have an expert inspection
2 of the object. In response to that, a Sunday afternoon
3 phone conference was held with Your Honor where Your Honor
4 instructed the plaintiff's counsel to bring the object to
5 the deposition of our expert, Doctor White.

6 The very next day the deposition of Doctor White was
7 held and the plaintiff's counsel didn't bring the object in,
8 in violation of the instruction that Your Honor had given
9 during that phone conference.

10 Now, in our memo, it's, it's, it's quoted therein the,
11 the language from the deposition. Mr. Willey explained that
12 he simply forgot, forgot the object back home when he
13 traveled to the deposition, and, as a result, our expert has
14 never had a chance to inspect the, the object, and even if
15 he's given an opportunity to inspect the object before
16 trial, there's a clear factual dispute about what the object
17 is.

18 Her, her doctor, Ms. -- the plaintiff's doctor
19 inspected the object within days after the incident, and, in
20 his written medical record and in his deposition testimony,
21 he described it as a screw and the object that's been made
22 available for defense counsel to look at, but not our
23 expert, is a roofing nail.

24 well, we don't---

25 THE COURT: All right.

1 MR. BLAIN: ---have any (indiscernible) here.

2 THE COURT: Let, let me tell you what my initial
3 feeling is and I'll hear you further in this regard.

4 I'm gonna allow them to introduce the nail. However,
5 you're gonna be given wide latitude on the fact that there
6 was such a long period of time before you've ever had an
7 opportunity to inspect it. You are gonna be able, able to
8 bring out -- well, I assume you are if you call the proper
9 experts, that it was described as a screw by the doctor, the
10 surgeon. I don't know if you -- if that was a de bene esse
11 deposition or he's coming but you can, you can bring that up
12 and you can ask the plaintiff whether or not your surgeon
13 described it as a screw.

14 I mean all of those things are -- and you can also
15 point out the fact that, although Mr. Willey was instructed
16 to do so, he did not bring the, the nail for your expert to
17 examine. I am gonna allow -- require that Mr. Willey
18 produce that nail to your expert before he testifies and let
19 him look at it.

20 MR. BLAIN: Thank you. Thank you, Your Honor. The
21 next point Mr.---

22 MR. WILLEY: Judge, can I be heard on that briefly?

23 I mean the, the -- and if I may share my screen -- may
24 I share my screen, Mr. Hofferth, because I mean this, this
25 is just, Judge, part and parcel of what we have been going

1 through with this entire case?

2 I mean there were three things that were said there
3 that are just patently false and they know they're false and
4 they continue to mislead the Court.

5 THE COURT: All right. Well tell me what was false.

6 MR. WILLEY: Number one. He says nobody knew about the
7 nail or saw the nail until such time as months later.
8 That's not true.

9 We have the deposition of Iesha Cooke who is the
10 customer service manager in the Wal-Mart who met with Ms.
11 Jones---

12 THE COURT: Well, there---

13 MR. WILLEY: ---and here's what she says. She says she
14 showed me the nail. She would not give me the nail itself.

15 THE COURT: Mr. Willey?

16 MR. WILLEY: I believe we took a picture of it.

17 THE COURT: Mr. Willey?

18 MR. WILLEY: Yes.

19 THE COURT: Mr. Willey, I hate to interrupt you but I'm
20 gonna allow you to put the, the nail into evidence and
21 just---

22 MR. WILLEY: I understand.

23 THE COURT: And you're gonna be able to explain --
24 anything that he said that's wrong, you're gonna be able to
25 address it. You're gonna be allowed to put the, the nail,

1 which is a roofing nail, into evidence.

2 MR. WILLEY: And the only thing that I would say with
3 respect to your ruling is I don't think that they can
4 cross-examine the plaintiff on what the surgeon said in a
5 deposition. That's improper pitting of witnesses. They can
6 ask him about it and he'll say the same thing---

7 THE COURT: Okay.

8 MR. WILLEY: ---that---

9 THE COURT: You're probably correct. You're probably
10 right in that regard.

11 Go ahead.

12 MR. WILLEY: All right. That -- that's my -- I mean,
13 by the way, the surgical note where it says screw, it
14 mentions nail about five times and screw once. Clearly a
15 typo. But clearly we can all see it's not a screw. That's
16 fine.

17 But we go through and they say oh, we've never seen the
18 nail. Ms. Bagley, who represented this defendant prior,
19 came to my office. I sat with her in my conference room.
20 Page 3 of their motion, this photograph is taken by her on
21 my conference room table.

22 MS. BOYD: Actually---

23 THE COURT: You---

24 MS. BOYD: ---that's patently false. That was Kelly
25 Evins that came in and inspected---

1 THE COURT: All right. Well, y'all can argue---

2 MS. BOYD: ---the nail.

3 THE COURT: Y'all can argue, y'all can argue about all
4 that. He's gonna be allowed to put the nail into evidence.

5 Go ahead.

6 MR. BLAIN: Thank you, Your Honor. I'll move on to
7 number two in our omnibus motion.

8 We, we would ask that---

9 MR. WILLEY: We agree with number two except as to
10 impeachment evidence. We're not gonna introduce evidence
11 that hadn't been produced or disclosed in discovery. That's
12 a rule of ev -- that's actually a rule of evidence.

13 MR. BLAIN: Noted. I'll move on to number three.

14 THE COURT: Okay.

15 MR. BLAIN: We could agree on that one, Mr. Willey.

16 Number three relates to exclusion of photographs or, or
17 other evidence related to alleged hazards from other
18 Wal-Mart Stores.

19 Just Tuesday of this week a, a photograph was produced
20 by plaintiff's counsel taken from a entirely different
21 Wal-Mart Store on an entirely different date that shows a
22 flooring transition strip from another ongoing case that has
23 absolutely no bearing on, on, on, on Ms. Jones case and we
24 would ask that that be---

25 THE COURT: Let's ask Mr. Willey if he plans on

1 introducing that.

2 MR. WILLEY: As we noted when we produced it, if it is
3 used, it will be used for impeachment purposes, which is
4 proper under the rule.

5 THE COURT: All right. We're not gonna do that until
6 we have a hearing about it. As it stands now, it's excluded
7 until such time as it's needed for impeachment and then
8 we'll address it. But until such time as we have such a
9 hearing, it can not be introduced.

10 MR. BLAIN: Thank you, Your Honor.

11 Moving on to number four, the defense would ask that
12 any evidence of speculative precautionary measures
13 be excluded upon information and belief that the plaintiffs
14 may seek to introduce evidence regarding precautionary
15 measures that Wal-Mart Store could have taken to reduce the
16 likelihood of a, of a metal object on the floor such as a
17 magnetic sweeper, a, a, a broom that will pick up metal
18 debris.

19 There's just simply no evidence that a magnetic sweeper
20 or similar sort of precautionary measures are industry
21 standards for retail stores like Wal-Mart. It, it --
22 there's no evidence that, you know, that should of been used
23 in the store. Absent evidence of industry standards
24 submitted through a appropriately qualified expert, you
25 know, the plaintiff should not be permitted to introduce

1 evidence to, to say that wal-Mart should of used a magnetic
2 sweeper cause that has the danger of prejudicing the jury
3 under Rule 403 and it's entirely irrelevant because it's not
4 part of our duty, duty of care.

5 THE COURT: Mr. Willey, what do you have to say about
6 that?

7 MR. WILLEY: I don't know what he's talking about or
8 what a magnetic sweeper is but I, I would say---

9 THE COURT: All right. Well, we can settle that right
10 now.

11 Do you plan on talking about a magnetic sweeper?

12 MR. WILLEY: I don't plan on talking about a magnetic
13 sweeper but---

14 THE COURT: All right. Well, there, there we go.
15 There we go and we aren't gonna do that.

16 MR. WILLEY: Precautionary measures, however, notice is
17 an issue in the case. And so as to the title, I would
18 disagree but I don't know what a magnetic street sweeper is.

19 THE COURT: Well, he agrees he's not gonna talk about a
20 magnetic sweeper. If the spirit moves him otherwise, he's
21 gonna talk -- have a hearing outside the presence of the
22 jury if we want to talk about a magnetic sweeper.

23 MR. BLAIN: Thank you, Your Honor.

24 Number five, the defense would request that the
25 exclusion of hearsay statements allegedly made by the

1 plaintiff's doctors.

2 Based on the plaintiff's deposition testimony, you know
3 she may make certain statements that were relayed to her by
4 her doctors about her medical condition or causation of her
5 medical injuries. The plaintiff is obviously a lay person
6 who does not have the qualification to explain the, the, the
7 medical causation of her amputations and, and the effect or,
8 or lack thereof of her preexisting conditions.

9 So, we would ask that hearsay statements allegedly made
10 by the plaintiff's doctors or treating providers be
11 excluded.

12 THE COURT: I think, as a general rule, you're correct
13 and I'm gonna ask -- I'm not gonna make a ruling on that now
14 but I'm sure there will be an objection if it -- if we get
15 into that.

16 MR. BLAIN: Okay. Thank you, Your Honor.

17 And moving on to the, the sixth and final point in our
18 omnibus motion in limine, the defense would request that we
19 exclude lay opinion testimony about the plaintiff's medical
20 injuries and causation. The, the, the plaintiff is going --
21 according to her deposition testimony, she may testify about
22 the cause of her medical injuries, and we would contend that
23 that is a, a circumstance that requires an expert opinion.

24 There's a complicated cocktail of causative issues at
25 play including a host of preexisting health conditions faced

1 by Ms. Jones. And so she should not be permitted to give
2 her own lay opinion testimony about the cause of her own
3 medical injuries. Certainly she can testify about the fact
4 that she stepped on something in the store.

5 But as to, as to the medical consequence of---

6 THE COURT: I think she could probably testify that she
7 stepped on a nail, her leg developed the -- an infection and
8 an ulcer. She went to the doctor, and as a result of what
9 they discovered, they cut my leg off. I think they -- she
10 can say that.

11 MR. BLAIN: Your Honor, if I, if I may clearly announce
12 a point there?

13 You know, according to her own testimony, the infection
14 set in in her toe, which was not the same -- and her toe was
15 not punctured by the nail. The, the -- she stepped on the
16 nail near the, near the arch of her foot. And, and so I
17 think there needs to be some expert's testimony to explain
18 the connection, if at all, between infection that set in in
19 her toe where the first amputation occurred.

20 THE COURT: All right. Let's see it -- are y'all gonna
21 have a doctor testify?

22 MR. WILLEY: Yes, Your Honor.

23 THE COURT: Are y'all gonna have a doctor testify,
24 Mr. Willey, Willey?

25 MR. WILLEY: Yes.

1 THE COURT: You are?

2 MR. WILLEY: Yes.

3 THE COURT: Oh, okay. Well, that, that covers that.

4 MR. BLAIN: Thank you, Your Honor.

5 THE COURT: All right.

6 MR. BLAIN: So that's it.

7 THE COURT: All right. Well, I -- well, that's -- I do
8 rule in your favor that she's not gonna be able to opine
9 what caused the amputation. She can say she stepped on a
10 nail. There was an infection. Her leg was cut off. But
11 the doctors will have to explain the rest and I understand,
12 from Mr. Willey, that they are indeed gonna call a, a doctor
13 to talk about those type things.

14 Is that correct?

15 MR. WILLEY: We, we will have at least one doctor as a
16 witness, yes.

17 THE COURT: Okay. All right. Can y'all think of
18 anything else?

19 MR. WILLEY: Well, we, we have motions and they have a
20 motion for summary judgment still.

21 THE COURT: All right. All right.

22 MR. WILLEY: We're happy to take this in parts. I
23 recognize that it's 10 after 4:00 and---

24 THE COURT: Well, we -- you know, I'm here because I
25 love the law and we're gonna go ahead until we get

1 finished --

2 MR. WILLEY: I just---

3 THE COURT: -- because, you know, this is a three and a
4 half day case that we're gonna finish on Wednesday
5 afternoon. I do want to talk about that.

6 We're gonna draw the jury in -- as it turns out, we
7 normally would draw the jury in two different shifts but we
8 only have a digital court reporter that's in this courtroom.
9 So, everybody's gonna have to be brought into this
10 courtroom. We're gonna do it all at one time.

11 (Pause.)

12 THE COURT: All right. Well, we're gonna try to draw
13 the jury -- we can certainly have a jury drawn by lunchtime,
14 and I would like, if at all possible, to have openings and a
15 witness or two Monday afternoon. And I would prefer for us
16 to go a little bit late if we can and maybe even start early
17 on Tuesday and Wednesday to make sure that we can get it
18 done.

19 How long do you anticipate this case going, Mr. Willey?

20 MR. WILLEY: Your Honor, I'm working on my trial plan
21 and schedule and my goal was to have it submitted to a jury
22 by Thursday morning. If you're telling me that you---

23 THE COURT: Well, Thursday morning is Veteran's Day.

24 MR. WILLEY: Right. So I, I didn't realize that but I
25 do now. So I will look at that and see if we can -- there's

1 a lot of witnesses in this case, Judge. I mean there are.
2 They're a lot of witnesses and I, I will -- I will try to
3 sit with it tonight and see what I think I can do on that
4 trial plan.

5 THE COURT: All right.

6 MR. WILLEY: Well, the defendant has a lot of
7 witness -- you know, they've got witnesses too --

8 THE COURT: All right.

9 MR. WILLEY: -- experts. I did not, I did not realize
10 until you just said it that Thursday was Veteran's Day. So
11 --.

12 THE COURT: Right.

13 well, we -- we're gonna try to start early and go late
14 and see what we can do.

15 And how many witnesses do you have -- does defense
16 have?

17 MS. BOYD: Well, we have three fact witnesses and two,
18 two experts --

19 THE COURT: All right.

20 MS. BOYD: -- pallet and medical.

21 THE COURT: All right.

22 MS. BOYD: Five.

23 THE COURT: Very good.

24 All right. Well, let's move forward with your motions,
25 Mr. Willey, and then we'll address the motion for summary

1 judgment.

2 MR. WILLEY: All right. Your Honor, the, the first
3 thing that I would raise, which actually I think is gonna
4 save us some time, is we have a consent motion that Doctor
5 Durig will testify via video or WebEx and that is just to
6 make that scheduling a little easier and the defense has
7 consented to that. So, I just bring that to your attention.

8 THE COURT: Okay.

9 MR. WILLEY: The second is that we have filed a motion
10 really along the lines of, of what you just granted with
11 respect to the, the medical causation testimony and you can
12 go and read it, of course, but basically what we're seeking
13 to do is to keep out any nonexpert testimony or inference
14 regarding any other potential cause of Ms. Jones maladies.

15 And so, in order to prove causation, no matter if
16 you're trying to prove it to prove something happened one
17 way or you're trying to prove it to say something happened
18 another way, you have to have expert medical testimony and
19 there's no dispute in this case that Ms. Jones was an
20 eggshell plaintiff. But you don't get to use that
21 information without expert testimony.

22 They've just indicated that they do intend to call the,
23 the medical expert that they named and we'll see if, if he
24 can get through it. But I just wanted to raise that for
25 purposes of opening cause I don't think, once we get to him,

1 that that is gonna come into evidence and, and there's gonna
2 be a basis for that.

3 So I just wanted to flag that for the Court in advance
4 that we can't have statements in opening and we can't have
5 just counsel saying it without some evidence that
6 something -- anything other than this nail caused it because
7 the only surgeon that worked on her said, without the nail
8 puncturing her foot, this doesn't happen.

9 And so unless they have some other evidence, they can't
10 just tell the jury that it's the case. And we've submitted
11 a motion in that regard consistent with the Eggshell
12 Plaintiff Doctrine.

13 This isn't a case, by the way, where, you know,
14 sometimes people have a bad back and then they get in a
15 wreck and say their back's worse. In those cases, sure, you
16 can talk about the back before because what we're trying to
17 measure is the difference between the back as it was and the
18 back as it is. That's not the case here.

19 The only expert testimony in this case to that point is
20 that, without that nail as a precipitating event, she
21 doesn't lose her leg. So unless there's some other
22 evidence, our motion is they don't get to talk about it.
23 They don't get to infer it to the jury. They don't get to
24 argue it. They've got to get evidence in in that regard.

25 THE COURT: Right. I can't, you know -- what do you

1 have to say about that?

2 who's arguing that?

3 Mr. Blain.

4 MR. BLAIN: Your Honor, I, I disagree with Mr. Willey's
5 interpretation of the, the surgeon, Doctor Player's,
6 deposition testimony.

7 On Page 38 and 39 he clearly testified that the
8 plaintiff's preexisting disease, including her hypertension,
9 high blood pressure, the occlusion of her femoral artery in
10 her, in her leg caused or contributed to cause her right
11 second toe amputation, the metatarsal amputation, and the
12 right above knee amputation. I mean there's, there's clear
13 evidence that the preexisting disease, you know, played a, a
14 major factor, if not exclusively caused, her need for, for
15 amputation. So I think it's a clear factual dispute that---

16 THE COURT: I think those -- I think that's acceptable
17 grounds for you to examine and cross-examination of his
18 expert and your expert. Just in a vacuum, I think he can
19 testify to those things.

20 MR. WILLEY: And, and, Your Honor, I agree that---

21 THE COURT: The fact, the fact, the fact that she has
22 dia -- everybody knows that people who have diabetes are
23 subject to infections and they're subject to amputations.
24 And that's no secret to me and it's no secret to the jury.
25 And I think that that's no defense to the case that she had

1 diabetes. But I am -- it is a preexisting condition and I'm
2 gonna allow you to talk about it.

3 MR. WILLEY: The one thing that I would ask for
4 clarification, Your Honor, is that if, if, if it's not a
5 cause it's not relevant. And so there has to be some
6 relevance for the preexisting---

7 THE COURT: But---

8 MR. WILLEY: ---condition and what Doctor Player says,
9 when he's asked, here's what he's asked. This is on Page
10 40.

11 But in each case, whatever happened is precipitated by
12 stepping on the nail, right?

13 A. Yes.

14 So, this is not a case where you have a condition and
15 you might lose your leg anyway. There has to be a
16 precipitating event, and because that eggshell plaintiff is
17 not a defense under South Carolina law, it can't be admitted
18 without some expert testimony as to causation.

19 They're not gonna get it from the surgeon that did the
20 surgeries. If their expert can get it in, that's a
21 different story. I, I don't think he's gonna be able to.
22 I've read some of his work in the past. We're gonna have a,
23 a good time with that.

24 But they've got to do that before they can talk about
25 it. Otherwise, they're unfairly tainting the jury by

1 introducing irrelevant prejudice -- unfairly prejudicial
2 information.

3 THE COURT: All right. I'm gonna -- one of the things
4 that every -- all lawyers ought to be aware of is not to
5 promise something in an opening that you can't prove. I'm
6 gonna allow y'all's judgment to be your guide in that
7 regard.

8 MR. BLAIN: Thank you, Your Honor.

9 MR. WILLEY: We then have a -- we have some motions in
10 limine and I think, hopefully, a lot of those will be agreed
11 to. I hate bringing these up. I say it every time I do but
12 I wouldn't do it if lawyers didn't use it, and the first
13 two -- the first one is any reference to law firm
14 advertising or the fact that our law firm advertises.

15 Obviously it's not relevant to any issue in the case
16 but lawyers have used it in trials against my clients. So,
17 I just raise that.

18 THE COURT: All right. What does the defense have to
19 say about that?

20 MS. BOYD: We don't object to that.

21 THE COURT: All right.

22 MS. BOYD: We don't object to that, Your Honor. We
23 have no plans to introduce their advertising.

24 THE COURT: All right. Very good.

25 MR. WILLEY: The second is with reference to any

1 collateral source and the reason that I raise this is it
2 came up in the deposition that the plaintiff was on
3 disability for a kidney issue before, and, of course, that
4 is a collateral source that can not come up nor can her
5 Medicare, and I'm sure there's no dispute, but I just want
6 to raise it before.

