

ORIGINAL

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2006-CP-26-5391

RECEIVED
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SC Court of Appeals

Don D. Gause, ... Respondent,

v.

Nathan Dale Smithers and Edward W. Hunt, ... Defendants,

of Whom, Edward W. Hunt is the, ... Appellant.

RECORD ON APPEAL

VOLUME II

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1 MR. ROTHSTEIN: SO I GET TO EXPLAIN. I CAN'T
2 ASK HIM UNDER YOUR RULING OR DO I GET TO ASK HIM UNDER YOUR
3 RULING?

4 THE COURT: WHY CAN'T YOU ASK HIM WHY DID YOU
5 PARK IN THE MIDDLE OF THE ROAD?

6 MR. ROTHSTEIN: I, WELL AND HE SAID SEVERAL
7 TIMES IN HIS DEPOSITION HE DOESN'T KNOW WHY AND THEN I CAN
8 ---

9 THE COURT: SEE WHAT HIS ANSWER ---

10 MR. ROTHSTEIN: SO I CAN ASK HIM WELL WHY DIDN'T
11 YOU MOVE THE CAR AFTER YOU WERE STOPPED.

12 THE COURT: SURE.

13 MR. ROTHSTEIN: OKAY, AND THE PROBLEM ---

14 MR. NICHOLS: THEN YOU GOT AN INCONSISTENT
15 STATEMENT AND YOU CAN IMPEACH HIM IN THAT RESPECT.

16 MR. ROTHSTEIN: RIGHT, RIGHT, OKAY, I
17 UNDERSTAND.

18 THE COURT: SURE, I MEAN WHEN I GET PULLED I
19 PULL OFF THE ROAD. I DON'T PARK IN THE MIDDLE OF THE ROAD,
20 THAT'S JUST ---

21 MR. ROTHSTEIN: THEY PULLED YOU?

22 THE COURT: I HAVE BEEN PULLED.

23 MR. ROTHSTEIN: THAT'S STATE LAW AND HE ACTUALLY
24 SAID IN HIS DEPOSITION HE UNDERSTOOD IT WAS STATE LAW NOT
25 TO STOP THE CAR IN THE MIDDLE OF THE ROAD.

1 THE COURT: ALL RIGHT, YA'LL READY? HOW LONG DO
2 YOU THINK IT WILL TAKE? YOU WANT TO DO THEM IN THE MORNING
3 OR DO YOU WANT TO FINISH HIM TODAY AND COME BACK TOMORROW?
4 HOW MANY WITNESSES DO YA'LL HAVE? YOU DON'T HAVE ANY?

5 MR. LAWSON: I'M GOING TO PUBLISH THE DEPOSITION
6 OF DR. MILLS.

7 THE COURT: AND YOU, MR. CONNELL?

8 MR. CONNELL: I HAVE MR. HUNT.

9 THE COURT: YA'LL WANT JUST TO COME BACK AND
10 FINISH TOMORROW? I DON'T CARE, I DON'T WANT TO KEEP THEM
11 PAST FIVE. IF WE'VE GOT ALL DAY TOMORROW AND THE NEXT
12 TRIAL WE CAN LET THEM GO.

13 MR. ROTHSTEIN: I'M FINE TO STAY HERE. I PREFER
14 TO GO BACK BUT I'M AT YOUR DISPOSAL, YOUR HONOR.

15 THE COURT: OKAY, I DON'T THINK WE CAN FINISH IT
16 TODAY AND THE CHARGE IS GOING TO BE 30 PAGES LONG PROBABLY.

17 MR. ROTHSTEIN: I DON'T HAVE ANY PROBLEM WITH
18 THAT.

19 THE COURT: ALL RIGHT, WELL WHY DON'T WE JUST
20 TAKE A LITTLE BREAK, GET A LITTLE REST, EVERYBODY GET HOME
21 AT FIVE, COME BACK TOMORROW AND WE'LL FINISH IT UP.

22 MR. ROTHSTEIN: YES, SIR.

23 THE COURT: AND I THINK THE CHARGE WON'T BE
24 ANYTHING TERRIBLY DIFFICULT.

25 MR. ROTHSTEIN: I MEAN THE SON IS UNDER A

1 SUBPOENA CAN WE GET HIM IN TONIGHT?

2 MR. CONNELL: I'LL MAKE SURE HE COMES BACK
3 TOMORROW.

4 THE COURT: HE'LL BE BACK OR I'LL GET HIM.

5 MR. CONNELL: HE'S COMING BACK.

6 MR. HUNT: HE'S LIVES WITH ME.

7 MR. CONNELL: SO WE'LL ALL BE HERE.

8 THE COURT: WE'LL GET HIM, I'LL MAKE SURE HE'S
9 BACK. ALL RIGHT, LET'S CALL THE JURY OUT.

10 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
11 4:32 P.M.)