7 THE COURT: What do y'all have to say about that?

8 MS. BOYD: No, no dispute on a collateral source. We
9 understand the law on that, Your Honor.

10 THE COURT: But you can talk about the kidney.

11 MS. BOYD: Yes.

12 THE COURT: You can't say she's disabled, on
13 Medicare---

14 MS. BOYD: Yes.

15 THE COURT: ---but you can talk about the kidney---

16 MS. BOYD: Yes, Your Honor.

17 THE COURT: ---problems.

18 MS. BOYD: We're, we're talking purely on the who paid
19 the bills and --.

20 THE COURT: Right.

21 MS. BOYD: Yes, we understand.

22 THE COURT: All right. And well, there's an agreement
23 in that regard.

24 MR. WILLEY: Any reference -- so this is a fun one. So
25 any reference or suggestion or the introduction of any

1 evidence by defense counsel directly or indirectly attacking
2 the American court system where plaintiff's attorneys or, or
3 reform campaigns, and here's how this one comes up, it's a
4 real practical one, is they say, and I don't think it's
5 gonna happen in this case, but it's happened.

6 They say oh, they think the courthouse is a casino and
7 this is a lottery. Obviously that's not relevant to any
8 issue in the case. The Court's gonna instruct them on
9 damages. I'm sure there's no dispute but anyway.

10 THE COURT: What do y'all have to say about that?

11 MS. BOYD: No intent to do so, Your Honor. We'll
12 agree.

13 THE COURT: All right.

14 MR. WILLEY: We talked about the causation approach---

15 THE COURT: I think some of the advertising of your
16 firm does -- is that your law firm that talks about the, the
17 seven, seven, seven---

18 MR. WILLEY: That's---

19 THE COURT: ---slot machines and that kind of thing?

20 MR. WILLEY: Yeah. But here's the thing. It's not
21 relevant to the issues.

22 THE COURT: I agree. I agree with you but I'm just
23 asking if that was your crowd. I didn't know whether it was
24 or not.

25 MR. WILLEY: It is. Yeah, it is.

1 THE COURT: All right. Well---

2 MR. WILLEY: I'm not---

3 THE COURT: They've agreed not to use that against you.
4 Go ahead.

5 MR. WILLEY: Okay. You watch, you watch network TV,
6 Judge.

7 THE COURT: I do.

8 MR. WILLEY: Okay. And then the last one is this.
9 Just any references or suggestion that a portion or cause of
10 action may be a subrogation claim, which goes to a
11 collateral source too. So, thank you.

12 THE COURT: Do you watch network TV?

13 MR. WILLEY: I do.

14 THE COURT: All right. I was just asking. I didn't
15 know if that was a bad thing or not.

16 MR. WILLEY: Oh, no, no, no.

17 MR. BLAIN: And I'm sure those advertisements work well
18 with, with the target audience, you know.

19 THE COURT: Audience like me.

20 Go ahead.

21 MR. WILLEY: All right. The last thing that we have is
22 a motion for spoliation remedy and this is outlined in our
23 motion that was filed today. And if you haven't had time to
24 read it, I would implore you to do so before you rule on it
25 but here's what's happened.

1 We asked for several things in our written discovery
2 responses. That discovery was responded to. We went
3 through the, you know, all the process with that in terms of
4 talking with counsel, et cetera, et cetera.

5 And then when we got into the deposition, we found out
6 that not everything responsive to that discovery had been
7 produced and we listed out, in, in our motion, what, what
8 those things are and I'll tell you one that was very
9 relevant to the hearings today that we still don't have is a
10 schematic. The Wal-Mart Store has a schematic of camera
11 coverage in terms of what its cameras in the store can see.

12 There is a missing video from when the plaintiff was in
13 the store, Clip 7, which is referenced and which was
14 admitted in the deposition that it was missing in the
15 deposition of Ringer.

16 And, Your Honor, this is a deposition that was taken --
17 I don't even know the date on it but it's been some time now
18 and it still hasn't been produced. A record of what outside
19 vendors brought items into the store during the relevant
20 period, April, May, and June of 2015, and, again, that goes
21 to that whitewood pallet vendor display. That's on the depo
22 of Ringer at 20.

23 These were all things, by the way, that, during that
24 deposition, he said, as a defendant in the case, would be
25 provided to us through counsel and counsel indicated in the

1 deposition. She said I'm getting a lot of homework here but
2 we still haven't received these things.

3 Number five was a log of OSIs, other similar incidents
4 and accidents. It's on the depo of Ringer at Page 79 and
5 80.

6 Personnel records indicating potential respondents to
7 the Code white, which was the code called in this case.
8 That's Page 81 and 82 of the deposition of Ringer where they
9 said we would get that.

10 A list of department managers during April, May, and
11 June of 2015. That's at Page 26 and 27 of his depo.

12 The training manual, there was a separate training
13 manual for handling pallets in the store. It's obviously
14 directly relevant to the case. That's Page 31 and 32 of his
15 depo.

16 Monthly safety bulletins and the organizational chart,
17 and those are all listed in our motion. If you look at his
18 depo, which we have filed as a exhibit, not only did we ask
19 for those in written discovery, but he indicated that they
20 existed and that, that we would get them through counsel.
21 we still don't have those and obviously we are on the eve of
22 trial.

23 We are not in a position where -- I mean frankly even
24 if they were introduced now, we could distribute them to the
25 necessary people and process them.

1 THE COURT: Mr. Willey, did you move to compel the
2 discovery of those?

3 MR. WILLEY: Your Honor, they were, during the
4 deposition, indicated that we would receive them. So we
5 would have no grounds to move to compel those things. They,
6 they said we will produce them.

7 And so, under the rules, if someone says we, we will,
8 then that is a promise to, and if they do not, then
9 spoliation---

10 THE COURT: You should file a motion to compel.

11 MR. WILLEY: No, you can. That is one avenue. Another
12 avenue is if they don't do it prior to trial---

13 THE COURT: Let's, let's hear what they say.

14 Have you listed all of the stuff yet?

15 MR. WILLEY: It was those 10 bulleted points in our
16 motion.

17 THE COURT: Okay.

18 MR. WILLEY: I have some additional---

19 THE COURT: All right.

20 MR. WILLEY: ---argument but those are the things we're
21 looking for.

22 MS. BOYD: Your---

23 THE COURT: All right.

24 MS. BOYD: Your Honor, I'd like to respond because I
25 was, of course, the counsel in that deposition and I, I

1 disagree that I said I will produce. I said I'm getting a
2 lot of homework and Tim Ringer is an individually named
3 defendant.

4 He did not -- he was not appearing as a 30(b)(6) on
5 behalf of wal-Mart, and, first, I'd like to point out that a
6 lot of the things that plaintiff's counsel mentioned are
7 wal-Mart policies, not Tim Ringer policies.

8 But I want to put the timing into prospective for Your
9 Honor. We -- this deposition was on April 5th, 2019, where
10 Mr. Ringer was deposed and he, he was asked if those things
11 exist, exist and we -- could counsel -- could he get --
12 could counsel give them. He didn't -- I didn't say yes,
13 I'll give them to you. He said can counsel get this to us
14 and Mr. Ringer, as an individually named plaintiff, said
15 yes. But the items that were being requested were not Mr.
16 Ringer's documents.

17 Less -- about a month later on May 22nd, 2019, and I
18 would like to advise the Court I never received written
19 discovery responses or I mean discovery requests regarding
20 this information. So, a month passed and we were at the
21 30(b)(6), Tim Ringer, at that point, was going to be the
22 corporate representative but this litigation was paused by
23 plaintiff's filing of an appeal of Your Honor's order
24 regarding, regarding trial proceeding on May 27th.

25 And so this action stalled and this matter proceeded

1 through the Appellate Courts, to the Supreme Court. At no
2 time during this incident did they send any reminder
3 correspondents saying hey, you guys agree to do this so that
4 we could assess the, the written request. It was something
5 said in a deposition and, arguably, a lot of stuff happened
6 immediately after that deposition involving this case.

7 And so, today, I went through to look at the items that
8 were promised and, in wal-Mart's discovery responses, a lot
9 of those items were addressed.

10 For instance, in defendant's response to plaintiff's
11 first set of interrogatories, Number 9, they asked for
12 similar incident reports and defendants responded that their
13 records were searched and that no such things were found.
14 And so there was a response. At no point in time did
15 plaintiff's counsel object or send any kind of letter saying
16 that these responses were not appropriate and asked for a
17 motion to compel or for clarification or a different --
18 different responses.

19 Additionally, they asked for schematics and diagrams.
20 We said those types of items will be produced upon the entry
21 of a confidentiality order and sent a proposed order to
22 plaintiff's counsel. It was never executed. They never
23 proceeded to file a motion to get these items produced
24 despite our request for a confidentiality order because
25 it's -- it is wal-Mart's position that their camera

1 schematics and the store layout are confidential because we
2 don't want our items out for theft purposes.

3 So, they never indicated that there was an issue with
4 our response and here we are, three years later or four
5 years later, I apologize, and we still never got a copy of a
6 signed confidentiality order or a follow-up correspondence
7 about our request.

8 So, it's our position, Your Honor, that we addressed
9 those same things today we admit they had asked for in
10 discovery and we gave a response that they never objected to
11 or tried to enforce.

12 And as far as the 2019 request, there was no follow-up,
13 no written discovery request to remind. And in the two
14 years that have passed, nothing was sent to plaintiffs -- to
15 the defense counsel until Tuesday of this week,
16 November 2nd, where they said hey, you said you would give
17 us all this stuff. Now we want it.

18 And so there was never a -- any type of communication
19 or multiple requests and we just simply said hey, we're not
20 gonna give you that and you just -- the case totally paused
21 when they filed an appeal and, and, honestly, those things
22 were not addressed in follow-up because we moved on to other
23 things.

24 So, I -- it's my position here today, Your Honor, that
25 it wasn't any malice or ill intent in not responding and

1 saying hey, no, those things are protected by
2 confidentiality or you have to sign this order to get those
3 things. It just simply was never followed up on and
4 addressed but their initial requests were addressed in our
5 responses to their, their first set of discovery.

6 THE COURT: All right. Anything further, Mr. Willey?

7 MR. WILLEY: Yes.

8 So, so that's just not accurate, Your Honor. I mean in
9 response to Number 9, what they did was they objected and
10 they said it's overbroad. They said that it seeks
11 information wholly irrelevant and not proportional, and
12 then, subject to all that, they said oh, we don't have it.

13 well, we asked Mr. Ringer and he says it's all
14 digitally kept and you can get it. And so we said that's
15 something that we -- now, he's the store manager. He's not
16 just some, you know, hobo off the street. I mean he's
17 running the store. So he knows a thing or two about this.
18 Represented by the same counsel and that we would get it and
19 it says so that's something again we can get from Ms. Boyd?

20 Yes. Yes.

21 And we've never got it and here's the thing. When you
22 go on appeal, obviously discovery stops. I understand all
23 that, but this issue about the nail, it's the same timeline.
24 we have to pick up when the case restarts. But the fact of
25 the matter is Iesha Cooke says, this is another issue, says

1 in her deposition she took a picture of the nail and
2 destroyed it.

3 We have these issues where Mr. Ringer says I'll get you
4 the information through counsel and we never get it.

5 THE COURT: All right. I think it's incumbent upon you
6 to move to compel those -- that outstanding discovery.

7 MR. WILLEY: Well then I so move.

8 THE COURT: What do you have to say about that, Mr.
9 Blain?

10 MR. BLAIN: Well, I, I might need to defer to my, my
11 cocounsel, Ms. Boyd, on this particular issue.

12 THE COURT: Ms. Boyd, what do you have to say about
13 that?

14 MS. BOYD: We, we would say that we have pro -- we have
15 advised that no such information exists. We've searched our
16 records. Mr. Ringer is an individual. He is not a wal --
17 he's not wal-Mart and you're asking for incidents that
18 involved wal-Mart. You're asking for policies that involve
19 wal-Mart.

20 We advised that we would give it to plaintiff's counsel
21 upon the entry of a confidentiality order. You get us that
22 confidentiality order, we would of given you those policies.
23 we would of given you those schematics. We would of given
24 you the floor plan. We've still not received any executed,
25 properly executed and filed confidentiality order for our

1 confidential documents.

2 MR. WILLEY: And, Your Honor, briefly on that. We're
3 not required to enter a confidentiality order to get
4 documents. There's a good order from Judge Toal---

5 THE COURT: Those, those matters should of been brought
6 before me if it was an issue.

7 MR. WILLEY: Right. But courts are open. I mean
8 courts are open to proceedings and we're not asking here for
9 how Wal-Mart makes corporate decisions. We're asking for a
10 map of the store. We're asking for---

11 THE COURT: And you -- what relief are you requesting?

12 MR. WILLEY: We're -- we are requesting the relief that
13 everything Mr. Ringer said in his deposition that counsel
14 could get us to get to us or, in the alternative, for a
15 spoliation order forbidding them from using it, issuing a
16 jury instruction advising the jurors that they may draw an
17 adverse inference, and for any other relief that the Court
18 deems justified.

19 I mean she's right. It's been two years where they
20 said they would get us this stuff and they haven't. So they
21 either need---

22 THE COURT: All right.

23 MR. WILLEY: ---to get it to us so we can make a
24 determination about whether or not that's gonna---

25 THE COURT: All right.

1 MS. BOYD: ---throw a wrench in anything or---

2 THE COURT: All right. I, under the circumstances,
3 your motion is denied. We'll start with the trial in the
4 morning.

5 Is there any other motions?

6 MR. WILLEY: Well, the motion to compel I don't think
7 you specifically ruled on. That was my spoliation motion.

8 My next -- my second motion, which I made oral in
9 court, was just to compel these items which she indicated
10 she has---

11 THE COURT: Do you have those?

12 MR. WILLEY: ---and if we could---

13 THE COURT: Do you have those?

14 MS. BOYD: Not all of the stuff that he asked for but
15 the confidential, the schematics, and the camera -- the
16 camera schematics and the floor plan, we do, Your Honor, but
17 we would ask that any documentation be under a
18 confidentiality order because obvious -- for obvious
19 reasons, Wal-Mart does not want their camera schematics
20 disclosed to the public.

21 THE COURT: Is that the only thing subject to the
22 confidentiality order?

23 MS. BOYD: No, the, the policies and procedures that,
24 that are proprietary that are used by Wal-Mart that they
25 take great lengths in establishing their own proprietary

1 policies and procedures for operations of their store.

2 THE COURT: All right. I, I agree that, if you want
3 the schematics, you're gonna have to sign a confidentiality
4 order.

5 MR. WILLEY: Well, let's just agree to it in open
6 court. However, I would note this, that if we intend to use
7 it at trial, it's not gonna be confidential. I don't know
8 cause I haven't seen it. So, I don't know what it shows.
9 But confidentiality is typically a discovery mechanism and
10 we're going to trial on Monday.

11 So once it's used -- put before a jury---

12 THE COURT: Well, until -- between now and Monday you
13 can't scatter it around all creation.

14 MR. WILLEY: I don't---

15 THE COURT: And then we'll address the issue later.

16 MR. WILLEY: I'm not gonna run---

17 THE COURT: As far as policy---

18 MR. WILLEY: ---and do---

19 THE COURT: As far as policy and procedures, I don't
20 think I find anything real proprietary about that, and, and
21 if she's got them, I'm gonna ask that you produce that.

22 MS. BOYD: Okay, Your Honor.

23 THE COURT: All right. Anything else?

24 MR. WILLEY: They have a motion for summary judgment
25 which---

1 THE COURT: Yes.

2 MS. BOYD: Yes, I, I, I thought -- I apologize, Roy. I
3 thought you wanted to address your spoliation request
4 regarding the nail.

5 was that encompassed in your argument?

6 It was kind of brought up that -- on a secondary
7 motion.

8 Did you believe that you had covered that?

9 MR. WILLEY: I just want the 10 things listed in my
10 motion. So, I think whatever you have he said give. The
11 confidential was confidential. I'm not gonna run to K-Mart
12 and say here's their floor plans, copy it.

13 THE COURT: All right. Let's, let's proceed forward
14 with the, with the motion for summary judgment.

15 MS. BOYD: Thank you, Your Honor.

16 It -- it's our position that plaintiff's counsel and
17 plaintiff have not introduced any evidence to establish that
18 wal-Mart either created or had notice of the foreign object
19 that Ms. Jones alleges, alleges she stepped on on the day of
20 the incident.

21 Plaintiff testified at length that she didn't know
22 where the nail came from. She said -- she assumed it came
23 from a pallet but she didn't know. She didn't know how long
24 it had been on the floor. She didn't know the origins of
25 the nail.

1 Plaintiff's expert, Doctor Durig, also he opined that
2 it probably came from a pallet but Your Honor has excluded
3 that testimony from being entered into evidence.

4 And so, at this juncture, we, we assert that there's no
5 evidence that wal-Mart knew or created the hazardous
6 condition in the subject store because any, any allegations
7 that it, it could have or where it may have come from,
8 without evidence, is, is pure speculation. It's not---

9 THE COURT: All right.

10 MS. BOYD: There's no circumstantial evidence at play
11 here. No one has testified that there -- about the
12 condition of the pallets at the time of the incident.
13 They've not provided any type of evidence that even if she
14 did step on the nail, wal-Mart knew about it or should of
15 known about it because even their own expert said that this
16 nail is not the type of nail -- it's a roofing nail and is
17 not -- it's not a pallet nail. It's not the type of nail
18 that's used.

19 Your Honor has excluded the testimony that it could be
20 used to repair a pallet. And so, at this juncture, there is
21 no testimony or evidence in the record that this nail came
22 from a pallet and that it was caused by wal-Mart of
23 wal-Mart---

24 THE COURT: I didn't necessarily excluded that. I'm
25 just saying I'm not gonna allow the expert to say it. But

1 it might be circumstantial -- it might could be argued
2 circumstantially.

3 what do you have to say about all that, Mr. Willey?

4 MS. BOYD: You're muted, Roy.

5 MR. WILLEY: They filed this same motion on
6 August 24th of 2020 and the only thing materially that has
7 changed between then and now is we picked up several
8 inconsistencies in their prior testimony and Doctor Durig,
9 my expert, testified. So, certainly we had a scintilla
10 then. We didn't lose it between then and now.

11 THE COURT: All right. The motion for summary judgment
12 is denied and we'll see y'all -- let's be here and be here
13 on time and be ready to go.

14 MR. BLAIN: Thank you, Judge.

15 THE COURT: Thank you.

16 MR. JEFFERIES: Thank you, Your Honor. Have a good
17 weekend.

18 MR. WILLEY: I didn't -- you want us here at 9:00?

19 THE COURT: Pardon?

20 MR. WILLEY: What time do you usually start?

21 THE COURT: I think the jury -- Madam Clerk, are they
22 usually starting about 9:30?

23 THE CLERK: Yes, sir.

24 THE COURT: 9:30.

25 MR. WILLEY: Okay.

1 THE COURT: Always good to be here early though.

2 MR. WILLEY: Yes, sir.

3 MR. BLAIN: Thank you, Your Honor.

4 THE COURT: All right.

5

6 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Florence County, South Carolina, on the 5th day of November, 2021.

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

March 3rd, 2022



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

-----x

APRIL JONES,)

Plaintiff,)

vs.)

Transcript of Record
2017-CP-21-01375

TIM RINGER, WALMART STORE)

NO. 630, WALMART STORES,)

INC., and WALMART STORES)

EAST, LP,)

Defendants.)

-----x

Monday, November 8, 2021

JURY TRIAL - VOLUME 1 of 4

B E F O R E:

The Honorable Michael G. Nettles, Presiding Judge; and jury.

A P P E A R A N C E S:

Roy T. Willey, IV, Esq.

Lane Jefferies, Esq.

Kenneth Thomas, Esq.

Eric Poulin, Esq.

Vanisa Siler, Esq.

Attorneys for the Plaintiff

Nashiba Boyd, Esq.

Robert Blain, Esq.

Regina Lewis, Esq.

Attorneys for Defendants

Recorded by: Court Monitor/DCRP

Transcribed by: Bobbi Fisher, RPR

I N D E X (Master)

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
JURY VOIR DIRE	8
PRE-TRIAL MATTERS	
Batson Motion	29
JURY SEATED	34
JURY SWORN	35
JURY INSTRUCTIONS	40
OPENING STATEMENTS	
By Mr. Willey	46
By Ms. Boyd	73
DR. KEITH PLAYER	
Direct Examination by Mr. Willey	85
Cross-Examination by Mr. Blain	104
Redirect Examination by Mr. Willey	125
<u>(TUESDAY, NOVEMBER 9th, 2021)</u>	
MATTERS OF LAW	139
TIM RINGER	
Direct Examination by Mr. Willey	148
Cross-Examination by Mr. Blain	204
Redirect Examination by Mr. Willey	238
AYESHA COOKE-SIMMONS	
Direct Examination by Mr. Willey	259
Cross-Examination by Mr. Blain	267
Redirect Examination by Mr. Willey	270

I N D E X (Master-Continued)

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
VIRGINIA WRIGHT	
Direct Examination by Mr. Willey	273
Cross-Examination by Ms. Boyd	287
Redirect Examination by Mr. Willey	290
ALLEN PAVLOVICH	
Direct Examination by Mr. Willey	293
Cross-Examination by Ms. Boyd	310
Redirect Examination by Mr. Willey	315
CHRISTIAN JONES	
Direct Examination by Mr. Jefferies	319
Cross-Examination by Mr. Blain	331
ISAAC JONES	
Direct Examination by Mr. Jefferies	334
CHELSEA RILLEY	
Direct Examination by Mr. Jefferies	346
JASON JONES	
Direct Examination by Mr. Jefferies	359
BROOKE JONES	
Direct Examination by Mr. Jefferies	367

I N D E X (Master; continued)

WITNESS/DESCRIPTION PAGE

(WEDNESDAY, NOVEMBER 10, 2021:)

APRIL JONES

Direct Examination by Mr. Jefferies 386

Cross-Examination by Ms. Boyd 487

Redirect Examination by Mr. Jefferies 542

MATTERS OF LAW/MOTIONS 552

(FRIDAY, NOVEMBER 12, 2021:)

MATTERS OF LAW/MOTIONS 579

PLAINTIFF RESTS 584

KEVIN LANE

Direct Examination by Ms. Boyd 586

Cross-Examination by Mr. Willey 600

Redirect Examination by Ms. Boyd 602

DR. JOHN ROSS

Direct Examination by Mr. Blain 604

Voir Dire Examination by Mr. Jefferies 613

Continuing Direct by Mr. Blain 616

Cross-Examination by Mr. Jefferies 665

Redirect Examination by Mr. Blain 705

I N D E X (Master; continued)

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
TIM RINGER	
Direct Examination by Mr. Blain	713
Cross-Examination by Mr. Willey	720
Proffered Testimony by Mr. Willey	721
Continued Cross-Examination by Mr. Willey	726
DEFENDANT RESTS	728
MATTERS OF LAW/MOTIONS	729
CLOSING ARGUMENT by Mr. Willey	742
CLOSING ARGUMENT by Mr. Blain	779
REPLY CLOSING ARGUMENT by Mr. Willey	801
JURY CHARGE	808
VERDICT	826
MOTIONS	828

E X H I B I T S (Master List)

(Exhibits on file in the Clerk's Office.)

<u>EXHIBIT</u>	<u>ID.</u>	<u>ADM.</u>
CT-1 Jury Strike Sheet	34	
CT-2 Census Bureau Info	34	
CT-3 Jury Info Sheet	34	
CT-4 Walmart Form 10-K	145	
CT-5 Walmart Five-Year Financial Summary	145	
CT-6 Pallet Photos	384	
CT-7 Flash Drive	383	
P-1 Three Panels	99	99
P-2A Floor Plan	164	165
P-2B Floor Plan	164	165
P-3 Thumb Drive/Video Clips	166	166
P-4 Department Safety Solutions Policy	168	168
P-5 Defendant's Amended Responses	199	199
P-6 Ringer Verification	199	199
P-7 Pallet Guard Photo	201	203
P-8 Jernigan Letter 7/21/15	254	258
P-9 Parham Letter	255	258
P-10 Jernigan Letter 9/21/15	256	258
P-11 Customer Incident Report	261	263
P-12 Claims Report	261	263
P-13 Video Request Form	262	263
P-14 Wright Document	283	285

P-15	Subject Nail	416	416
P-16	Medical Bills	480	480
P-17	Demonstrative Foot	551	551
P-18	Dr. Ross Invoice/Opinions	703	703
P-19	Photograph	724	--
P-20	Photograph	724	--
P-21	Photograph	724	--
P-22	Photograph	724	--
P-23	Photograph	724	--
P-24	Photograph	724	--
P-25	Photograph	724	--
P-26	Photograph	724	--
D-1	April Jones Depo Transcript	487	--
D-2	Medical Records	618	--

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:43 a.m.)

(Jury qualifications having been concluded, the following case was called and tried before a jury:)

JURY VOIR DIRE

THE COURT: Ladies and gentlemen of the jury, each of you are qualified. None of you have exercised an exemption, and I want to tell you a little bit about the facts of the first case to be tried. It's Civil Action 2017-CP-21-1375. The plaintiff is April Jones, and she's seated at the plaintiff's table in a black frock there. And the -- it's April Jones versus the defendants, Tim Ringer --

Mr. Ringer, please stand. Yes, sir.

-- and Walmart Stores. Is anybody related to April Jones or Tim Ringer? Do you have a close social, business, or personal relationship with these individuals? If so, please stand.

Yes, ma'am, if you could come forward.

THE BAILIFF: Juror 116.

BENCH CONFERENCE

(A bench conference was held off the record and outside of the hearing of the jury and others.)

THE COURT: Yes, ma'am, your full name.

JUROR NO. 116: Shenetha Pressley.

THE COURT: Ms. Pressley.

1 JUROR NO. 116: (Inaudible).

2 THE COURT: And you say April Jones?

3 JUROR NO. 116: Yes.

4 THE COURT: All right. And you say you have known them
5 your entire life?

6 JUROR NO. 116: Yes, (inaudible).

7 THE COURT: And tell me about a little bit about your
8 relationship. Y'all were --

9 JUROR NO. 116: (Inaudible).

10 THE COURT: Okay. And do you think that would be
11 difficult for you, if called upon to serve on this jury, and
12 to serve as a juror in this case?

13 JUROR NO. 116: Yes.

14 THE COURT: It would be?

15 JUROR NO. 116: Uh-huh.

16 THE COURT: Thank you so much were disclosing that to us.
17 When you said "uh-huh," that -- we have to take that down. It
18 has to be recorded. So that -- so it would be difficult for
19 you?

20 JUROR NO. 116: Yes, sir.

21 THE COURT: All right. Well, I'm going to excuse you
22 from this case. Thank you so much.

23 JUROR NO. 116: Mm-hmm

24 (Open court resumes as follows:)

25 THE COURT: She's excused.

1 (Juror No. 116 was excused from jury service.)

2 THE COURT: Is there any member of the jury panel, or
3 your immediate family, a stockholder or employee of Walmart?

4 JUROR NO. 85: My family used to manage a Walmart.

5 THE COURT: If you could come forward, please.

6 THE BAILIFF: Juror 85, David Kelly.

7 BENCH CONFERENCE

8 (A bench conference was held off the record and outside of
9 the hearing of the jury and others.)

10 THE COURT: Yes, sir.

11 JUROR NO. 85: (Inaudible) Neighborhood grocery.

12 THE COURT: All right, sir. Okay. This doesn't involve
13 a Walmart Neighborhood grocery. Walmart does indeed,
14 obviously, own those. If called upon to serve on this jury,
15 could you listen to the evidence in the case or the lack of
16 evidence and the law as I charge it to you and give both the
17 plaintiff and the defendant a fair and impartial trial?

18 JUROR NO. 85: (Inaudible).

19 THE COURT: Okay. In view of the fact that you are
20 somewhat hesitant in that regard, I'm going to excuse you.
21 Thank you.

22 (Open court resumes as follows:)

23 (Juror No. 85 was excused from jury service.)

24 THE COURT: Ladies and gentlemen of the jury, the
25 allegations that give rise to this civil action arise from

1 events that allegedly took place on June 26, 2015, at the
2 Florence Walmart Store No. 630, which is on North Beltline. I
3 have lived here my entire life, and I'm not a street person,
4 I'm a landmark person. This is one that is close to Sam's
5 Wholesale, Hobby Lobby, and across the street from West
6 Florence. It took place there, the allegations that give rise
7 to this cause of action.

8 Having been armed with this information, did anybody
9 witness the events that gave rise to this cause of action?

10 (No response given.)

11 The allegations are that Ms. Jones stepped on a nail in
12 Walmart. Has anybody heard anything, read anything about that
13 or know anything about this case? If so, please stand.

14 (No response given.)

15 No response.

16 I'm going to recognize the plaintiff at this time and ask
17 if you could list for the jury potential witnesses.

18 MR. WILLEY: Yes, Your Honor. We have with us here in
19 the courtroom, Isaac and Chelsea, who are Ms. Jones's
20 children. We also have Brooke Jones, Kristin Jones, and Jason
21 Jones. Joe Deas, who is her pastor. We, obviously, have
22 Mr. Ringer and Ms. Jones. We also have, from the Walmart
23 store, Ayesha Cooke-Simmons, Jenny Wright, Allen Pavlovich.
24 We have Ms. Jones's surgeon that did the amputation, Dr. Keith
25 Player. And in addition to that, we have Dr. Brian Durek.

1 And I think that's it.

2 THE COURT: Very good.

3 Is anyone related by blood or marriage or do you have a
4 close social, business, or personal relationship with any of
5 these potential witnesses? If so, please stand.

6 (No response given.)

7 No response.

8 Ms. Boyd, I'm going to ask if you could give us a list of
9 potential defense witnesses.

10 MS. BOYD: Yes, Your Honor.

11 Store employee Kevin Lane, Dr. Marshall White, Dr. John
12 Ross, and Sara Luftin (ph).

13 THE COURT: Very good.

14 Is anyone related by blood or marriage, do you have a
15 close social, business, or personal relationship with any of
16 these potential witnesses? If so, please stand.

17 (No response given.)

18 THE COURT: No response.

19 Does any member of the jury have an interest in the
20 outcome of this case? If so, please stand.

21 (No response given.)

22 THE COURT: No response.

23 Has anybody member expressed or formed an opinion about
24 this case? If so, please stand.

25 (No response given.)

1 THE COURT: Does any member of the jury have any bias or
2 prejudice for or against the plaintiff or the defendant in
3 this case? If so, please stand.

4 (No response given.)

5 THE COURT: No response.

6 Does any member of the jury panel know of any reason why
7 you cannot give both the plaintiff and the defendant a fair
8 and impartial trial? If so, please stand.

9 Yes, sir, if you could come forward.

10 THE BAILIFF: Juror 137.

11 BENCH CONFERENCE

12 (A bench conference was held off the record and outside of
13 the hearing of the jury and others.)

14 THE COURT: This is Mr. Taylor. And your number?

15 JUROR NO. 137: 137.

16 THE COURT: 137. Thank you.

17 JUROR NO. 137: (Inaudible).

18 THE COURT: All right. Very good. Thank you for being
19 forthright in that regard. You're free to leave. Thank you.

20 (Open court resumes as follows:)

21 THE COURT: He's excused.

22 (Juror No. 116 was excused from jury service.)

23 THE COURT: Mr. Willey, I'm going to ask if you could
24 stand and identify yourself and co-counsel.

25 MR. WILLEY: Yes, Your Honor. Roy Willey. Pleasure to

1 represent April Jones along with...

2 MR. POULIN: Good morning. My name is Eric Poulin.

3 MR. JEFFERIES: Good morning. My name is Lane Jefferies.

4 MR. WILLEY: And we also have from our office here in
5 Florence, Heather Honey (ph) and Adrienne Stuckey.

6 THE COURT: Thank you.

7 Is anyone related by blood or marriage; do you have a
8 close social, business, or personal relationship with any of
9 these lawyers; do they have an ongoing case with you as your
10 lawyer; or have you represented you in the past? If so,
11 please stand.

12 (No response given.)

13 THE COURT: No response.

14 Ms. Boyd, you're recognized. If you could identify
15 yourself and co-counsel.

16 MS. BOYD: Thank you, Your Honor.

17 Good afternoon. Nashiba Boyd of Gaffney Lewis Law Firm.
18 We represent the defendant, Tim Ringer and Walmart.

19 MR. BLAIN: Good morning. My name is Robert Blain. I'm
20 work with Ms. Boyd and Gaffney Lewis Law Firm.

21 THE COURT: Very good.

22 Is anyone related by blood or marriage; do you have a
23 close social, business, or personal relationship with Ms. Boyd
24 or Mr. Blain; have they ever represented you in the past; do
25 they have an ongoing case with you? If so, please stand.

1 (No response given.)

2 THE COURT: No response.

3 Is there any member of the jury panel who has been a
4 plaintiff or a defendant in a civil lawsuit other than family
5 court? If so, please stand.

6 (No response given.)

7 THE COURT: Have you ever been sued or have you ever sued
8 anyone? If so, please stand. It's a different way of saying
9 it.

10 (No response given.)

11 THE COURT: No response.

12 Is any member of the jury panel or your immediate family
13 a member of Angels All Around Ministry located in Florence?

14 (No response given.)

15 THE COURT: All right. No response.

16 All right. Any additional questions from the plaintiff
17 or the defense other than what's been submitted?

18 MR. WILLEY: Just the submission. Thank you.

19 THE COURT: All right. Anything further, Ms. Boyd?

20 MS. BOYD: Just what's been previously submitted, Your
21 Honor.

22 THE COURT: Very good. All right.

23 At this time, we're going to -- the clerk is going to go
24 ahead and do the struck list and then -- the strikes will be
25 four and four, and one on each alternate. And then those who

1 are in this panel will be instructed to be back at 2:00, and
2 then we will select from the first panel at a later date and
3 time.

4 MR. BLAIN: Your Honor, may I raise one issue?

5 THE COURT: Yes.

6 MR. BLAIN: May I approach?

7 THE COURT: Yes, sir.

8 BENCH CONFERENCE

9 (A bench conference was held off the record and outside of
10 the hearing of the jury and others.)

11 (Open court resumes as follows:)

12 THE COURT: Ladies and gentlemen of the jury, what we're
13 doing -- I don't want to leave you just sit here in suspense.
14 The clerk is, from all the jurors who have shown up today, is
15 going to randomly select through the computer a number of
16 jurors, and from that list, we're going to select a jury.
17 Usually, it's a pretty efficient process. It used to be,
18 years ago, that you would take this jury list and the clerk
19 would cut each name off and put it in a capsule and they'd put
20 it in a rotating bin, and the statute required that a blind
21 person pull the capsule out.

22 But, now, we have a true random selection through the
23 computer, and sometimes the computer doesn't work and we have
24 to pull out that bin again. I'm not even sure if there's one
25 in this courtroom, but we have had occasion to do that.

1 But as soon as we get that, then the lawyers are going to
2 have an opportunity to look at the struck list and they're
3 going to go back in the conference room and confer with their
4 clients in their jury selection process, and that's going to
5 take them about 10 minutes. And y'all can retire to the
6 conference room to do that.

7 And while they're doing that, over the next ten minutes,
8 you can go, use the restroom, refresh yourself, but let's be
9 back in ten minutes so we can proceed forward.

10 (The prospective jurors exited the courtroom at 12:21 p.m.)

11 (A brief recess was taken.)

12 (The prospective jurors entered the courtroom at 12:40 p.m.)

13 THE COURT: -- names that were from the two different
14 panels that we have selected today. Each side has four
15 strikes on the original 12 jurors, and the one strike on each
16 of the alternates. And we're going to go through the jury
17 selection process, and then we're going to call the name of
18 the entire 12 jurors who are selected, some of which are in
19 the first panel. So they're going to call the entire list,
20 and if your name is called, stand up. We're going to ask that
21 you come and have a seat in the jury box.

22 Those of you who are selected from this panel, we're
23 going to ask that you come up here to the jury box. We're
24 going to go through the jury selection process at this time.
25 And strikes are four and four.

1 MR. WILLEY: Your Honor, may I approach?

2 THE COURT: Yes.

3 BENCH CONFERENCE

4 (A bench conference was held off the record and outside of
5 the hearing of the jury and others.)

6 (Open court resumes as follows:)

7 THE COURT: Ladies and gentlemen of the jury panel, we
8 have one -- it's a very unusual set of circumstances. We have
9 a legal matter that we need to resolve before we do the jury
10 selection or complete the jury selection process, and there's
11 not really a convenient way to do this, but we do have a big
12 hallway in this new courthouse. So I'm going to ask if y'all
13 could just go out there for a moment, and the bailiff will
14 tell you when to come back in. But -- thank you very much.

15 (The prospective jurors exited the courtroom at 12:44 p.m.)

16 UNIDENTIFIED SPEAKER: (Inaudible).

17 THE COURT: I tell you what we're going to do. That's
18 not even a concern because Court Administration will have to
19 make the accommodation. We'll come back on Saturday, Sunday,
20 or Monday.

21 UNIDENTIFIED SPEAKER: (Inaudible).

22 THE COURT: I don't know how that will -- I mean, how
23 does it not prejudice the defendant?

24 UNIDENTIFIED SPEAKER: (Inaudible).

25 THE COURT: Why would it not prejudice the defendant?

1 UNIDENTIFIED SPEAKER: (Inaudible).

2 THE COURT: I don't believe that's the case. That's pure
3 conjecture. I have never -- the answer to that is no. I'll
4 allow you to put all of that on the record.

5 UNIDENTIFIED SPEAKER: No, I'm not going to (inaudible).

6 THE COURT: All right. Very good.

7 All right. If we could shut the door.

8 All right. Be glad to hear from the plaintiff.

9 MR. WILLEY: Thank you, Your Honor, if it please the
10 Court. As Your Honor knows, under Title 14, Chapter 7, the
11 Court of Common Pleas is required to have 75 jurors summoned
12 and appear for jury selection. There were 88 drawn on the
13 list, and 22 of those were unable to locate, meaning that 66
14 were summoned, and there's some discrepancy about the exact
15 count on our side, but only about 50 showed, and then, of
16 course, fewer than that survived the strikes.

17 And so under the statutory law of South Carolina,
18 14-7-200, 260, 300, and 1140, the Court doesn't have
19 jurisdiction to hold a jury trial in the Court of Common Pleas
20 unless there are 75 jurors in the pool, and there were not
21 today.

22 THE COURT: All right. Be glad to hear from defense.

23 MS. BOYD: Thank you, Your Honor. It's our argument that
24 it's the Court's discretion, and in the interest of justice,
25 we're here. There's enough people to impanel a 12-member jury

1 out of the two panels that we have here today, and we're just
2 asking the Court to go forward since we're all here and ready
3 to go forward, Your Honor.

4 THE COURT: All right.

5 MS. BOYD: In the interest of justice.

6 THE COURT: All right.

7 MS. BOYD: Oh, and this case has been pending since 2017.
8 It's 2021. And so we just believe, due to the old nature of
9 the case, it just needs to be heard.

10 THE COURT: All right. Do you say your name "Will-ee" or
11 "Wi-lee"?

12 MR. WILLEY: It's "Will-ee," Your Honor.

13 THE COURT: "Will-ee"?

14 MR. WILLEY: Yes.

15 THE COURT: All right.

16 MR. WILLEY: And I would note that the statute does
17 provide that the circuit judge can lower the number in advance
18 of the trial with notice of the parties, which didn't happen.

19 THE COURT: Very good. Thank you for the insight.

20 All right. I'm -- you know, this case is an older case,
21 and it was scheduled, I believe, for a date certain -- maybe
22 or maybe not. But there was an issue that was brought before
23 the Court, and I think there was a conflict between Florence
24 court and Waltherboro. And I think there was an indication
25 that counsel for the plaintiff was not available, that they

1 had to be in Walterboro County. And I denied the motion for
2 continuance, as I recall, and the issue was appealed to the
3 Court of Appeals. And that was remanded. I didn't even read
4 the opinion, but I assume they said that it was -- at any
5 rate, I don't know what they said about -- what did they say
6 about that appeal?

7 MR. WILLEY: It was mooted because the other case was no
8 longer pending, I believe, by the time it got there, so...

9 MS. BOYD: Actually, Your Honor, the holding was that it
10 was an interlocutory order that was not appealable at the
11 time.

12 THE COURT: I thought it was an interlocutory appeal.

13 MS. BOYD: That was the ruling of the court.

14 THE COURT: I felt that when it happened, but we have
15 that going on. We also have COVID going on, and that causes
16 difficulty for people coming in. We have had some difficulty
17 regard to the trial of the case. I think that no one has been
18 prejudiced. We have got a good cross-section of Florence
19 County. It very well might indeed be jurisdictional, but I
20 don't believe it is. And if it is, the Court of Appeals will
21 reverse me, and we'll come back and do it again. But we're
22 going to go forward with the case here today. Motion is
23 denied.