12 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE
13 HAVE REACHED A POINT THAT I THINK IT'S A GOOD TIME TO GO
14 AHEAD AND STOP FOR THE DAY. WE'RE GOING TO HAVE TO COME
15 BACK TOMORROW ANYWAY SO INSTEAD OF GOING REAL LATE, WEARING
16 EVERYBODY OUT, WE'RE GOING TO GO AHEAD AND SEND YOU HOME,
17 HOPEFULLY YOU CAN BE HOME BY FIVE. I EXPECT WE'LL FINISH
18 TOMORROW DEPENDING ON HOW LONG YOU TAKE WELL BEFORE FIVE SO
19 YOU ARE EXCUSED. DON'T TALK ABOUT THE CASE AMONG
20 YOURSELVES OR WITH ANYBODY. GET SOME REST AND COME ON BACK
21 AND WE'LL FINISH THIS TRIAL TOMORROW AND YOU'LL BE DONE FOR
22 THE WEEK.

23 MADAM FOREPERSON: 9:30?

24 THE COURT: 9:30, YES, MA'AM, AND THANK YOU.

25 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING

1 AT 4:34 P.M.)

2 THE COURT: ALL RIGHT, WE'RE DONE UNTIL TOMORROW
3 MORNING 9:30.

4 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING
5 AT 4:45 P.M.)

6 (WHEREUPON, COURT RESUMED ON JANUARY 6, 2011 AT
7 9:30 A.M.)

8 THE COURT: ANYTHING BEFORE WE START?

9 MR. ROTHSTEIN: YOUR HONOR, I RECEIVED THIS FAX
10 YESTERDAY AFTERNOON. I DID NOT CALL DR. MILLS AS AN
11 EXPERT, I SUBPOENAED HIM HERE AS A FACT WITNESS. I PAID
12 HIM THE \$25 WITNESS FEE AS PER RULES AND I REQUEST A RULING
13 THAT I'M NOT RESPONSIBLE AND MY CLIENT IS NOT RESPONSIBLE
14 FOR THAT BILL.

15 THE COURT: YOU KNOW AS FAR AS I'M CONCERNED
16 IT'S JUST A FAX TO YOU. I DON'T SEE WHERE IT'S AN ISSUE
17 BEFORE ME. IT'S NOT A MOTION BEFORE ME.

18 MR. ROTHSTEIN: OKAY.

19 THE COURT: YOU'RE GOING BACK TO GREENVILLE, ALL
20 RIGHT, ANYTHING ELSE?

21 MR. CONNELL: I HAVE SEVERAL ISSUES I WANT TO
22 ADDRESS BEFORE THE HUNTS ARE CALLED.

23 THE COURT: ALL RIGHT.

24 MR. CONNELL: AS YOUR HONOR INDICATED LAST NIGHT
25 BEFORE WE LEFT YOU EXPECTED THAT YOU WERE CONSIDERING

1 CHARGING PUNITIVE DAMAGES AS AN ISSUE TO FAMILY PURPOSE.

2 THE COURT: RIGHT.

3 MR. CONNELL: SO, OF COURSE, I WENT BACK TO MY
4 OFFICE AND SPENT HALF THE NIGHT LOOKING AT SOME CASES.
5 THERE ARE NO CASES IN SOUTH CAROLINA, HOWEVER THERE ARE
6 THREE CASES IN OTHER JURISDICTIONS, ARIZONA, WISCONSIN, AND
7 NORTH CAROLINA, BUT THERE AGAIN IT IS UP TO YOUR HONOR, BUT
8 ALL THREE OF THEM HOLD THAT YOU CANNOT GIVE PUNITIVE
9 DAMAGES AGAINST THE OWNER OF A VEHICLE. TWO OF THEM DEAL
10 WITH DRINKING AND THEY SAY THAT THE REASON WHY IS BECAUSE
11 THE REASON BEHIND PUNITIVE DAMAGES AND THE FAMILY PURPOSE
12 DOCTRINE ARE TWO DIFFERENT ISSUES. IN THE ISSUE OF
13 PUNITIVE DAMAGES YOU'RE TRYING TO PUNISH THE WRONGDOER. IN
14 THE ISSUE OF THE FAMILY PURPOSE DOCTRINE YOU'RE TRYING TO
15 GET COMPENSATION OR ACTUAL DAMAGES ONLY AND I'LL POINT OUT
16 THE CASES ARE JACOBSON V. SUPERIOR COURT, I MADE SOME
17 COPIES FOR YA'LL IF YOU WANT TO SEE THEM.