24 All right. We're ready for the jury.

25 (The prospective jurors entered the courtroom at 12:51

1 p.m.)

2 THE COURT: All right. We'll begin the jury selection
3 process. Strikes are four and four. Plaintiff goes first.

4 MR. WILLEY: Plaintiff strikes No. 6.

5 THE CLERK: I'm sorry. Could you...

6 MR. WILLEY: No. 6.

7 THE CLERK: No. 6. Plaintiff struck No. 6.

8 (Juror No. 8, a white male, was struck by the Plaintiff.)
9 Defendant?

10 MS. BOYD: Defendant strikes No. 27.

11 THE CLERK: No, use the margin one.

12 THE COURT: No, the --

13 MS. BOYD: Oh, I'm sorry.

14 THE COURT: No. 15.

15 MS. BOYD: No. 15. Okay.

16 THE CLERK: Defendant struck No. 15.

17 (Juror No. 27, a black male, was struck by the
18 Defendant.)

19 THE CLERK: Plaintiff?

20 MR. WILLEY: Plaintiff strikes No. 4.

21 THE CLERK: No. 4?

22 MR. WILLEY: Yes, ma'am.

23 THE CLERK: Plaintiff struck 4.

24 (Juror No. 101, a white female, was struck by the
25 Plaintiff.)

1 THE CLERK: Defendant?

2 MS. BOYD: No. 16.

3 THE CLERK: 16?

4 MS. BOYD: Yeah, 16.

5 THE CLERK: Defendant struck No. 16.

6 (Juror No. 83, a black male, was struck by the
7 Defendant.)

8 THE CLERK: Plaintiff?

9 MR. WILLEY: Plaintiff strikes No. 13.

10 THE CLERK: Plaintiff struck No. 13.

11 (Juror No. 66, a white female, was struck by the
12 Plaintiff.)

13 THE CLERK: Defendant?

14 MS. BOYD: No. 18.

15 THE CLERK: Defendant struck No. 18.

16 (Juror No. 147, a black male, was struck by the
17 Defendant.)

18 THE CLERK: Plaintiff?

19 MR. WILLEY: No. 12.

20 THE CLERK: Plaintiff struck No. 12.

21 (Juror No. 95, a white female, was struck by the
22 Plaintiff.)

23 THE CLERK: Defendant?

24 MS. BOYD: No. 11.

25 THE CLERK: Defendant struck No. 11.

1 (Juror No. 128, a black male, was struck by the
2 Defendant.)

3 THE CLERK: For your first alternate?

4 MR. WILLEY: Plaintiff strikes 21.

5 THE CLERK: Plaintiff strikes 21.

6 (Juror No. 44, a white male, was struck by the
7 Plaintiff.)

8 MS. BOYD: 23.

9 THE CLERK: Defendant struck 23.

10 (Juror No. 34, a white male, was struck by the
11 Defendant.)

12 THE CLERK: For your second alternate?

13 MR. WILLEY: 26.

14 THE CLERK: Plaintiff struck 26.

15 (Juror No. 105, a white male, was struck by the
16 Plaintiff.)

17 THE CLERK: Defendant?

18 MS. BOYD: 25.

19 THE CLERK: Defendant struck 25.

20 (Juror No. 18, a white female, was struck by the
21 Defendant.)

22 THE CLERK: Please check your strikes.

23 Plaintiff struck 4, 6, 12, 13; 21 for the alternate and
24 26 for second alternate.

25 MR. WILLEY: Correct.

1 THE CLERK: Defendant struck 11, 15, 16, 18; 23 for the
2 first alternate and 25 for the second alternate.

3 THE COURT: Is that correct?

4 MS. BOYD: That's correct.

5 THE CLERK: As I call your name, please gather your
6 belongings and have a seat in the jury box.

7 THE COURT: And once again, there will be names that will
8 be called that are coming from the first panel, but if your
9 name is called, we want you in the jury box.

10 THE CLERK: Juror No. 57, Sheila Hanna. First panel.

11 (Juror No. 57, a white female, was seated.)

12 Juror No. 43, Dawnyelle Fulmore. First panel.

13 (Juror No. 43, a black female, was seated.)

14 Juror No. 93, Earl McFadden.

15 (Juror No. 93, a black male, was seated.)

16 Juror No. 11, Christopher Boswell. First panel.

17 (Juror No. 11, a white male, was seated.)

18 Juror 106, Preston Morrison.

19 (Juror No. 106, a white male, was seated.)

20 Juror No. 91, Carissa Little.

21 (Juror No. 91, a white female, was seated.)

22 Juror 108, Nalini Naraine.

23 (Juror No. 108, an Asian female, was seated.)

24 JUROR NO. 108: Yes, ma'am.

25 THE CLERK: Juror 15, Billy Brown. First panel.

1 (Juror No. 15, a black male, was seated.)

2 Juror 104, Marc Moore.

3 (Juror No. 104, a white male, was seated.)

4 Juror 65, Gary Hayes. First panel.

5 (Juror No. 65, a white male, was seated.)

6 Juror 78, Panzy Johnson.

7 (Juror No. 78, a black female, was seated.)

8 Juror 139, India Thompson.

9 (Juror No. 139, a black female, was seated.)

10 Juror 103, Antonio Montes.

11 (Juror No. 103, an Asian male, was seated.)

12 Juror 58, Gracie Hannah. First panel.

13 (Juror No. 58, a black female, was seated.)

14 THE COURT: That concludes the jury selection process.

15 As a practical matter, I think that's going to conclude your
16 jury service; however, there is a remote possibility that we
17 might have to select another jury. So I'm going to ask that
18 you call the clerk's office after 5:00 and follow the
19 instructions. Don't everybody call right at 5:00 because it
20 will be busy. Sometime before you lay your head down on the
21 pillow tonight, call and follow the instructions. And you're
22 free to leave.

23 (The remaining prospective jurors exited the courtroom at
24 12:58 p.m.)

25 THE COURT: Ladies and gentlemen of the jury panel, we're

1 going to ask that you be back at 2:00. When you come in,
2 there will be a bailiff at the elevator, and they're going to
3 carry you in through the back door, through the corridor --
4 the secure corridor. And it's going to be held in this
5 courtroom, and they're going to take you to the jury room. So
6 come to the third floor, and the bailiff will assist you in
7 going to the jury room.

8 I want to talk to you a little bit about -- give you some
9 admonitions before we begin. You have heard what the case is
10 about, and I have told you where the allegations took place
11 that give rise to this cause of action. Do not do any
12 independent investigation. Don't go out to Walmart trying to
13 look and investigate. Let's all stay away. There's a number
14 of Walmarts in Florence. Let's stay away from Walmart over
15 there across from West Florence, which is Florence Store No.
16 630 over there on North Beltline. Let's not go in there
17 during the -- hopefully that's not a hardship on you, but do
18 not go into that store and certainly do not do any independent
19 investigation.

20 There's not anything in the entire world that you can't
21 look up on the Google. Do not look up any particular
22 incident. Do not look up witnesses. Do not look up lawyers.
23 Do not do that. You need to base your decision on what
24 transpires here in this courtroom.

25 And I imagine when you leave this courtroom, when you go

1 back and start tending to your personal business in between
2 now and 2:00, some of your co-workers or family members are
3 going to say, "What's going on in -- on your jury service?"
4 Do not tell them about this case. I'm going to order that you
5 not do that because it might be that they have an opinion
6 about this particular type litigation. That would be
7 inappropriate and unfair for all parties concerned. Do not do
8 that.

9 Do not discuss the case amongst yourselves or with anyone
10 else. And I'm going to ask each of you, when you come back in
11 the jury room, don't talk about this case. Y'all can talk
12 about Carolina/Clemson football or how Carolina whipped up on
13 Florida this past weekend, you can talk about fishing, you can
14 talk about whatever you want to talk about, but do not talk
15 about this case. Don't talk about the lawyers. Don't talk
16 about anything having to do with this matter. You can discuss
17 anything you want to but not this case.

18 And I'm going to ask that you be back here at 2:00. 2:00
19 sharp.

20 Everyone remain seated as the jury exits the courtroom.

21 Just follow the bailiff; they'll assist you.

22 (The jury exited the courtroom at 1:02 p.m.)

23 THE COURT: One of the things I do want to put on the
24 record is that normally when we subpoena jurors -- as a matter
25 of fact, during COVID, we would subpoena 200 people and quite

1 often not get but 45. So -- and I have been practicing law
2 for 20 years and I have been on the bench for 17. I have
3 never heard that -- never heard that motion before.

4 You maintain it's jurisdiction. I don't think it is.
5 And if it is, in Florence County, I don't think we could ever
6 impanel a jury because, when we were doing 200, we were still
7 only getting about 50. For whatever that's worth, I think
8 it's important for the record to be clear in that regard. But
9 we shall see, as they say. We'll see.

10 All right. We'll see y'all back at 2:00. 2:00 sharp.

11 MR. WILLEY: I will have one matter of law, if you want
12 to take it up now.

13 THE COURT: Well, yes. How quickly -- you know, we have
14 got to get something to eat.

15 MR. WILLEY: Well, it's quick. It's quick.

16 THE COURT: All right.

17 PRE-TRIAL MATTERS

18 MR. WILLEY: So Ms. Jones, obviously, is
19 African-American, and all of the strikes of the main jury
20 panel were of African-Americans. So, under the *Batson* case
21 and *State v. Inman*, which is 409 S.C. 19, we believe that
22 demonstrates -- obviously, it's a prima facie showing that the
23 challenge was based on race, and no white jurors were struck
24 from the main panel. So, at this point --

25 THE COURT: What is -- before we do that, what is the

1 make-up of the jury as far as race goes?

2 MR. WILLEY: More white people than African -- I mean,
3 that's not part of the standard, but it's more white people
4 than African-Americans.

5 THE COURT: Well, I think --

6 MR. WILLEY: It's pretty close.

7 THE COURT: -- I tell you, to some extent it is relevant.
8 That's one of the first things you need to do is look at
9 whether or not -- well, let's look at that. Let's look and
10 see how many African-Americans are on the jury.

11 MR. WILLEY: There's six, by my count.

12 THE COURT: All right. Correct me if I'm wrong, I think
13 it's important for appellate purposes to -- for the appellate
14 entity to know what the jury panel actually was. And I
15 understand that there are six African-Americans and six
16 Caucasians and two Asians that were empanelled. Is that
17 correct, Madam Clerk?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: That's 14. That's two alternates. All
20 right.

21 So there are just as many African-Americans as there are
22 white. Of course the main crux of the *Batson* is, is do they
23 have a racially mutual reason for the strikes? And I'm going
24 to allow Ms. Boyd an opportunity to gather her thoughts in
25 that regard, and we will hear from her and make a

1 determination as to whether or not -- as to whether or not --

2 MS. BOYD: May we have two minutes, Your Honor?

3 THE COURT: You sure may.

4 And the other thing that's somewhat troubling is that we
5 have already dismissed the panel, and it's somewhat troubling
6 in that regard.

7 (Pause in the proceedings.)

8 THE COURT: Ms. Boyd, you're recognized. Have you had an
9 opportunity to review your jury information and are you in a
10 position to do that now?

11 MS. BOYD: We are, Your Honor.

12 THE COURT: If not, we can put it off. Are you ready?

13 MS. BOYD: Yeah, we're ready, Your Honor.

14 THE COURT: All right. Very good.

15 MS. BOYD: Defense counsel relied on other
16 non-racial-based criteria in making its selection,
17 racial-neutral criteria.

18 For Juror No. 27, it was based on his political
19 affiliations, in our research.

20 THE COURT: All right.

21 MS. BOYD: The same is true for Juror No. 83.

22 147, it was based on age, as was 128.

23 We also struck Juror No. 34 as the alternate, who was a
24 white male, but we struck him because of his age, Your Honor.

25 And Juror No. 18 we also struck, who was a white female.

1 We'd also like to point out that all of Plaintiff's
2 strikes were against white jurors in an attempt to, we
3 believe, reverse-stack the jury.

4 So we did not base our -- we have racially neutral
5 reasons for our strikes.

6 THE COURT: Are you making a motion to disqualify this
7 jury because of --

8 MS. BOYD: I am not, but we're just pointing out that we
9 did not use racial reasons to strike our jury as evidenced by
10 the reasons we have proffered here today and evidence by the
11 alternates that we struck. We did strike two white
12 alternates.

13 THE COURT: Okay. Very good. All right.

14 Mr. Willey?

15 MR. WILLEY: Your Honor, under the *State v. Inman* case,
16 they have to show a race neutral explanation for each
17 challenge, and it's their burden to do so. And they have to
18 do so on a plausibility basis, and it has to be an actual
19 explanation.

20 For example, I'll give you this. So they indicated that
21 they struck 128 and 147 because of age. Okay? So let's look
22 at 128, was born in the year 2001. 147 was born in the year
23 2000. Okay?

24 Who did they not strike? Juror No. 106, for example, a
25 white male born in the year 2000.

1 Political affiliations. Several of these individuals
2 that are not struck share political affiliations.

3 Occupation, they didn't even use that one, but that
4 wouldn't be a good one either because they left white males
5 that had the same qualifying information that we know about
6 these African-Americans on the jury. They didn't strike a
7 single one of them.

8 And so, under *State v. Inman*, they haven't met their
9 burden to explain any racially neutral basis for the strikes.
10 The one they give for two is just patently provable that is
11 wrong. They came up with "political affiliation as part of
12 our research." Well, your political affiliation is one of two
13 things. Not everybody on the jury here is a republican or a
14 democrat that remains, so they didn't strike everybody because
15 of political affiliation. But age is the most obvious. They
16 left a white male born in 2000 and struck a black male born in
17 2000 and another black male struck born in 2001 and said,
18 well, it was because of the black male's age. Presumably they
19 didn't think they were old enough to be on a jury. But they
20 left the white male. They had a strike. If age was the
21 concern, they could have struck the white male.

22 THE COURT: Very good.

23 All right. I'm going to hold this matter in abeyance and
24 I'll allow you to reply at the conclusion of lunch. And we
25 will reconvene at 2:00. 2:00 sharp.

1 (A lunch recess was taken from 1:13 p.m. to 2:03 p.m.)

2 THE COURT: Madam Clerk, you're recognized.

3 THE CLERK: As I call your name, please gather your
4 belongings and have a seat in the jury box.

5 Juror No. 57, Sheila Hanna.

6 (Juror No. 57, a white female, was seated.)

7 Juror No. 43, Dawnyelle Fulmore.

8 (Juror No. 43, a black female, was seated.)

9 Juror No. 96, Earl McFadden. From the first panel.

10 (Juror No. 96, a black male, was seated.)

11 Juror No. 11, Christopher Boswell.

12 (Juror No. 11, a white male, was seated.)

13 Juror No. 15, Billy Brown.

14 (Juror No. 15, a black male, was seated.)

15 Juror No. 104, Marc Moore. He's already in the back.

16 (Juror No. 104, a white male, was seated.)

17 Juror No. 65, Gary Hayes.

18 (Juror No. 65, a white male, was seated.)

19 Juror No. 78, Panzy Johnson. She's already in the back.

20 (Juror No. 78, a black female, was seated.)

21 Juror 139, India Thompson. She's already in the back.

22 (Juror No. 139, a black female, was seated.)

23 103, Antonio Montes. Already in the back.

24 (Juror No. 103, an Asian male, was seated.)

25 Juror 58, Gracie Hannah.

1 (Juror No. 58, a black female, was seated.)

2 Judge, I think that's all of them.

3 THE COURT: Very good.

4 I want to ask -- before we do that, ladies and gentlemen
5 of the jury, I would like to say that you have completed your
6 service for the balance of the week. There's a remote
7 possibility that we might need to draw another jury. It's
8 highly unlikely. I'm going to ask that you call the clerk's
9 office after 5:00 and abide by the instructions given to you
10 on that message. Once again, don't everybody call at 5:00 --
11 at 6:00. 6:00. Once again, do not everybody call at 6:00
12 because it will be busy. Sometime before you lay your head
13 down on the pillow at night, call and get instructions and
14 follow those instructions. And you're free to leave at this
15 time.

16 (The unselected jurors exited the courtroom at 2:05 p.m.)

17 THE COURT: And we can get the remaining jury and bring
18 them in here.

19 (The remaining jurors entered the courtroom at 2:08 p.m.)

20 THE CLERK: Please stand and raise your right hand.

21 (The jury panel was duly sworn.)

22 THE COURT: Mr. Gary Hayes, I'm going to ask that you
23 serve as the foreman of this jury, and I'm going to ask if you
24 could exchange chairs with this young lady here.

25 Mr. Hayes, you, like everyone else, when it comes time to

1 deliberate, you're going to have one vote, but you're going to
2 have additional responsibilities and duties, the first of
3 which is, if there are questions or concerns that develop
4 amongst the jury throughout the trial of this case, I'm going
5 to ask them to communicate that question or concern to you.
6 You reduce it to writing and give it to the bailiff. If it's
7 something I can assist you with, I'll be happy to do so.

8 And at the conclusion of the case, when it's time to
9 begin deliberations, you're going to be charged with the
10 responsibility of presiding over the deliberations, and that
11 essentially means that you are charged with the responsibility
12 of ensuring that everybody's voice is heard.

13 In addition to that, there are going to be times where
14 you're in the jury room outside of our presence. Quite often,
15 we're taking up matters of law. There will be periods of time
16 when you come in in the morning where you'll be in there by
17 yourself, and -- in the jury room, and when you come back for
18 lunch and during breaks. It's going to be your responsibility
19 to ensure that, during those periods of time, there's no
20 discussion whatsoever about this case. Do not talk about the
21 case amongst yourselves or with anyone else. And I'm going to
22 ask that you do that.

23 Can you do that?

24 JUROR NO. 65: Yes, sir.

25 THE COURT: All right. Very good.

1 All right. We have some legal matters that we need to
2 tend to, and I'm going to ask that each of you retire to the
3 jury room, but do not discuss the case. We'll begin shortly.

4 Everyone remain seated as the jury exits the courtroom.

5 (The jury exited the courtroom at 2:11 p.m.)

6 PRE-TRIAL MATTERS

7 THE COURT: All right. We were -- had to break for
8 lunch -- for a quick lunch, and Ms. Boyd, you have an
9 opportunity to reply to Mr. Willey's presentation.

10 MS. BOYD: Thank you, Your Honor.

11 Defense counsel had an opportunity to review its notes
12 specifically about the jurors, Jurors No. 106, 128, and 147,
13 who are all very young. And based on the notes that defense
14 counsel was able to review, all three were considered for
15 strike, but defense counsel decided to retain No. 106 based on
16 his social media posts where he describes himself as a hard
17 worker, and so we decided to keep him.

18 Juror No. 147 was unemployed, so we struck him.

19 Juror No. 128 was only 20 years old, and so based on his
20 age, we decided to strike him.

21 So those were the race-neutral reasons for retaining 106
22 over the other two.

23 THE COURT: All right. Very good.

24 And I'm going to make a part of the record the jury
25 struck list, which indicates the actual jury make-up of the

1 jury, and I think it's equally split amongst African-American
2 and Caucasians, and there are two Asians on there.

3 I'm also -- I'm going to make this a part of the record
4 as a Court's exhibit for appellate review.

5 (Court's Exhibit 1, Jury Strike Sheet, was marked for
6 identification and received into evidence for appellate review
7 only.)

8 THE COURT: And I thought it was important for the
9 appellate entity to know what the racial split is in Florence
10 County. And I was not exactly aware of this, but according to
11 the United States Census, white population at 47.7;
12 black/African-American is 47.6. So it's an equal split, and
13 we have got an equal split on the jury. I think that's
14 important for the appellate court to consider. And I'm going
15 to take judicial notice of the United States Census Bureau,
16 and make that a part of the record as well.

17 (Court's Exhibit No. 2, U.S. Census Bureau Information,
18 was marked for identification and received into evidence for
19 appellate review only.)

20 THE COURT: Anything before we move forward?

21 MR. WILLEY: Your Honor, the only thing that I would say
22 in response, I'd ask that we make this a part of the record,
23 which has their date of birth on it.

24 THE COURT: Yes, yes.

25 (Court's Exhibit No. 3, Jury Information Sheet, was

1 marked for identification and received into evidence for
2 appellate review only.)

3 MR. WILLEY: And I would note that it was there
4 subsequent race-neutral explanation given for the gentleman
5 with respect to age. The one that was given with respect to
6 unemployment, there are unemployed white male on the jury, and
7 so I don't think that that passes muster either under a
8 race-neutral explanation, so...

9 THE COURT: Thank you very much.

10 All right. Anything before we bring the jury out?

11 MR. WILLEY: If I can just get this going and we will be
12 ready to roll. May I approach?

13 THE COURT: Yes.

14 MR. WILLEY: I was hoping for some help with the Wi-Fi.

15 UNIDENTIFIED SPEAKER: Judgenet17, all lowercase.

16 MR. WILLEY: Pardon?

17 UNIDENTIFIED SPEAKER: Judgenet17, all lower case.

18 MR. WILLEY: Thank you very much. I appreciate it.

19 THE COURT: Is the plaintiff ready to proceed?

20 MR. WILLEY: We are, Your Honor.

21 THE COURT: Is the defense ready to proceed?

22 MS. BOYD: Yes, Your Honor.

23 THE COURT: All right. We're ready for the jury.

24 (The jury entered the courtroom at 2:17 p.m.)

25 THE COURT: One additional matter with regard to

1 housekeeping. Mr. Hayes, you're the foreman; I'm going to ask
2 that you remain in that chair the entire time. And
3 Mr. Antonio Montes and Ms. Gracie Hannah, y'all are the
4 alternates, and I'm going to ask that y'all remain in those
5 two chairs the entire time. The rest of you are general
6 admission. So I'm going to ask that, as a practical matter,
7 it's probably best for y'all to come in last -- y'all three to
8 come in last so people don't have to walk over you. The rest
9 of you just file on in.

10 JURY INSTRUCTIONS

11 THE COURT: All right. We are about to begin the trial
12 of April Jones versus Tim Ringer, individually and as an
13 employee of Walmart Stores, and Walmart Stores as defendants.
14 It's Civil Action 2019-002066.

15 I want to take just a brief moment to tell you about --
16 many of you have maybe not served on a jury before. I want to
17 tell you about what to expect. This is a civil case, and the
18 plaintiff, who is represented by Mr. Willey, has the burden of
19 proof. And we're going to start off the trial with what's
20 known as opening statements. He's going to have an
21 opportunity to stand up before you and, in a summary fashion,
22 sort of explain what this case is about, sort of give you a
23 roadmap and explain what the theories of the case are and sort
24 of orient you in that regard.

25 The defense, Ms. Boyd or Mr. Blain, are going to have an

1 opportunity to stand up and give their positions, any defenses
2 that they might have, and their perspective on the case.

3 And they're sort of summary in fashion. It will aid you
4 immensely as you begin this case, so pay very close to what
5 they have to say.

6 After that, once again, the plaintiff has the burden of
7 proof. They are going to be required at that stage in the
8 case to put up their evidence. The evidence takes a number of
9 different forms. Witnesses will be called to the witness
10 stand. They'll take an oath and have a seat in the witness
11 chair. And Mr. Willey, since he has the burden of proof, will
12 ask them direct questions about what they know about this
13 case. And the defense will have an opportunity to
14 cross-examine them, and Mr. Willey will have an opportunity to
15 ask some reply questions or redirect questions.

16 And pay very close attention. He'll call one witness
17 right after the other for his case in chief. And then we'll
18 take a break, take up some matters of law. And then the
19 defense will have an opportunity to present any evidence that
20 they have in this case. I'm going to ask that you pay very
21 close attention.

22 The presentation of evidence takes a number of different
23 forms. What the witness says is evidence for you to consider.
24 Pay very close attention. Documents that are introduced into
25 evidence, documentary evidence, that's evidence for you to

1 consider in your deliberations. Photographs, models,
2 stipulations where lawyers agree as to a certain fact, and
3 depositions, sworn testimony taken outside of this court prior
4 to this trial date. All of those things are things that you
5 can consider.

6 I'll reiterate: During the breaks, there is to be
7 absolutely no discussion about this case, no -- do not do any
8 deliberation until I give you instructions to do so. After
9 you have heard all the evidence and I will charge you the
10 relevant law and give you instructions as to when to begin
11 discussing the case, but do not do that at any point in time.

12 And, Mr. Foreman, I'm going to ask that you enforce that
13 rule.

14 Ladies and gentlemen of the jury, you and I have very
15 distinct and different roles in this case. My job is the
16 arbiter of the law, and I preside over this proceeding. I
17 determine what evidence you get to hear. And, at the
18 conclusion of the case, I will charge you the law. Those are
19 my functions.

20 You, on the other hand, are the arbiters of the facts.
21 You listen to all the evidence that's been presented here in
22 this courtroom to determine what the truth is and apply it to
23 the law. That's your job.

24 You are the sole and exclusive judges of the facts. As
25 we go throughout this process, every trial that I have ever

1 been involved in as a lawyer or judge -- or as a judge, you
2 will hear lawyers stand up and say, "I have an objection, I
3 have a matter of law to take up with the Court." And those
4 typically have to do with evidentiary matters. Those
5 conversations will take place outside of your earshot, either
6 up here at the bench or if it's a more involved question of
7 law, we'll send you back to the jury room. And we'll be
8 discussing those points of law, evidentiary matters, outside
9 of your presence.

10 And I want to let you know that in advance. It's not as
11 though we're trying to hide anything from you, but the Rules
12 of Evidence and the Rules of Civil Procedure require that only
13 admissible evidence come before you, and that's what these
14 issues are about. And at the conclusion of the case, if you
15 have a question about a particular point of law and if I can
16 remember what it was, I'd be happy to share it with you at
17 that time, but it would be inappropriate for you to do that
18 prior to deliberation and rendering a verdict.

19 Ladies and gentlemen of the jury, you are the sole and
20 exclusive judges of the facts. You need to pay very close
21 attention to the testimony as it comes from the witness stand.
22 And the law explains how you, as jurors, fulfill your duty as
23 the judges of fact -- as the judge of the facts. You need to
24 ask yourself what opportunity this witness had to observe the
25 things to which they're testifying to. Ask yourself whether

1 or not what they say is corroborated by other evidence or
2 whether or not it's in conflict with other evidence. You can
3 believe all of what a witness says, none of what a witness
4 says, or a portion thereof.

5 The law also says that you can take into consideration a
6 witness's demeanor, how they're acting on the witness stand.
7 We all, who have teenage children, know that it's important to
8 listen to what your teenage child tells you, but it's also
9 important to pay attention to how they're acting, their
10 demeanor. The law says that you can take that into
11 consideration.

12 The law also does not ask you to leave your good common
13 sense outside of the courtroom. We all, in our everyday
14 lives, have an opportunity to evaluate whether or not someone
15 is telling us the truth. It's that common sense that you
16 apply to this process, and I'm going to ask that you do that.

17 As far as the presentation of evidence, the plaintiff
18 goes first. The defense has an opportunity to present their
19 case, and then the plaintiff, since they have the burden of
20 proof, may have some issues on reply, and they're allowed in
21 the procedure -- the procedural rules allow them to do that.

22 At the conclusion of the presentation of evidence, these
23 lawyers are going to have an opportunity to stand up before
24 you and give closing arguments, and what they have to say in
25 closing arguments is not evidence but it will aid you

1 immensely in your deliberation process. And the closing
2 arguments is very similar in form to the opening statement,
3 but this presentation would be truly argumentative, because,
4 at that juncture, you'll have heard all of the evidence.
5 These very fine lawyers have an opportunity to point to the
6 evidence that supports their relative theory of the case. So
7 I implore you to pay very close attention during closing
8 arguments.

9 At the conclusion of that, I will charge you the
10 substantive law with regard to this case. The burden of proof
11 in a negligence case is by a preponderance of the evidence,
12 more likely than not. I will charge you in greater detail at
13 the conclusion of the case how to evaluate that.

14 Ladies and gentlemen of the jury, you are the triers of
15 fact, and I'm the arbiter of the law. You're participating in
16 a time-tested system. You have taken a solemn oath to fulfill
17 your duties as the triers of fact, and I'm confident that you
18 will do so. Given the nature of this case and the length of
19 this case, I'm going to ask that you not take notes. But this
20 is an important case. It's an important case to the
21 plaintiff, it's an important case to the defendant, and it's
22 also an important case for you because you have taken a solemn
23 oath, listened to the evidence, apply it to the law, and
24 render a verdict that speaks the truth. So pay very close
25 attention.

1 I also, in closing, want to say this: If I make an error
2 with regard to the law, those errors are easily corrected.
3 However, if you, as a jury -- as a jury panel make an error
4 with regard to the findings of fact, quite often, those errors
5 never can be corrected. So it's important for you to pay very
6 close attention to this case.

7 Mr. Willey, you're recognized.

8 MR. WILLEY: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes.

11 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

12 MR. WILLEY: Good afternoon. And, first, I want to thank
13 you all for your service. And as we started this morning, you
14 probably for hoping that you weren't chosen, but everything
15 happens for a reason, and you were chosen.

16 And this is a very important case, as Judge Nettles told
17 you, for my client, and it's a very important case for you and
18 for Florence County. And for the next little while, I'm going
19 to take you through the case and what the evidence in the case
20 is going to show you, and I think that what you'll see about
21 this case is that it's a relatively straightforward case.
22 This is not a complicated, complex case. This is a case that
23 is pretty simple, by all standards.

24 Ms. Jones was in Walmart. She stepped on a nail. The
25 nail punctured her foot. She immediately went to the hospital

1 to get a tetanus shot. The puncture wound became infected.
2 She ended up getting gangrene and ended up needing a series of
3 amputations, resulting in today she has no leg -- no right leg
4 below the knee.

5 That's what happened. Let's talk about why that matters.

6 The safety rules in this case are that Walmart has a
7 responsibility to keep its store reasonably safe for its
8 customers. Walmart has a responsibility to inspect its store
9 for unsafe conditions and to remedy them. If Walmart does not
10 do those two very basic things and, as a result, someone is
11 injured, then Walmart is responsible for the harm.

12 Straightforward. How we got here, what the evidence
13 shows. Well, we got here because, as you'll hear throughout
14 the course of this case, Walmart denies the undeniable, they
15 delay the inevitable, and they defend the indefensible. And
16 you're going to see the evidence in the case. And Walmart has
17 been doing this since June 26 of 2015. That is the day that
18 Ms. Jones stepped on that nail. It has been 2,327 days for
19 her to get her day in court. Six years, four months, and 13
20 days she has been living with this case. And she will live
21 with this case and with your verdict for the rest of her life
22 because she can't grow a leg back.

23 And you're going to hear testimony in this case that, for
24 2,437 [verbatim] days that she has lived with this case, she
25 has been injured. She has suffered tremendously. And you're

1 going to hear that she can't afford a prosthetic. You
2 probably had an opportunity to open her coming and going in a
3 wheelchair. That is how she comes and goes.

4 And you're going to hear all that evidence.

5 Well, before that, let me show you how clear it is what
6 happened on June 26, 2015, and when Walmart knew about it.

7 These are Walmart cameras, and you'll have the opportunity to
8 see these in more detail. But at 11:30, Ms. Jones enters the
9 Walmart. And you'll see her come this way and walk through
10 the doors.

11 At 11:31, in this video, you'll see her. There's
12 Ms. Jones, entering the Walmart, walking normally. At 11:31,
13 you'll see her enter the produce area. She'll come around
14 with her cart.

15 (Video plays.)

16 You'll notice that, by the door, there's an associate --
17 a Walmart associate to greet her, checking people out. Here
18 comes Ms. Jones coming into the produce area. There's the
19 greeter right by the produce area. And Ms. Jones turns right
20 into that produce area, past the watermelons.

21 At 11:31:46, you'll see Ms. Jones come around, and you'll
22 see her shop for some produce, and you'll get just barely a
23 glimpse of her. This will become important later, because
24 we'll learn about whether Walmart has cameras and what they're
25 able to show us if they want to.

1 There's Ms. Jones shopping for her produce.

2 And you'll see Ms. Jones here. When it gets to 46, here
3 she comes, leaving the produce area and entering what we call
4 the grocery action alley; that's what Walmart calls it.

5 You'll see her walk down. And when it gets to 11:32:37 when
6 Ms. Jones gets down here, you'll see her look down. And
7 she'll testify the evidence will show through her testimony
8 that she looked down because she heard a "tick tick" sound,
9 kind of like something was caught on her shoe.

10 (Video plays.)

11 You can see her look down. She pulls her foot up and
12 looks down.

13 Ms. Jones, at that point, stops and talks with an
14 acquaintance. You'll see her there and you'll see other shots
15 of that. There's a couple there that she knows at the
16 Walmart, and so she stops at that point and talks to them.

17 There's another shot of it. There's the two individuals
18 and Ms. Jones. And you'll notice the yellow. That will give
19 you a good idea where -- where you are.

20 And then watch Ms. Jones. She takes her flip-flop off,
21 and her foot's bloody. She notices there's a nail on the
22 bottom of her flip-flop that has punctured her foot that she
23 had picked up in that aisle. She takes it out of her
24 flip-flop. She wraps it up, puts her flip-flop back on. You
25 see the bloody foot. 11:34:11.

1 Ms. Jones had come that day to buy some bleach. That's
2 why she's gone to the laundry area, the evidence will show.
3 And you'll see that Ms. Jones eventually gets her bleach. At
4 11:37:20, she enters the register area. You'll notice she's
5 kind of favoring the left leg. She'll go over to the register
6 area and check out.

7 At 11:39:42, see Ms. Jones paid. She leaves the register
8 area. And she'll testify that her foot was giving her some
9 more pain, and so she stops here at the register area and
10 looks at it again. She realizes that perhaps it was a little
11 more punctured than she thought.

12 So what did Ms. Jones do? This is a picture which will
13 become important later. This shows you the point of sales
14 system, and this will show you Ms. Jones, as she pays for her
15 bleach. Because what you'll learn is that Walmart denies that
16 Ms. Jones was even a patron at the store. And you'll see her
17 put her five-dollar bill in. That's how good their camera is;
18 you can actually see what it says on it when she puts it in.
19 And leaves.

20 So after Ms. Jones leaves the register area, what does
21 she do? She enters customer service to tell them what had
22 happened, see if they have any first aid.

23 See her at 11:40:59, she'll come down here and she'll
24 enter the customer service area. You can see her now, she's
25 just coming into the frame. She's moving, you'll notice, a

1 little slower as she went into the store.

2 Another Walmart associate. And she rounds the bend and
3 enters customer service.

4 So what happens at customer service? Well, here's what
5 happens in customer service. Ms. Jones tells Ayesha Cooke,
6 who you'll hear from, a Walmart customer service
7 representative, that she stepped on a nail. And Ms. Cooke --
8 this is a customer incident report. Ms. Jones filled out the
9 top, and Ms. Cooke filled in the information:
10 African-American female, white tank top, green shorts and
11 flip-flops. On the laundry department aisle.

12 Now, notice that Ms. Jones wrote that it happened on the
13 main aisle of the grocery. That where she first noticed it;
14 remember the "tick tick" before it punctured her. And if
15 you've ever stepped on a nail, you probably had some
16 experience with that. But they were in the laundry department
17 aisle, so they knew where it happened -- whereabouts it
18 happened.

19 And then Ms. Cooke will testify, the evidence will show,
20 she put the information into the computer to go to the people
21 up in corporate, in charge. Right? And how long did that
22 take? An hour. Ms. Jones didn't get out of the customer
23 service until 12:35:52. And while she was in customer
24 service, you'll see her leave. Walmart asked for the nail, if
25 they could have the nail. Ms. Jones, intelligently said no,

1 and you'll see why that was an intelligent decision as we go
2 through the course of this trial.

3 And they never offered to call her an ambulance, medical
4 attention, or anything like that. And so Ms. Jones left. And
5 you'll see her walk out. Again, favoring that left leg.

6 So Walmart knew. Ms. Cooke then filled out a video
7 request form, which goes up to the folks in asset protection
8 at Walmart. And what that does is it triggers Walmart to go
9 ahead and pull all the video of that customer in the store.
10 And you will see that Ms. Cooke wrote "punctured by a nail" as
11 the type of accident. Ms. Cooke is going to testify that she
12 actually saw the nail, by the way, and she thinks she took a
13 picture of it, but she doesn't know what happened to the
14 picture.

15 And those videos were pulled. You have seen some of
16 these videos were pulled. And that was completed by Jenny
17 Wright, who you're also going to hear from, on 6/29 of '15, so
18 just three days later. Okay?

19 And Ms. Wright came up with a timeline of what she saw,
20 and she saw what we all just saw; that Ms. Jones checked her
21 left leg at 11:34:10; that she paid for her bleach; that she
22 went into customer service; that she talked to individuals in
23 customer service, filled out an accident report, and then she
24 left.

25 On 6/29/15, the asset protection manager of Walmart

1 chronicaled those series of events just the same way that you
2 and I just saw them. Okay?

3 So what did Ms. Jones do? She went to the hospital
4 immediately. 2:02 is when she's finally seen by a doctor.
5 See 1404. That's military time. And she reported to them
6 what happened: Stepped on a rusty nail with right foot prior
7 to arrival, bleeding controlled, and states she needs a
8 tetanus shot.

9 Immediately went for medical attention to get a tetanus
10 shot. Makes sense; right? Step on a rusty nail, you get cut
11 by something rusty, you go get a tetanus shot. She did that
12 immediately. Left -- again, left customer service at 12:35.
13 She was being seen by a doctor at 2:02 that same afternoon
14 over at McLeod.

15 And she actually reported to them that she was walking in
16 Walmart, whenever she stepped -- it says "stepping", it should
17 be "stepped" -- on a rusty nail with her right foot. Patient
18 has a puncture wound to the planar surface of the right foot
19 and bleeding controlled prior to arrival. Wearing flip-flops.

20 When you tell the truth, it's easy. Right? This is what
21 happened. It was seen on video. Walmart has reported it.
22 The doctor reported it.

23 And so what happened as a result of that? As a result of
24 the injury -- and the evidence will show and you'll have the
25 opportunity to see these in more detail -- once that infection

1 developed, Ms. Jones develops some complications. And, again,
2 you'll see these in more detail. But, initially, they had to
3 take off a couple of her toes as a result of the infection.
4 That happened 8/4/2015. And that left foot, by the way, they
5 had opened her up on 7/15 of 2015, just about two weeks after
6 this with the infection, to try to clean the infection out and
7 only take one toe, and the doctor will tell you why that's
8 important, why we start with the most conservative to try to
9 get rid of the infection. And they couldn't get rid of the
10 infection.

11 And then, after they had taken that and they had taken
12 more toes and that didn't work, by February, Ms. Jones was
13 having a right above-the-knee amputation by February of 2016.

14 I show you all that to say the timeline is very
15 straightforward. It's a very straightforward case.

16 So after all that and learning all that, Walmart, of
17 course, did the right thing; right? Wrong. Here's what
18 happened. Walmart continued to deny the undeniable, delay the
19 inevitable, and defend the indefensible. So Ms. Jones was
20 forced to file a lawsuit, and she did it on May 22nd of 2017,
21 more than a year after she lost her leg, trying to be
22 reasonable.

23 Walmart delayed the inevitable by filing notice of
24 removal, trying to take the case to federal court. That got
25 kicked back. And so we had to file an amended complaint. Our

1 amended complaint, we finally got back into this court so
2 y'all could hear it on January 16th of 2018. So this current
3 case's amended complaint has been pending now for coming up on
4 four years.

5 And, at the very beginning of this amended complaint, we
6 put the same synopsis that we did at the beginning of the
7 other complaint. And what does it say about that? On June
8 26, 2015, April Jones was a patron of Walmart Store No. 630 in
9 Florence, South Carolina. Ms. Jones passed through an area
10 where there were several pallets nearby in which she suddenly
11 felt a sharp pain in her foot. Ms. Jones inspected her foot
12 and observed that a rusty nail had pierced through her shoe
13 was and lodged into her foot. Ms. Jones visited the hospital
14 and subsequently had to have a hole cut in her foot to treat
15 the wound, which led to multiple surgical amputations,
16 eventually resulting in losing her right leg up to just above
17 her knee. That's what we just saw. We all just watched it
18 again.