18 MR. ROTHSTEIN: JUDGE, I HAVEN'T LOOKED AT THOSE
19 CASES. I'D LIKE TO RESPOND BRIEFLY TO WHAT MR. CONNELL ---

20 THE COURT: SURE, I HAVEN'T LOOKED AT THEM
21 EITHER. IF YOU'D LIKE TO LOOK AT THEM, I'LL LOOK AT THEM
22 AND WE'LL BRING THEM UP AGAIN.

23 MR. ROTHSTEIN: I WAS TRYING TO LOG ON AND ---

24 MR. CONNELL: I'VE GOT SOME COPIES FOR YOU.

25 MR. ROTHSTEIN: OKAY, THANKS.

1 THE COURT: THANK YOU, GO AHEAD.

2 MR. CONNELL: YOUR HONOR, IN THE JACOBSON CASE,
3 AND THAT'S 154 ARIZONA 430 1987, THE COURT OF APPEALS OF
4 ARIZONA WAS ASKED THE QUESTION WHETHER OR NOT PUNITIVE
5 DAMAGES COULD BE ARGUED IN A CASE AGAINST THE PARENTS OF A
6 VEHICLE WHERE THEY HAD A ROLL OVER COLLISION, AND THE
7 ARIZONA COURT CITES THE WISCONSIN COURT AND SAID THIS IS A
8 CASE OF FIRST IMPRESSION IN ARIZONA. THIS IS NOT BASED ON
9 CLASSICAL THEORIES OF AGENCY. THERE IS A BIG DIFFERENCE
10 BETWEEN PUNITIVE DAMAGES FOR A WRONGDOER AND CHARGING
11 SOMEONE WHO WASN'T EVEN AT THE SCENE FOR THAT AND THE COURT
12 GOES ON TO NOTE AT LEAST ONE OTHER COURT HAS FACED THIS
13 ISSUE. NORTH CAROLINA COURT OF APPEALS HAS HELD WE ARE
14 UNWILLING TO SAY THAT WHEN A DRIVER USES A FAMILY MEMBERS
15 AUTOMOBILE WILLFULLY, WANTONLY, OR MALICIOUSLY TO INJURE
16 ANOTHER THAT THE FAMILY PURPOSE DOCTRINE SHOULD BE APPLIED
17 SO AS TO ALLOW RECOVERY OF PUNITIVE DAMAGES AGAINST THE
18 OWNER BASED ON SUCH USE, AND THEY CITE THE CASE OF BRYNE V.
19 BORDEAUX, A NORTH CAROLINA CASE, 354 AT S.E. 2ND 277, 1987.
20 AND THEY GO ON TO SAY THAT IS THEY FIRST LOOKED AT THE
21 ARIZONA CASE, KIND OF UNUSUAL FOOTNOTE, AND IT SAYS THAT
22 THE FOLLOWING STATES HAVE ADOPTED THE FAMILY PURPOSE
23 DOCTRINE, ARIZONA, COLORADO, CONNECTICUT, GEORGIA,
24 KENTUCKY, NEBRASKA, NEW MEXICO, NORTH CAROLINA, NORTH
25 DAKOTA, OREGON, SOUTH CAROLINA, AND TENNESSEE, AND SO IT'S

1 OUR POSITION, YOUR HONOR, THAT, NUMBER ONE, THAT PUNITIVE
2 DAMAGES WOULD NOT GO TO THE JURY AND, NUMBER TWO, THAT ANY
3 TESTIMONY OFFERED BY THE PLAINTIFFS AGAINST MR. HUNT ON THE
4 ISSUE OF WILLFUL, MALICIOUS, WANTON CONDUCT WOULD NOT BE
5 APPLICABLE ANYWAY BECAUSE YOU CAN'T GET PUNITIVE DAMAGES IN
6 A VICARIOUS LIABILITY SITUATION.

7 THE OTHER CASE THAT IS FRANZ V. BRENNAN, 150
8 WISCONSIN 2ND, 1989, AND IT SAYS THAT WE'VE LOOKED AT THE
9 ARIZONA CASE AND WE DO NOT BELIEVE THAT THE ARIZONA CASE,
10 OR WE BELIEVE THAT THE ARIZONA CASE IS RIGHT, THAT PUNITIVE
11 DAMAGES ARE INTENDED AS A PERSONAL PENALTY FOR THE ACTUAL
12 WRONGDOER AND ITS EXTENSION TO OTHERS WHO ARE NOT
13 THEMSELVES THE ACTUAL PERPETRATORS SHOULD BE LIMITED, AND
14 THEY AGAIN CITE BRYNE V. BORDEAUX, 354 S.E. 2ND 277, 1987.