19 So what did Walmart do? As to paragraph one, "Defendants
20 admit the allegations in paragraph 1 only to the extent they
21 allege that the plaintiff was present in the subject store in
22 Florence County, South Carolina, on June 26, 2015.
23 Defendants -- Mr. Ringer and Walmart -- deny all the remaining
24 allegations contained in paragraph 1." So they continue to
25 deny the undeniable, that we all just saw on video, and they

1 had an opportunity to see on video three days after it
2 happened.

3 So let's go through all the things they denied in number
4 one. In green is what they agreed to. Okay? They agree that
5 it happened on June 26, 2015, in Florence, South Carolina.
6 Okay. That's about as far as we got.

7 They deny that Ms. Jones visited the hospital. They deny
8 that Ms. Jones was a patron; they just say that she was
9 present. And you're going to learn, when the judge charges
10 you on the law, some of the importance of that, because a
11 shopkeeper has a duty to patrons to inspect their premises to
12 make sure that they're safe, and if they're not, to remedy it,
13 and they have a responsibility not to create a danger.

14 So Ms. Jones wins this case if you find that Walmart
15 brought the nail into the store, okay, on a pallet or
16 otherwise, or if you find that the nail was simply on the
17 store and that a reasonable inspection would have discovered
18 it and that that did not happen and she stepped on the nail.
19 But, again, they're not even willing to admit she was a
20 patron, despite the fact they have video of her putting five
21 dollars into their machine.

22 Ms. Jones passed through an area where there were several
23 pallets nearby. Okay? They deny that. And you'll see
24 evidence of that as we go through this.

25 They deny that she suddenly felt the sharp pain in her

1 foot. Well, that's exactly what she told Ayesha Cooke.
2 That's exactly what the video shows. She was bleeding. How
3 could it not have been a pain in her foot?

4 They deny that Ms. Jones inspected her foot despite the
5 fact that we have it on video -- their video that they had
6 given to us.

7 They deny that Ms. Jones observed a rusty nail that had
8 pierced through her shoe and was lodged into her foot, despite
9 the fact you'll hear from Ayesha Cooke, their own employee,
10 that that's what Ms. Jones said. She observed the nail. And
11 you'll have the opportunity to see the nail as well.

12 They deny that Ms. Jones subsequently had to have a hole
13 cut in her foot to treat the wound. You'll hear from the
14 doctor that that's what happened, and you'll hear from
15 Ms. Jones that that's what happened. You'll see the
16 information that's led to multiple surgical amputations,
17 eventually resulting in her losing her right leg.

18 So here's all the evidence again. There's her putting
19 five dollars into, as the evidence will show. There are
20 pallets in the area that she was passing through, grocery
21 action alley. Here she is where she felt the sharp pain in
22 her foot and inspected her foot and observed the rusty nail in
23 her foot.

24 Here's a picture of the nail, and you'll have the
25 opportunity to see it throughout the course of the trial. And

1 here's what Ms. Simmons said under oath: "She told me that
2 something went through her foot, a nail. She showed me the
3 nail. She would not give me the nail itself." Yet they still
4 deny that a nail went through her foot.

5 Ms. Cooke also says she believes she took a picture of it
6 but she can't be sure where that went.

7 They deny she went to the hospital. Again, you have seen
8 the record. And on and on.

9 And so after Walmart had the opportunity and their
10 counsel and defendants had the opportunity to review all the
11 videos, they didn't persist in the strike. I mean, they
12 didn't continue to deny what was so obvious and true.
13 December of 2018, here's what they say. This is the official
14 court document, Defendant's Amended and Supplemental Responses
15 to Plaintiff's Interrogatories, which Walmart and Mr. Ringer
16 verified, and you'll see that.

17 Defendant Walmart further responds that, "Wooden pallets
18 are occasionally used in seasonal displays, but upon
19 information and belief, no such displays were in place in the
20 subject store on the day of the incident." But we just saw
21 pallets in the picture on the day of the incident on the
22 video.

23 But it gets better because the evidence is going to show
24 that, when Mr. Ringer comes and testifies and we take him
25 through the videos, Mr. Ringer, the store manager, the

1 defendant in the case, who responded to these interrogatories,
2 we talked to him about wooden pallets, and we said, "Is there
3 an instance where a wooden pallet, instead of being unloaded,
4 gets onto the sales floor?" And he said, "Yes." And you'll
5 learn that that's against Walmart policy.

6 And we asked him, "What type of items go on the sales
7 floor on a wooden pallet? Just seasonal or --"

8 And what he says? "All over the map."

9 So we follow-up: "All right. It could be food. It
10 could be stereo equipment. Just whatever came on a wooden
11 pallet?"

12 "Yeah, whatever came on a wooden pallet goes on the sales
13 floor."

14 Common sense. We have all been to Walmart probably. But
15 we verified with Mr. Ringer just in case.

16 And we asked him if pallets would remain in the store. I
17 know you say you don't generally like that and you'll learn
18 that's against their policy, but if it were to remain in the
19 store, is that like, if you get a ton of watermelons sitting
20 on a pallet, is that probably the --

21 And his answer is: "I mean, if a watermelon bin comes in
22 and it's on the pallet, yes, it's going to stay on the
23 pallet."

24 Question: "Because it weighs a flipping (ph) ton?"

25 Answer: "Yes. It's made to ship that way."

1 "So if I understand you correctly with respect to wooden
2 pallets, what you said is you can't guarantee they never ended
3 up staying on the sales floor, but that's not what Walmart
4 wants to happen. That's not what you want to happen. If that
5 happens and you spot it or somebody else spots it, you say fix
6 it, get those wood pallets off the sales floor?"

7 Answer: "Yes."

8 And then we're going to look at a video of Mr. Ringer,
9 and Mr. Ringer is going to have the opportunity to see the
10 video of the store that day. And during his deposition under
11 oath, just like his court testimony will be, the evidence will
12 show he will point out to you at least one pallet. Okay?

13 And, again, remember, no such displays were on the floor
14 on the day of the incident. It's just not true. It's just
15 not true.

16 So, surely, after we pointed that out -- and the evidence
17 will show Walmart did the right thing; right? No.

18 Defendant's Amended Responses to Plaintiff's First
19 Request to Admit -- these are from 2018, I believe -- and
20 these are just basic -- it's where you just send them requests
21 to admit to try to narrow the issues. And we said, "Admit
22 that they're responsible for maintenance and/or premises care
23 and have a duty to maintain a safe environment for an
24 invitee," which is what a patron is, it's an invitee under the
25 law, as you'll learn.

1 "Denied as stated."

2 "Admit that the placement of unmaintained wooden pallets
3 with loose rusty nails in the areas where invitees passing
4 through is or should be foreseeable, presented a dangerous
5 condition for those shopping on the premises."

6 "Denied as stated."

7 And upon information and belief, no unmaintained wooden
8 pallets or loose rusty nails were present in the subject areas
9 of the store at the time of the alleged incident.

10 And it goes on.

11 "Admit that Defendant knew or should have known
12 unmaintained wooden pallets with loose, rusty nails were being
13 placed in areas where invitees passing through was or should
14 have been foreseeable at Walmart No. 630."

15 "Denied."

16 "Admit that the Defendants have a duty to make regular
17 inspections of the Walmart premises."

18 "Denied as stated."

19 "Walmart owes its customers a duty to exercise ordinary
20 care to keep the premises reasonably safe. Admit that
21 Defendant failed to make regular inspections of the Walmart
22 630."

23 "Denied."

24 "Admit that Defendant knew or should have known
25 unmaintained property could present dangerous conditions and

1 hazards to invitees."

2 "Denied as stated."

3 "Admit that, on June 16th, 2015, Defendant failed to
4 warn."

5 "Denied."

6 Okay? So these, again, were verified by a representative
7 of Walmart, okay, as under-oath statements, and by Mr. Ringer,
8 who is the defendant in the case, and you'll have those. You
9 can see those verifications.

10 And remember what he told us at his deposition when we
11 actually went through it. He told us that the policy of
12 Walmart is not to have wooden pallets on the sales floor, and
13 yet, when we had asked him prior to admit that, on June 26,
14 2015, Defendant did not follow internal safety policies and
15 procedures that became an incident, which (inaudible), and he
16 denied it. But he pointed out the pallet (inaudible).

17 Here's the policy. Remove pallets from the sales floor,
18 along with shrink wrap, cardboard, and other debris in a
19 timely manner, and their redaction (inaudible) that Walmart
20 did. They didn't want us to see the rest.

21 But remember what Mr. Ringer said. You can see that wood
22 (inaudible). That's wood. That's a pallet. And you'll hear
23 him testify to that, okay, during the course of this case.

24 And you'll see some other photographs, because surely,
25 after all of this, Walmart would have made sure that they

1 would not continue to leave unmaintained wooden pallets on the
2 sales floor and endanger people; right? No.

3 You'll see these photographs, and you'll hear expert
4 testimony that these pallets do not comply with ANSI
5 standards. You'll see missing nails. And those are the same
6 color, the Walmart sales floor on the videos. You'll see all
7 kinds of nails used to repair pallets that are on the sales
8 floor.

9 You'll see a photograph of a pallet with a nail sticking
10 out on the Walmart sales floor, and you'll see it in larger.
11 You'll notice the "Rollback" sign up there, just in case you
12 have any doubt.

13 MR. BLAIN: Your Honor --

14 MR. WILLEY: And you'll have the opportunity --

15 MR. BLAIN: I've got to make an objection.

16 THE COURT: Hold on. I'm going to ask, Mr. Foreman, if
17 you could retire to the jury room. Once again, do not discuss
18 the case.

19 (The jury exited the courtroom at 2:56 p.m.)

20 THE COURT: Yes, ma'am. Yes, sir.

21 MR. BLAIN: Thank you, Your Honor. I would make an
22 objection based on the defendant's motion in limine that we
23 argued and was decided by the Court on Friday of last week.
24 These photos are clearly photos that we discussed and was
25 excluded by Your Honor based on the improper inspection

1 conducted in 2019, and they're being used in opening --
2 opening statements. They're irrelevant. They are
3 prejudicial. They are not probative of any material issue in
4 the case, and they are simply not evidence and they have been
5 excluded as evidence by Your Honor a few days ago.

6 MS. BOYD: And, further, too --

7 MR. WILLEY: We can't have multiple people arguing
8 objections. Whoever is doing opening gets to argue.

9 With respect to these photos, they were not excluded.
10 Your Honor excluded photos that were part of the kite display
11 because Your Honor found that perhaps there was some
12 destructive testing done to it. And so you excluded the photo
13 with respect to the destructive pallet under the kite display.
14 That is not these photographs. These photographs are not
15 excluded by Your Honor, so...

16 THE COURT: Well, that was the reason why I excluded that
17 particular photograph.

18 When were these pictures taken?

19 MR. WILLEY: These pictures are taken subsequent, and
20 they are relevant in this case for two reasons.

21 THE COURT: When?

22 MR. WILLEY: These photos -- 2019. These photographs
23 were taken subsequent in the Walmart at issue, and you found
24 that you did not perhaps love the Rule 34 inspection, the way
25 it went, and the Court might rule on that, but that you were

1 not going to exclude the rest of the photographs.

2 And with respect to these, punitive damages are an issue
3 in this case, and this is on going conduct of the same type
4 that is alleged. They did not move to bifurcate punitive
5 damages; it's too late to do so now. And so this is what the
6 evidence is going to show with respect to that.

7 Still, Walmart, four years later, unmaintained pallets,
8 nails sticking out, in their store. And so it's directly
9 relevant to the issues in the case.

10 THE COURT: What do y'all have to say about that?

11 MR. BLAIN: Yes, Your Honor. These are photos -- at
12 least one of these photos was taken in 2019 during the
13 inspection that we all watched video of on Friday when
14 Mr. Jefferies and his companions were in the store without
15 prior notification, two defendant's counsel, doing an
16 inspection with gloves, with a hammer. You can clear as day
17 take a look at the center photo and see that that pallet has
18 been tampered with on some level, and I think that is at least
19 the circumstantial evidence that Your Honor cited on Friday as
20 the basis to exclude that evidence.

21 And I think, if I recall your ruling correctly, Your
22 Honor, what we decided is that, before these photos would be
23 even considered to be submitted into evidence, we'd be allowed
24 to make that objection. And now these photos are being
25 offered in opening statements.

1 THE COURT: In addition to that, the opening statement is
2 more like a closing argument. I mean, opening statements were
3 not designed to do what you're doing. And you're not giving
4 them the opportunity to object to pictures that are
5 objectionable.

6 MR. WILLEY: No, he has the opportunity. He just
7 objected.

8 THE COURT: Well, you have already shown it to them.

9 MR. WILLEY: Right, because I have a reasonable belief
10 they're coming into evidence. They were not excluded as part
11 of the motion in limine, and they're directly related to
12 punitive damages, which they could have moved to bifurcate and
13 they did not do so. And so that is what opening statement is.
14 It's an overview of what counsel believes the evidence will
15 show, and I believe that the evidence will show this.

16 And we have already had a preliminary ruling indicating
17 that the evidence will. And I believe, if you review the
18 transcript, your exact quote was, "I'm excluding the one
19 photo, and that's sanction enough -- and that sanction," I
20 think is actually what you said; I don't think you used the
21 word "enough." And so that's what we have.

22 And, in any event, they're not in evidence at this point.
23 It's an opening statement, so...

24 THE COURT: I'm going to sustain the objection with
25 regard to showing of any pictures of any pallets during the

1 opening, and we'll address the admissibility of each one of
2 them on the merits when it comes up.

3 MR. BLAIN: Your Honor, I would also ask for a curative
4 instruction to explain to the jury that these are photos from
5 2019 that have simply no connection to Ms. Jones's incident in
6 2015 beyond pure speculation from the plaintiff's counsel.

7 THE COURT: We -- I'm going to -- that's my ruling. I'm
8 not going to give a curative charge at this time. I am going
9 to -- and of course when and if they're introduced into
10 evidence, you can point out -- if they get into evidence, you
11 can point out when they were taken.

12 MR. BLAIN: Thank you, Your Honor.

13 THE COURT: So there will be no more pictures in opening
14 statement with regard to pictures that might or might not be
15 admissible.

16 MR. WILLEY: May I have a moment just to make sure I
17 don't have anymore in my presentation?

18 THE COURT: Yes.

19 (Pause in the proceedings.)

20 MR. WILLEY: Okay. I'm ready.

21 MR. BLAIN: Your Honor, if I may go ahead and ask for a
22 clarification on one item. I believe your ruling just
23 excluded photos of pallets. There's another photo that just
24 popped up of the nail that we have not seen, that has not been
25 produced, on a white background. I just saw it flash on your

1 screen.

2 MR. WILLEY: It's already been shown in opening, and you
3 didn't object.

4 MR. BLAIN: Well, I'm making an objection now. I just
5 saw it on your presentation.

6 MR. WILLEY: It's the nail at issue.

7 MR. BLAIN: Well, I don't know that. It hasn't been
8 produced.

9 MR. WILLEY: Well, you can object at the appropriate
10 time.

11 THE COURT: Well, it might be a little bit too late,
12 then, if it's inadmissible for you should have shown it to the
13 jury. If you're going to be showing pictures, let's go
14 through them.

15 MR. WILLEY: That's the -- it's the nail. I mean, do you
16 want me to show the actual nail instead?

17 MR. BLAIN: I mean, you're using photographs that are
18 enlarged and that haven't been produced. I just don't -- we
19 haven't seen that. That's the basis of my objection.

20 We have all agreed during the motions in limine not to --

21 MR. WILLEY: Okay. I'll take the photo of the nail out.
22 That's just the craziest thing I have ever heard, but that's
23 fine. Okay.

24 THE COURT: We're ready for the jury.

25 (The jury entered the courtroom at 3:06 p.m.)

1 THE COURT: You may proceed.

2 MR. WILLEY: Thank you, Your Honor.

3 So, as I was saying, the evidence will show that, to this
4 day, Walmart still uses wooden pallets on the sales floor
5 despite knowing that they can cause injury. And you'll
6 remember in the videos that there are two displays of
7 watermelons, the exact thing that Mr. Ringer indicated that
8 they come in on pallets and sit on pallets.

9 And, of course, you'll remember what Ms. Jones bought,
10 bleach. And you'll notice Clorox uses a pallet in its
11 display. And you'll remember that --

12 MS. BOYD: Objection, Your Honor. Objection, Your Honor.

13 THE COURT: Why don't you approach the bench.

14 BENCH CONFERENCE

15 (A bench conference was held off the record and outside of
16 the hearing of the jury and others.)

17 (Open court resumes as follows:)

18 MR. WILLEY: So, as I was saying, you'll remember that
19 Walmart denied they even used pallets on the sales floor. We
20 know that's not true.

21 And so you have heard the judge say that the plaintiff
22 has the burden of proving its case, and that's correct. So
23 what does Ms. Jones have to prove in order to recover for her
24 damages in this case? She does not actually have to prove
25 that the nail came from a pallet. Okay? You're going to hear

1 a lot of testimony about did the nail -- and, by the way,
2 here's the nail. Did the nail -- and you'll be able to see it
3 at the appropriate time, okay? Did the nail come from a
4 pallet? Where did the nail come from?

5 But the truth is, all she has to prove is that she
6 stepped on it in the Walmart, which we know is true, and that
7 a reasonable inspection would have detected it; that if a
8 Walmart associate had been walking around, looking for
9 dangerous things and had seen it, they would have been able to
10 see it; or that Walmart knew it was there, and that's the part
11 about bringing it in with a pallet, creating; or that Walmart
12 should have known it was there; or that Walmart created the
13 danger by bringing it into the store in some way other than a
14 pallet. So if there's some other way that Walmart could have
15 brought the nail into the store itself, then they would be
16 liable. And that's or, or, or. One of those things.

17 And she has to then, after that, which I would
18 demonstrate, it's fairly straightforward, she has to prove to
19 you her harms and losses. And what the judge will tell you is
20 that you are the finders of damages in this case. And so
21 you'll have some tools. You'll hear testimony about the
22 things that she could do before that she can't do now. Okay?
23 The things that you would expect that a person who has a leg
24 amputation that can't afford a prosthesis is unable to do.
25 Okay? You'll hear about those things.

1 You'll hear about the things that she would like to be
2 able to do now that she can't. You'll hear about her medical
3 bills. Okay? And you'll have those. You'll have the
4 opportunity to actually have those -- the actual medical bills
5 that go to the doctors that did a good job for her because,
6 let's be clear, as the evidence will show, this is the type of
7 infection that, if it's not stopped, it can lead to death.
8 And she didn't die. She's very thankful for that. She's
9 thankful for the treatment she got. So you'll see those
10 medical bills.

11 And you'll hear from people about those things. And
12 that's would you have to judge in this case. What are the
13 harms and losses? And we call that inside the box. Okay?
14 Everything else is outside the box.

15 So, you know, you can't consider sympathy for one party
16 or another or anything like that. You have to look right at
17 the damages and say, okay, this is what Ms. Jones went
18 through, this is all that we can do, this is what we'll award
19 money for. That's all we can do in our system. Believe me, I
20 wish we could put her right back, but we can't.

21 And so, at the end of this, we're going to ask for a
22 money verdict, and what the evidence is going to show in this
23 case is that Ms. Jones's harms and losses are significant.
24 Okay? You're going to see that. And so we're going to ask
25 you for a significant verdict. This is an important case for

1 Ms. Jones.

2 Now, this is the important part because this is --
3 everything you see, all the evidence in the case, everything I
4 have shown you, the evidence, is going to be in the case.
5 Here's how you are to judge it. The judge will instruct you
6 at the end it's simply more likely than not. And Ms. Jones's
7 burden is not beyond a reasonable doubt like in a criminal
8 case where somebody might go to jail and lose their freedom.
9 That's the highest burden. Okay?

10 This is simply a preponderance of the evidence, and so is
11 it more likely than not. And if you think of a set of scales,
12 a market scales -- you remember Lady Justice with the
13 blindfold and the sword and a set of scales? If -- at this
14 point, those scales are even when we started this case, and if
15 you find throughout the course of this case that those scales
16 tip ever so slightly in Ms. Jones's favor -- a feather, a
17 grain of sand, a grain of salt -- ever so slightly, then she
18 will have prevailed. She doesn't have to prove her case
19 beyond a reasonable doubt, simply a preponderance of the
20 evidence. And so that's important, as you watch the evidence
21 throughout the case, to understand that.