15 SO, YOUR HONOR, I WOULD ASK THAT THE THREE CASES
16 I HANDED UP JACOBSON V. SUPERIOR COURT 454 ARIZONA 430
17 1987, FRANZ V. BRENNAN 150 WISCONSIN 2ND 1989, AND BRYNE V.
18 BORDEAUX 354 S.E. 2ND 277 1987 BE APPENDED AS A COURT'S
19 EXHIBIT AND THAT YOUR HONOR DO TWO THINGS, STRIKE THE
20 PUNITIVE DAMAGES AND LIMIT ANY TESTIMONY THAT THE
21 PLAINTIFFS INTEND TO ELICIT ABOUT ANY POTENTIAL PUNITIVE
22 DAMAGES BECAUSE THE ONLY PERSON THAT THEY'RE TENDING TO
23 PUNISH IS A PERSON WHO WASN'T AT THE SCENE, WHO WAS AN
24 OWNER OF THE VEHICLE, AND THAT THE INTENTION TO OFFER
25 TESTIMONY OF MR. HUNT'S SON ABOUT THAT WOULD BE A VIOLATION

1 OF THESE CASES AND WOULD NOT BE APPROPRIATE UNDER THE
2 FAMILY PURPOSE DOCTRINE.

3 THE COURT: ALL RIGHT, MR. NICHOLS, WOULD YOU
4 LIKE TO RESPOND NOW OR --

5 MR. NICHOLS: I'D JUST LIKE TO RESPOND BRIEFLY
6 TO A FEW POINTS. FIRST OFF MR. CONNELL IS WRONG FOR
7 PURPOSES OF PUNITIVE DAMAGES ARE NOT SOLELY TO PUNISH AND
8 THE SUPREME COURT, THIS ARGUMENT HAS BEEN MADE BY THE
9 DEFENSE BAR. THE SUPREME COURT PUT THAT TO REST THIS YEAR
10 IN A CASE CALLED O'NEIL V. SMITH. I ARGUED THE CASE; I
11 KNOW THE CASE VERY WELL. JUSTICE BEATTY WROTE THE CASE,
12 TALKS ABOUT THE POLICIES OF UNDERLYING PUNITIVE DAMAGES.
13 THEY ARE PUNISHABLE; THEY'RE A SPECIFIC DETERRENT. THEY'RE
14 GENTLE DETERRENT AND VERY IMPORTANTLY IN SOUTH CAROLINA.
15 UNLIKE NORTH CAROLINA, UNLIKE ARIZONA, UNLIKE MINNESOTA,
16 SOUTH CAROLINA HAS A FOURTH POLICY THAT SERVE FOR PUNITIVE
17 DAMAGES AND THAT IS VINDICATION OF THE PLAINTIFFS RIGHTS.
18 THERE HAD BEEN A TREND AWAY FROM THAT FOURTH POLICY UNTIL
19 THE O'NEIL V. SMITH CASE. IT WAS A CERTIFIED QUESTION FROM
20 DISTRICT COURT JUDGE MATTHEW PERRY AND THE SUPREME COURT
21 WAS VERY LOUD AND CLEAR. IT'S O'NEIL V. SMITH AND I WAS
22 TRYING TO LOCATE IT, JUDGE. I'VE GOT IT RIGHT HERE; IT WAS
23 FILED IN JUNE OF THIS YEAR, SO FIRST OFF TO SAY THAT YOU
24 CAN'T GET PUNITIVE DAMAGES BECAUSE YOU'RE TRYING TO GET
25 PUNITIVE DAMAGES AGAINST A PERSON THAT DIDN'T PULL THE

1 TRIGGER IS, IS ALL WELL AND GOOD, BUT THAT, THAT IS ON A
2 FALSE PRETENSE THAT THE SUPREME COURT FINALLY PUT TO REST
3 IN THE O'NEIL CASE.