22 In just a moment, I'm going to sit down, and one of the
23 Walmart attorneys is going to stand up, and I don't know what
24 they're going to say. Okay? I have no idea because, as you
25 saw, they denied everything, the undeniable.

1 But I want you to remember this: I want you to remember
2 what I told you the evidence is going to show, what you saw
3 with your own eyes, and I want you to remember what they say,
4 because, at the close of the trial, I'll come back before you,
5 and I'm going to write this down, some of what they said, and
6 we'll have the opportunity to talk about that.

7 So just remember: This case, at the end of the day, for
8 us -- this case, we have a duty -- I have a duty to represent
9 Ms. Jones, you have a duty to serve as jurors. This is her
10 one opportunity in court. She doesn't get to come back.

11 And so thank you for your attention, thank you your time,
12 thank you for your service. I really mean that because, as
13 you'll see, Ms. Jones is a nice lady, the evidence will show
14 that. And she deserves it. So, thank you.

15 THE COURT: Defense is recognized, Ms. Boyd.

16 MS. BOYD: Thank you. Can my co-counsel again help me
17 turn the podium, Your Honor?

18 THE COURT: Yes.

19 OPENING STATEMENT ON BEHALF OF THE DEFENDANTS

20 MS. BOYD: Good afternoon, everyone. I don't a fancy
21 PowerPoint display. I'm just going to talk to you a little
22 bit about this case. First, I want to thank you-all for your
23 service this afternoon and for the next week. We do
24 appreciate your time, and we know what a burden these can be
25 sometimes, so we do appreciate you.

1 It's Walmart's and Mr. Ringer's position that this case
2 is about misplaced blame. Unfortunately, Ms. Jones had a long
3 history of health issues that resulted in the amputation of
4 her leg, and now, she's placing that blame on Mr. Ringer and
5 Walmart, and they did nothing wrong.

6 It's natural for us to want to place the blame on someone
7 to have done something, but, often, no one did anything wrong.
8 And that's why the law in South Carolina recognizes that you
9 must establish that the defendant caused the harm, that it
10 injured the party, and that that injury resulted in their
11 damages.

12 Here, Ms. Jones is asking for you to hold Mr. Ringer
13 personally responsible because he's an employee of Walmart,
14 and she's also asking you to hold Walmart responsible. But
15 the evidence will show that neither one of them did anything
16 wrong. And while Walmart always wants its customers to have a
17 satisfactory shopping experience, sometimes things happen in
18 the store, and they're sympathetic to those things, but it
19 doesn't mean that Walmart or any of its employees did anything
20 wrong.

21 At the time of this incident, Mr. Ringer was the store
22 manager of the Beltline Drive store. He isn't anymore, but
23 he's still employed with Walmart. He's a hard-working man
24 with a family. He's been with Walmart for 28 years.

25 And I want you guys to remember that this lawsuit is

1 suing Mr. Ringer personally, individually, not Walmart store
2 manager but Tim Ringer individually. So any judgment that you
3 render is personally against Mr. Ringer. And the evidence
4 will show that that's solely because he was the store manager
5 on the day that Ms. Jones came into Walmart on Beltline Drive.

6 I also want to point out to you that Ms. Jones had a long
7 history of issues when she came into the store that day. She
8 drove herself into Walmart on June 26, 2015, but at the time,
9 she was a diabetic, she had a kidney removed, and her own
10 testimony will tell you that she wasn't doing anything to
11 treat her diabetic condition. She's going to tell you that
12 her diabetes were under control, but her medical records will
13 show a different story, and, unfortunately, that just wasn't
14 the case.

15 Ms. Jones also was wearing flip-flops on the day of the
16 incident, and you will hear testimony that diabetics should
17 really protect their feet to prevent this type of incident,
18 injury to their feet.

19 Ms. Jones walks into the store. She's going to testify
20 that she was in that store less than three minutes before she
21 notices a clicking sound. In the video that you saw, it's
22 consistent with that testimony that she's going to proffer to
23 you. She heard a clicking noise, and so she looked at her
24 foot. She never felt anything. And she's going to testify,
25 she didn't feel pain. She just heard this noise and it

1 prompted her to stop. And she did. Then she looked at her
2 foot and she kept walking. And she continued to the bleach
3 aisle where she's going to take that nail out of her shoe and
4 place it on a shelf. And she's going to continue on to
5 purchase the bleach -- to get the bleach that she's there to
6 purchase. She walks on down the aisle.

7 And she's going to testify that she notices some blood in
8 her flip-flop, so she turns around, and she gets the nail off
9 of the shelf. And she goes to self-checkout, she uses a
10 coupon, and she does indeed pay for her bleach, and then she
11 goes to customer service.

12 And as the video will show, as her counsel showed you so
13 beautifully, that she passed several Walmart associates, and
14 she never said anything to anyone. She continued until she
15 got to customer service. She purchased her items first. She
16 took her time. She was in no immediate hurry.

17 Ms. Jones is also going to testify that, when she looked
18 at her foot, she saw a hole the size of a dime; that the wound
19 in her foot was larger than the nail itself. And she's also
20 going to tell you that that wound was in the middle, towards
21 the back of her foot, and that's going to be important because
22 you're going to hear other testimony about the wounds in her
23 foot.

24 Ms. Jones is also going to tell you that, three days
25 after this incident, her toes got infected, and so she went in

1 to get treatment, and ultimately, her toe was amputated. But
2 Ms. Jones is going to tell you, her own admission, that she
3 was she told it was because of her diabetes. And medical
4 professionals are going to testify. Walmart's expert is going
5 to also testify that that initial amputation was because of
6 her pre-existing diabetic condition.

7 Ms. Jones is asking you to hold Walmart and Mr. Ringer
8 responsible because she was simply in the store when she
9 noticed the nail in her shoe. And now, some of you, you may
10 think, if it happens in the store, the store is responsible,
11 but that's just not the law. And you-all have been sworn in
12 and taken an oath to follow and apply the law of South
13 Carolina.

14 So what is the law? The law says that, for a store to be
15 responsible, it must have created the condition or it knew
16 about the condition before the injury occurred or there is
17 evidence that the condition had been there for such a long
18 time that it reasonably should have been located and taken
19 care of.

20 Ms. Jones is going to tell you a lot of things, but she
21 is not going to show you any evidence that any of those three
22 things occurred in this case.

23 In addition to showing that Walmart's responsible for the
24 actual nail in her shoe, she must also show that Walmart's
25 responsible for her medical condition and damages that

1 occurred because of that nail injury. But she won't be able
2 to do that because her own testimony, her diabetic condition
3 is what causes that initial amputation that starts a cascade
4 of the additional amputations. It is not because of Walmart
5 but because of her pre-existing conditions.

6 But as you listen to the evidence, I want you guys to
7 remember a couple of things. First, when you think about
8 Walmart, it is a corporation, but the law makes no difference
9 between Mr. Ringer and Walmart, and you are to view Walmart
10 just as if you're viewing Mr. Ringer, and you must be fair and
11 apply the law and not just consider penalizing Walmart because
12 it's a corporation. It is just like a person (indiscernible).
13 Okay? So I need you guys to remember that.

14 The other thing is, there are a lot of surveillance
15 videos, and Plaintiff's counsel showed you but a bit of it.
16 And I want you to pay special attention to it, because it is
17 an unbiased witness. It recorded everything that happened in
18 the store that was captured. Ms. Jones walking, entering,
19 walking through the store, and exiting the store. The whole
20 time she was there in, there's camera footage. So I want you
21 guys to pay attention to the camera footage instead of what
22 the witnesses may say.

23 Lastly, I agree with Plaintiff's counsel, actually, in
24 something he said. He said this case is simple. And I agree.
25 Because you guys have to ask yourself three questions: Is

1 there evidence that Mr. Ringer or Walmart put a nail on the
2 floor? I say to you there won't be evidence of that.

3 The second question is: Is there evidence that
4 Mr. Ringer or Walmart knew the nail was on the floor before
5 Ms. Jones stepped on it or found it in her shoe? And I
6 believe there is no evidence of that. And I believe that the
7 evidence will show that as well to you.

8 And, third, you have to ask: Is there evidence that the
9 nail was on the floor for such a long time that Mr. Ringer or
10 Walmart should have found it before Ms. Jones stepped on it or
11 found it in her shoe?

12 So what's the evidence going to show? First, it's going
13 to show that she walked in and was only in the store three
14 minutes before hearing the "tick tick" noise. She didn't have
15 an opportunity to walk all over this 150,000 square foot
16 store. Her movements were limited to the grocery section of
17 this area. So the area of this incident is limited to the
18 grocery section of the store.

19 So I ask you: Let's not look at evidence of 150,000
20 square feet of what is happening in the Walmart. We have to
21 narrow it down to the grocery area where she walked.

22 Second, the evidence is going to show you that Ms. Jones
23 simply found a nail in her shoe. At no point do you see her
24 stepping on anything. And I'm not saying she did not step on
25 the nail. I am saying the evidence shows her discovering the

1 nail in her shoe. So she doesn't know the origin of the nail.
2 She doesn't know where it came from. She simply heard a
3 noise. She didn't feel a pain that would indicate it just
4 immediately happened. She heard a noise, and she stopped to
5 investigate a noise.

6 Ms. Jones doesn't know the source of the nail. She's
7 going to tell you she assumed it came from a pallet in the
8 store, but she's also going to tell you that she doesn't know
9 that. You're going to hear a lot of information about
10 pallets, but that's just smoke and mirrors, because Ms. Jones
11 is also going to tell you that, in the three minutes that she
12 walked in the store, that she walked down this main action
13 alley, she didn't see anything on the floor. She didn't see a
14 nail. She didn't see any pallet damage. She didn't see
15 anything. She's just making an assumption about where the
16 nail came from.

17 Plaintiff is making a big argument that Walmart is
18 denying the undeniable. Walmart and Mr. Ringer admit there
19 are wooden pallets in the store, and we're going to show you
20 that the evidence will show that having a palletized display
21 in Walmart does not violate Walmart policy; that there's a
22 misapplication of the policy that they showed you; that they
23 don't apply to palletized displays, which is what Mr. Ringer
24 will testify about. He will tell you the difference between a
25 pallet that merchandise is stocked from and brought into the

1 store and a palletized display that is set up by the vendor to
2 be displayed on a pallet. Those are different items.

3 But Walmart doesn't deny that there are pallets in the
4 store. The denial is that there were pallets in the area
5 where she walked. Just because there are pallets in a 150,000
6 square foot store doesn't put Walmart on notice that a nail
7 may fall out of a pallet as alleged by the plaintiff.

8 But I also want to talk to you about this nail. It's a
9 very (inaudible). Plaintiff counsel showed it for you
10 (inaudible). It's a small nail. Plaintiff's own expert is
11 going to testify and tell you that it's a roofing nail; that
12 it is not a nail that is commonly in a pallet. And Walmart's
13 expert is going to tell you the same thing. And he is an
14 expert on manufacturing and repairing pallets. And he's going
15 to tell you, you don't use a roofing nail to manufacture or
16 repair a pallet. You just don't. And this is not the nail
17 that you would find in a pallet.

18 And there's no evidence -- Ms. Jones won't produce any
19 evidence that anyone has identified the pallet with this
20 roofing nail in it. There just isn't any evidence of it.

21 And so, to us, it's misdirection. And Plaintiffs have
22 said, "We don't have to prove where it came from," well, you
23 have to show that we created it. They have to show that
24 Walmart and Mr. Ringer introduced it in some fashion. But you
25 have to do that by more than speculation and saying where it

1 could have come from, instead trying to say where it's likely
2 to come from or where it came from.

3 And the fact that a wooden pallet was in the store is not
4 evidence that it is the source of the nail. Period. But it's
5 definitely not evidence of the source of a wooden -- of a
6 roofing nail. I apologize. Of a roofing nail. I'm getting
7 all tongue-tied; I apologize.

8 Walmart's employees will also testify here today or this
9 week that they conducted an inspection of the store, and they
10 didn't see anything on the floor. They did not have any prior
11 notice of this nail prior to Ms. Jones coming into customer
12 service.

13 Ayesha Cooke will also testify. She's worked in that
14 store for years. She's never had a customer come and complain
15 of stepping on a nail. Mr. Ringer will tell you the same
16 thing. This isn't something that commonly happens in Walmart
17 or the Beltline Drive store.

18 Ms. Jones will tell you she had no idea whether Walmart
19 knew about the nail before she stepped on it. She also will
20 tell you she had no idea how long it had been on the floor
21 before she stepped on it. With that in mind, she can't tell
22 you that Walmart or Mr. Ringer created it or that they knew
23 about it or how long it had been there to establish that it
24 had been there long enough that they should have found it.

25 Therefore, we ask that you find that there is no

1 liability in this case; that Walmart and Mr. Ringer just
2 aren't responsible.

3 But I told you at the beginning, it's twofold. You have
4 to look at liability but also the causation of her damages.
5 And I want to talk to you a little bit about Ms. Jones's
6 damages. Ms. Jones is going to testify that she suffered this
7 large wound in her foot after -- immediately after stepping on
8 the nail that day in Walmart. In fact, she said it was as
9 large as a dime.

10 As store associate/manager, Kevin Lane, he's going to
11 testify because he saw her foot. He gave her first aid that
12 day, and he's going to say, "Yes, there was a wound on her
13 foot." And she said the wound was on the middle of her foot
14 towards the back, and he agreed that that's where her foot was
15 bleeding. But he also is going to testify that he saw other
16 sores on her foot.

17 And Ms. Jones's doctors are going to testify about her
18 infections, and they're going to tell you that her toe was
19 infected because of a wound that was at the base of her toe,
20 not near the bottom of her foot.

21 And so we're here to say that the evidence suggests that
22 Ms. Jones's injuries or her amputation were the result of her
23 diabetic condition and not by stepping on the nail in Walmart.
24 And Ms. Jones herself will tell you, would she have been
25 dealing with that infected toe three days after she stepped on

1 the nail at Walmart? Her doctor told her it was because of
2 her diabetic condition that toe was infected.

3 And she will also tell you that the wound itself was not
4 infected, the wound that she stepped on, the nail. That was a
5 different area. She will tell you that.

6 And so we believe that the evidence is going to show that
7 there's no causation between her stepping on that roofing nail
8 in Walmart and her subsequent amputations and that those
9 subsequent amputations were because of the initial toe
10 amputation and not her stepping on the nail in Walmart.

11 This is an unfortunate incident, and Walmart is so super
12 sympathetic to Ms. Jones in all that she's gone through, and
13 they don't deny that she's endured the amputation of her toe
14 and her foot and her leg, but it's just not their fault.
15 There's no evidence that Walmart or Tim Ringer caused to have
16 (inaudible) that injured Ms. Jones on June 26, 2015. So I ask
17 you to please return a verdict in Walmart and Mr. Ringer's
18 favor. Thank you so much.

19 THE COURT: Thank you, Ms. Boyd.

20 Mr. Willey, you may call your first witness.

21 MR. WILLEY: Thank you, Your Honor. May it please the
22 Court.

23 THE COURT: Yes, sir.

24 MR. WILLEY: Plaintiff April Jones would call her
25 treating physician, Dr. Keith Player.

1 THE COURT: Dr. Player, if you could come forward,
2 please, sir. I'm going to ask you if you could approach the
3 bailiff there and place your left hand on the Bible and raise
4 your right hand as the clerk administers the oath.

5 KEITH PLAYER, M.D.,
6 the witness, after having been duly sworn, was examined and
7 testified to as follows:

8 THE CLERK: Please be seated.

9 THE COURT: Watch your step; that's a slanted area there.
10 And have a seat in the witness chair. I'm going to ask if you
11 could pull up real close to that microphone. Speak loudly,
12 clearly, and slowly in order that we can hear everything that
13 you have to say.

14 THE WITNESS: Take the mask off?

15 THE COURT: If you feel comfortable taking your mask off,
16 we'd appreciate you doing that, and it might make it easier
17 for everybody to hear. Thank you.

18 And let's start with your full name, please, sir.

19 THE WITNESS: Keith Charles Player.

20 THE COURT: Thank you.

21 MR. WILLEY: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. WILLEY:

24 Q Dr. Player, we appreciate you coming over this afternoon.
25 I know you and I are familiar, but I'm sure the jury might not

1 be familiar with you. Can you just color in the picture about
2 yourself a little bit, a little bit of your background, where
3 you're from, that sort of thing?

4 **A** I was born in Florence. I graduated from West Florence
5 High School. I got a bachelor's of science in politics at
6 Princeton University. Went to medical school in Charleston at
7 the Medical University of South Carolina. Did my surgery
8 residency in Spartanburg. Finished there in 1999 and then
9 have been working here at McLeod since.

10 **Q** Hometown Florence guy off to Princeton and then MUSC.
11 Glad we got you back.

12 **A** I'm happy to be back.

13 **Q** Tell us what kind of work you do here.

14 **A** I'm a general surgeon.

15 **Q** Color in that picture a little bit. What is general
16 surgery? Is that everything like what you do with Ms. Jones,
17 or is it --

18 **A** General surgery is a -- it's -- you can think of it as
19 the family doctor of surgery where we handle pretty much
20 everything from -- from head to toe other than brains, bones,
21 hearts and lungs, for the most part.

22 **Q** And is that folks who are suffering from disease or folks
23 who have been accidents or folks who have -- what sort of
24 things would cause somebody to end up in your operating room?

25 **A** Both trauma -- it falls under general surgery.

1 Appendicitis, gallbladder disease, or cancer, thyroid disease,
2 breast disease, things like that.

3 Q How long have you been practicing as a general surgeon?

4 A I finished residency in 1999 and started practice
5 thereafter.

6 Q So that's -- do the math -- 20 years -- 20-something
7 years.

8 A Yes.

9 Q Any idea how many surgeries you have done in that period
10 of time?

11 A No.

12 Q Suffice it to say probably thousands?

13 A Yes, yes.

14 Q Tell us a little, in terms of your education. Any
15 specializations, certifications, that sort of that thing that
16 sets you apart from a lot of other physicians?

17 A Well, I'm board-certified in general surgery, which our
18 core of work encompasses all the areas that we just described.
19 I'm not fellowship-trained, but in -- we have a very
20 broad-based knowledge of varieties of disease processes.

21 Q So all types of surgeries for 20 years, too numerous to
22 count?

23 A Yes.

24 Q Amputations?

25 A Yes.

1 Q More than just on Ms. Jones?

2 A Yes.

3 Q What sort of conditions or injuries would have led to
4 those, just in general?

5 A Peripheral vascular disease, trauma, diabetes,
6 hypertension. Those are the primary causes of need for
7 amputation.

8 Q Understood.

9 MR. WILLEY: Your Honor, at this time, we would offer
10 Dr. Keith Player not only as, obviously, a percipient witness
11 who treated Ms. Jones but as an expert in the field of general
12 surgery.

13 THE COURT: Any query with regard to his qualifications?

14 MR. BLAIN: No objection.

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, normally a person cannot give opinion testimony.
17 Normally when a person testifies, they must testify as to what
18 they either saw, heard, or sensed by smell; however, there's
19 an exception when someone is qualified because of education or
20 experience. They're permitted to give their opinions in
21 certain areas if the Court qualifies them that way.

22 This witness will be qualified in the area of general
23 surgery to give opinion testimony in that area; however, that
24 does not mean that you must accept the opinion, but it is
25 evidence for you to use in any way you see fit and give the

1 weight and credibility you believe is appropriate. I'll
2 charge you in greater detail with regard to how to evaluate
3 expert testimony at the conclusion of the case.

4 MR. WILLEY: Thank you, Your Honor.

5 BY MR. WILLEY:

6 Q Dr. Player, so you treated April Jones back in 2015; is
7 that correct?

8 A I did, yes.

9 Q How long after the incident at Walmart on June 26 of 2015
10 was it before you first saw Ms. Jones?

11 A Three days, I believe.

12 Q So that would be the 29th?

13 A The 29th, yes.

14 Q All right. Can you describe for us and help us
15 understand the terminology and all that as you do it. You
16 know, I notice this is workday stuff for you, but it's new
17 stuff for a lot of us.

18 Describe for us your encounter with Ms. Jones, the
19 treatment you gave, the diagnoses you made, and let's just
20 kind of walk us through that, through each of those multiple
21 instances.

22 A Okay. So I believe she was admitted to the nephrology
23 service when she presented to the emergency department with
24 worsening foot infection. Her kidney doctors placed her in
25 the hospital, started her on antibiotics. She underwent

1 X-rays of her foot and what's called a bone scan, which looks
2 for infection in the bones.

3 She had a wound on the bottom of her foot, and her
4 nephrologist felt that that needed to be evaluated to
5 determine if we needed to operate on it to remove any
6 unhealthy tissue.

7 **Q** And that's how you became involved because you would make
8 that evaluation?

9 **A** Yes.

10 **Q** Okay. And her nephrologist referred Ms. Jones, then, to
11 you?

12 **A** Yes.

13 **Q** And you examined her. And tell us about what you found.

14 **A** So she had a wound on the bottom of her foot. I believe
15 it was at the base of her second toe. The foot has a variety
16 of bones, and I believe the wound was at the junction of the
17 toe bone and the -- what's called the metatarsal, which is in
18 the middle part of your foot. But it was on the foot -- on
19 the bottom part of her foot, what we call the plantar surface
20 of her foot.

21 The plantar surface is the bottom of the foot. The
22 dorsal surface is on the top of the foot. I guess I'll talk
23 about that later, but she had a wound on her foot which had
24 clearly unhealthy tissue, infected tissue, which was in need
25 of what's called debridement.

1 If you get tissue that is dying, infected, you must
2 remove it because the antibiotics can't treat tissue that
3 doesn't have blood flow to it or that has died.

4 So we took her to the operating room and did what's
5 called a debridement, which is where you cut back to what
6 appears to be healthy bleeding, live tissue to allow, then,
7 the antibiotics to take care of the rest of the infection in
8 her foot.

9 **Q** And did you make any conclusions about -- at that time
10 about what had caused that infection in Ms. Jones's toe or
11 anything about her history?

12 **A** The history that was given was that she had stepped on a
13 nail in Walmart three days previously.

14 **Q** Okay. And was the infection that you saw consistent with
15 what you expected Ms. Jones from --

16 **A** Yes, I did.

17 **Q** -- stepping on a nail?

18 **A** Yes.

19 **Q** Yes, it was? Okay.

20 So that was -- that would have been, what, June 29th?

21 **A** Yes.

22 **Q** Okay. What was your next encounter with Ms. Jones after
23 that debridement and the antibiotics?

24 **A** I believe she stayed in the hospital for a couple more
25 days and then was discharged by the nephrologist on

1 antibiotics at home. I believe I saw her back maybe a week or
2 so later in the office. She had a worsening foot infection,
3 and we admitted her directly from the office to start I.V.
4 antibiotics and re-evaluate her foot.

5 **Q** Let me ask you this about the infection. If you step on
6 a nail, say it's a rusty nail, dirty nail, something along
7 those lines, is it necessarily sure that the infection has to
8 start right where the nail went in the foot or could the blood
9 carry it elsewhere and present it elsewhere in the foot or
10 could either happen? Tell us a little bit about that.

11 **A** Generally speaking, the infection would begin where the
12 puncture is. We have bacteria on our feet or all over the
13 body. And a traumatic injury generally would introduce
14 bacteria at the site of the wound. It can then spread through
15 the adjacent tissue. But, generally speaking, the bacteria
16 would have been introduced at the puncture site.

17 **Q** When you saw Ms. Jones three days after the incident at
18 Walmart and you looked at her injuries, was that consistent
19 with the story that she told you, that she had stepped on a
20 nail?

21 **A** Yes.

22 **Q** So there wasn't anything about it where you would have
23 said, "Oh, my goodness, that couldn't be how that happened.
24 This clearly looks like" --

25 **A** No, it clearly fit her story, yes.

1 Q Okay. So you admit her -- you get her on I.V.
2 antibiotics, did you say?

3 A Yes.

4 Q Okay. What happens next?

5 A The second hospitalization?

6 Q I guess it would be the July hospitalization.

7 A Okay. So she came back into the hospital. We started
8 her back on antibiotics. We began some wound care to try to
9 clean her foot up to help debride any further non-healthy
10 tissue with just gauze and packing and things like that.

11 We then got more X-rays. I believe we had an MRI of the
12 foot to look for bone infection, but, at that point, she had
13 developed gangrene of the second toe, which clearly was not
14 going to survive and was in need of removal.

15 Q I want to show you a few graphics here, and I want to
16 show them to opposing counsel first.

17 MR. WILLEY: July, August, and February of 2016. Any
18 objection?

19 MS. BOYD: No objection.

20 MR. WILLEY: Thank you.

21 Your Honor, if it would be possible for Dr. Player to
22 leave the witness stand and come down so he can point this out
23 to the jury.

24 THE COURT: Certainly. Yes, sir.

25 BY MR. WILLEY:

1 Q Dr. Player, before you start talking about this, I want
2 to ask you first off if you have seen this before and if you
3 recognize what it is.

4 A I have seen this diagram.

5 Q And it looks the same as the first time you saw it
6 probably during your deposition?

7 A It does.

8 Q All right. Is it a true and accurate representation of
9 the medical care that was given to Ms. Jones?

10 A Yes.

11 Q Okay. If you would help the jury understand and kind of
12 walk us through this process of what we're seeing here, what
13 was done, and why.

14 A So, when she initially came to the hospital, she had a
15 wound on the bottom of her foot which had tissue which was
16 sort of that greenish-blackish appearing tissue. That is
17 basically gangrenous tissue, which is dying.

18 Her initial operation was to cut back to pinker,
19 healthier looking stuff. And an initial operation was an
20 attempt to try to save as much of her foot as possible. When
21 she went home, she began wound care at home, took antibiotics
22 at home. And when she returned to the office, she had
23 developed worsening appearance of this, and then the toe
24 itself actually had become black and leathery and gangrenous.

25 So the other images did not appear to demonstrate other

1 substantial infection further back towards her ankle. So we
2 took her to the operating room to remove this toe in an
3 attempt to salvage the rest of her foot. Removing a single
4 toe still allows people to ambulate properly, particularly
5 toes other than the big toe.

6 And so removal of the toe involves an incision. This is
7 the bone I was talking about, the metatarsal which goes back
8 towards the middle part of her foot. Toes have three bones,
9 you know, little bones like your fingers, and they go out to
10 the end. So you have three little bones here and then a
11 longer bone here. You separate the little bone to the toe
12 from the bigger bone going down this way and remove this.

13 And then, because of the infection, you can't put
14 stitches in. You have to leave it open so that you don't trap
15 infection in there and let anything else drain out.

16 So, at the conclusion of the case, the wound in the foot,
17 roughly like that, with an open wound that was impacted with
18 gauze and treated with antibiotics to try to treat infection.

19 **Q** And that was all on July -- July 15 of 2015?

20 **A** Yes.

21 **Q** Okay. At that time, other than the wounds you've
22 identified, did you see any other wounds on Ms. Jones's foot
23 when you examined her?

24 **A** I don't recall seeing other wounds, no.

25 **Q** And everything you're talking about was taking place on

1 the bottom of her foot; correct?

2 **A** Correct. The only difference on the picture is that this
3 is on the top of the foot and that's basically, if you, in
4 your mind, flip it around, this is my foot. On these
5 pictures, this is where the incision is. It's basically just
6 the bottom of your foot. It's right here on the bottom part
7 of your foot. Kind of the ball of your foot of the second
8 toe.

9 **Q** And when you examined Ms. Jones, you indicated that you
10 saw that wound up by the base of the toe?

11 **A** Yes.

12 **Q** And you indicated that was consistent with stepping on a
13 nail?

14 **A** Yes.

15 **Q** And it wasn't giant, that size, was it, at that time?

16 **A** The initial wound was not big, no.

17 **Q** Not dime sized?

18 **A** No.

19 **Q** And all this was up kind of toward the front of the foot,
20 not by the back of the foot or the top or the side?

21 **A** Well, it was at the ball of the foot.

22 **Q** Ball of the foot, okay.

23 **A** That would be -- you know, when you bear weight on your
24 foot, you land on your heel and on the ball of your feet. So,
25 generally speaking, that would be a common location for a

1 foreign body because that's where you're stepping down on the
2 floor.

3 Q And as that infection progressed, of course those wounds
4 would get larger, the initial wounds?

5 A Yeah, yeah.

6 Q All right. So that was in July. And you were hopeful
7 this would resolve the issue.

8 A Yes.

9 Q But did it?

10 A It did not, no.

11 Q It did not.

12 I want to show you another enlargement. And, again, if
13 you could just confirm that this also accurately represents
14 the care that Ms. Jones received. Well, does it accurately
15 represent it?

16 A Yes.

17 Q All right. Walk us through what happened in August of
18 2015.

19 A So her wound, apparently, did not heal properly. She
20 developed worsening, infected tissue involving her big toe and
21 her third toe, which then led to removal of those remaining
22 toes, leaving her fourth -- her pinky toe and her fourth toe.

23 Q What effect would that have? I know you indicated
24 losing, essentially, that second toe doesn't really affect
25 your ability to walk. Losing all but the piggy that got roast

1 beef and the piggy that got none, losing all but those two,
2 what effect did that have?

3 **A** You'd still be able to walk. If the wound healed
4 properly, you can actually get a small prothesis for your
5 shoe. The concerns you get when you remove your toes like
6 that is your shoes are not going to fit properly, so you'll
7 get rubbing and develop sores and wounds and things like that.

8 So once the wound heals, you can put something in your
9 shoe to stabilize your foot so that it doesn't rub back and
10 forth.

11 The key, from an ambulation standpoint, is keeping your
12 heel, because that's what we put most of our weight on when
13 we're walking. So you can -- you can lose your toes and still
14 ambulate because you still have basically a post to plant on
15 when you're walking.

16 The toes help you with balance, and the way the foot's --
17 you know, the bones and those things are designed, they bear
18 weight across the bottom of the foot in a way that, if you
19 remove a toe or two, you begin to change your weight bearing,
20 which does put you at higher risk for (indiscernible) and
21 things like that. But, by and large, you're still able to
22 walk because you have got your heel to put your weight on.

23 **Q** And these amputations, if I understand correctly,
24 essentially, you have to do this so that the gangrenous tissue
25 does not progress? I mean, could you die from this?

1 **A** Yes. When you have gangrenous tissue, the antibiotics
2 can't get to tissue that's not getting any blood to it. So
3 when the tissue dies, it's a nice place for bacteria to grow
4 and they can't get reached by the antibiotics. And so you
5 must remove the dead tissue and hope that the remaining live
6 tissue can be treated adequately with antibiotics.

7 **Q** And, obviously, you don't want to remove more than you
8 have to and that's why kind of do it in steps.

9 **A** Right, correct.

10 **Q** So, in August of 2015, so operation is done, and now,
11 Ms. Jones is down to just the two remaining smallest toes.
12 But that still does not solve the problem. The infection
13 continues?

14 **A** I believe so, yes.

15 **Q** And then you end up, in February of 2016, with a third
16 and final amputation.

17 **A** Yes.

18 **Q** Tell us a little bit -- and does this board accurately
19 represent that amputation?

20 **A** It does. Now, I did not do this operation; one of my
21 partners did. And so the reason for the amputation at this
22 level was a progression of her gangrene and non-healing wound
23 of her foot, which spread above the level of her ankle. She
24 had evaluations of her circulation, which did show vascular
25 disease.

1 And when you make decisions about where to amputate a
2 foot, we try -- we like to go below the knee because it's
3 easier to wear a prosthesis that way. Keeping your knee as the
4 knee joint allows you stability and balance better than if you
5 lose your knee.

6 But the blood supply to the foot, you have got one
7 primary big blood vessel that runs down your thigh. It gets
8 to the knee and it spreads out into three smaller blood
9 vessels. And then they go down to the ankle.

10 When they split into the three, they had a higher risk of
11 having vascular disease that decreases the flow further
12 downstream. You can think of blood vessels basically like
13 pipes, and if you start getting a bunch of crud in your pipes,
14 the bigger the pipe, the more fluid you can get through it.
15 When the pipes get smaller, you have a harder time getting the
16 fluid where it needs to go.

17 So an amputation below the knee, if you have got
18 reasonable blood flow, has a better functional outcome because
19 you save your knee from a stability standpoint, but it does
20 have a higher risk of not healing as well because the pipes
21 are bigger in the thigh than they are in the calf.

22 So I believe, in this situation, the decision was made
23 that her best shot at healing was to remove the leg above the
24 knee.

25 Q And it turned out now, we are five years later and no

1 more amputations, that that worked?

2 **A** Yes.

3 **Q** I have heard these medical terms -- you heard one from
4 opposing counsel earlier: Cascade. Heard another one:
5 Precipitating event. And my understanding is there's a
6 precipitating event that causes a cascade. Is this the
7 cascade of amputations?

8 **A** Yes.

9 **Q** What's the precipitating event that caused Ms. Jones's
10 amputations?

11 **A** In my opinion, the stepping on the nail fits her story as
12 a reasonable event that led to the beginning of the problems.

13 **Q** Was she, to your knowledge, having any -- any need of
14 amputation prior to stepping on this nail?

15 **A** Not to my knowledge, no.

16 **Q** Nobody in your practice, as far as you knew, had plans to
17 amputate any part of Ms. Jones's body until after she stepped
18 on this nail?

19 **A** Correct.

20 **Q** You heard here in opening statements, and you heard
21 counsel talk about Ms. Jones having health conditions, having
22 diabetes, having hypertension, poor vascular flow. Is that
23 something that you have seen before in other people?

24 **A** Yes, yes.

25 **Q** Does every single person with diabetes or hypertension or

1 poor vascular flow have an amputation?

2 **A** No.

3 **Q** Could you go your whole life with all the diabetes, poor
4 vascular flow, hypertension, and never have anything
5 amputated?

6 **A** Yes.

7 **Q** But if there were a precipitating event, then --

8 **A** Yes, yes.

9 **Q** You and I talked earlier, and we talked about an analogy
10 about a wine glass and a beer mug. And I was hoping -- I
11 found that really helped me, and I was hoping you could share
12 that with the jury.

13 **A** The analogy was basically if you have a fine glass --
14 thin wine glass that's sitting on a shelf next to a large beer
15 mug and they're both sitting on the shelf, the expectation
16 would be that, as long as they're sitting on the shelf,
17 neither one of them are going to break. If the glasses were
18 knocked from the shelf and hit the floor, they're probably
19 both going to have some trauma to it. The beer mug may get
20 chipped; the wine glass probably will shatter, depending on
21 the thickness of the glasses. But as long as there had been
22 no knocking the glass off the shelf, they would sit there fine
23 and not have a problem.

24 **Q** And that's the same thing we have here. Fragile woman.
25 If she gets knocked off the shelf, she might be hurt way more

1 than me.

2 **A** Correct.

3 **Q** But if she doesn't get knocked off the shelf, she could
4 sit there forever and be fine.

5 **A** That is -- that is a possibility, yes.

6 **Q** I appreciate you explaining those, if you want to have a
7 seat back in the jury box.

8 MR. WILLEY: Your Honor, we would like to move these
9 three panels into evidence as Plaintiff's Exhibit No. 1, if it
10 please the Court.

11 THE COURT: Any objection?

12 MR. BLAIN: No objection, Your Honor.

13 THE COURT: They're into evidence.

14 (Plaintiff's Exhibit No. 1, three panels, were marked for
15 identification and received into evidence.)

16 MR. WILLEY: Thank you.

17 BY MR. WILLEY:

18 **Q** Dr. Player, just a few more questions so I just want to
19 make sure that I understand this well. You heard earlier
20 during opening statements and argument from defense counsel
21 that Ms. Jones's diabetes was the precipitating cause of this
22 cascade. What you just told the Court -- told these jurors is
23 that, no, diabetes was a factor, but what caused this, the
24 precipitating event, was stepping on the nail; is that
25 correct?

1 **A** Yes, I would agree with that.

2 **Q** And you told us earlier that Ms. Jones's injuries, what
3 you saw on her foot, was consistent with stepping on a nail?

4 **A** Yes.

5 **Q** And you've expressed a lot of opinions here today. Have
6 you expressed all of those opinions to a reasonable degree of
7 medical certainty?

8 **A** Yes.

9 **Q** And it's your opinion, to a reasonable degree of medical
10 certainty, that it's more likely than not that Ms. Jones's
11 cascade of events was precipitated by stepping on a nail?

12 **A** I do.

13 **Q** And beyond that, not only is it more likely than not,
14 aren't you certain that stepping on the nail is what caused
15 this?

16 **A** Based on the history, that's the most likely source, yes.

17 **Q** I might have some follow-up questions for you, Doctor.
18 In the meantime, opposing counsel is going to ask a few
19 things; if you would please answer their questions as well.
20 Thank you.

21 THE COURT: Mr. Blain, cross-examination.

22 CROSS-EXAMINATION

23 BY MR. BLAIN:

24 **Q** Good afternoon, Dr. Player. I'm going to set Plaintiff's
25 exhibits over to the side so I can have a conversation with

1 you about Ms. Jones.

2 Dr. Player, the information -- your opinions, they're
3 only as reliable as the information that's given to you; is
4 that right?

5 A Yes.

6 Q The information that's given to you by Ms. Jones;
7 correct?

8 A Yes, mm-hmm.

9 Q The information that you have based on her prior medical
10 history?

11 A Correct, yes.

12 Q You rely on what Ms. Jones says, you rely on your prior
13 medical history to reach your opinions; is that fair?

14 A Yes.

15 Q You first saw Ms. Jones three days after her incident at
16 Walmart; correct?

17 A Yes.

18 Q And she told you that she stepped on a nail; correct?

19 A Yes.

20 Q You didn't see a nail in her foot when she showed up at
21 your office, did you?

22 A She was in the hospital, but no, I did not -- there was
23 not a foreign body in her foot, no.

24 Q Okay. But when you saw Ms. Jones, she brought something
25 for you to look at, didn't she?

1 **A** As I recall, yes.

2 **Q** And you looked at what she gave you. You looked at the
3 object that she brought to you in your office, and you wrote
4 down in your medical records that she gave you a screw and not
5 a nail?

6 **A** Yes.

7 **Q** Now, Dr. Player, do you have a garage or a workspace
8 where you can do some handy work around the house?

9 **A** I don't.

10 **Q** Okay. Okay. That's fair.

11 Let me ask a more simpler, straightforward question. Are
12 you familiar with what a screw looks like?

13 **A** Yes, I am.

14 **Q** And a screw has threads on them; isn't that correct?

15 **A** Correct, yes.

16 **Q** And a screw could be a flathead or a Phillips head screw?

17 **A** Correct.

18 **Q** So it would have some sort of indentation in the top to
19 twist the screw; is that fair?

20 **A** Yes.

21 **Q** So Ms. Jones came to your office, pulled something out of
22 her pocketbook, showed it to you, and you said, "Huh, that's a
23 screw." Is that correct? Is that right?

24 **A** Yes.

25 **Q** Dr. Player, I'd like to talk with you a little bit about

1 Ms. Jones's pre-existing health conditions. Most of the
2 patients you see have some level of pre-existing disease; is
3 that fair?

4 **A** That is very fair, yes.

5 **Q** So Ms. Jones is not unique in that regard?

6 **A** No, she's not.

7 **Q** Okay. We'll go through a list here. Ms. Jones had
8 diabetes; correct?

9 **A** Yes.

10 **Q** She had non-insulin-dependent diabetes mellitus type 2?

11 **A** Yes.

12 **Q** Do you know what, if anything, Ms. Jones was doing to
13 control that diabetes?

14 **A** I don't. I had not seen her before the admission to the
15 hospital.

16 **Q** Okay. So you don't know if she was doing anything at all
17 prior to her admission to the hospital to attempt to control
18 her diabetes?

19 **A** I don't.

20 **Q** Does -- diabetes affects a diabetic's lower extremities;
21 is that fair?

22 **A** Yes.

23 **Q** And one of the ways it affects a diabetic's lower
24 extremity is something called neuropathy; is that fair?

25 **A** Yes.