4 SECONDLY, MR. ROTHSTEIN HANDED UP SOME CASES
5 YESTERDAY. PUNITIVE DAMAGES ARE ALLOWED IN A, IN AN AGENCY
6 PRINCIPAL RELATIONSHIP IN SOUTH CAROLINA. I DON'T KNOW
7 WHAT JURISDICTIONS SAY THAT BUT SOUTH CAROLINA HAS MADE IT
8 VERY PLAIN THAT, AND WE ARE STILL IN SOUTH CAROLINA, THAT
9 HAS MADE IT VERY PLAIN THAT THOSE DAMAGES ARE RECOVERABLE
10 IN AN AGENCY PRINCIPAL AGAINST THE PRINCIPAL. AND,
11 FINALLY, THE CAMPBELL V. PASCAL CASE, JUDGE, I MEAN ALL OF
12 THESE CASES ARE, ARE MEANINGFULLY DISTINGUISHABLE ON JUST
13 ABOUT EVERY POINT MR. CONNELL RAISED.

14 THOMPSON V. MICHAEL WHICH WAS WRITTEN BY JUSTICE
15 MOORE IN 1993 FAMILY PURPOSE DOCTRINE DERIVES FROM AGENCY
16 LAW IN SOUTH CAROLINA. IT MAY NOT IN ARIZONA, IT MAY NOT
17 SOMEWHERE ELSE BUT WE'RE NOT IN ARIZONA. SO MY RESPONSE TO
18 YOU IS THAT WHILE THAT LAW MAY APPLY IN OTHER JURISDICTIONS
19 THE LAW IN SOUTH CAROLINA IS PRETTY SETTLED.

20 THE COURT: ALL RIGHT.

21 MR. CONNELL: THERE'S A COUPLE OF THINGS. THE
22 ARIZONA CASE RAISES THE EXACT ISSUES THAT HE TALKED, HE
23 TALKS ABOUT AND IT SAYS THIS. "WE HOLD THAT PUNITIVE
24 DAMAGES ARE NOT RECOVERABLE UNDER THE FAMILY PURPOSE
25 DOCTRINE AGAINST PARENTS FOR THEIR CHILD'S NEGLIGENT

1 DRIVING. THE ISSUES OF AGENCY, CLASSICAL AGENCY ARE NOT TO
2 BE USED IN FAMILY PURPOSE BECAUSE FAMILY PURPOSE IS A WHOLE
3 DIFFERENT SET OF RULES THAN THE AGENCY RULES AND THAT'S
4 FOUND ON RULE 54 ARIZONA 433. YOUR HONOR, WE WOULD ASK
5 THAT YOUR HONOR LIMIT THE TESTIMONY IN REGARD TO PUNITIVE,
6 FIRST STRIKE PUNITIVE DAMAGES AND THEN LIMIT THE TESTIMONY
7 SUCH THAT, THAT TESTIMONY COULD NOT BE ELICITED BECAUSE
8 THERE'S PRETTY CLEAR THAT THEY CAN'T ALLEGE MR. HUNT DID
9 ANYTHING WRONG. I MEAN HE'S NOT, HE'S NOT THE WRONGDOER IF
10 THERE'S ANY WRONGDOER IN THIS CASE.

11 THE COURT: THE ONLY PROBLEM I HAVE WITH THAT IS
12 IT'S LOGICALLY IF YOU CAN'T IMPUTE THE SON'S NEGLIGENCE TO
13 THE FATHER UNDER THE FAMILY PURPOSE DOCTRINE WHY COULDN'T
14 YOU IMPUTE THE PUNITIVE DAMAGES TO THE FATHER AS WELL?

15 MR. CONNELL: WELL THAT'S ADDRESSED IF YOUR
16 HONOR WILL LOOK AT THE BRYNE V. BORDEAUX, THE NORTH
17 CAROLINA CASE, 354 S.E. 2ND 277, AND ---

18 THE COURT: BUT I HAVE READ SOME CASES THAT BACK
19 UP WHAT MR. NICHOLS SAID THAT IN SOUTH CAROLINA PUNITIVE
20 DAMAGES ARE RECOVERABLE AGAINST THE MASTER AS LONG AS THE
21 SERVANTS ACTS WERE COMMITTED WITHIN THE SCOPE OF THE
22 AGENCY, SO THEY CAN TRICKLE ON UP THE FOOD CHAIN.

23 MR. CONNELL: WELL, YOUR HONOR, I WOULD ASK THAT
24 YOU READ ---

25 THE COURT: I DON'T LIKE IT BUT --

1 MR. CONNELL: I UNDERSTAND. I WOULD ASK THAT
2 YOU READ THE ARIZONA CASE BECAUSE ---

3 THE COURT: I WILL.

4 MR. CONNELL: --- IT CLEARLY TALKS ABOUT THE
5 FAMILY PURPOSE DOCTRINE, DOES NOT REST ON CLASSICAL
6 THEORIES OF AGENCY AND IT WAS NEVER PURPORTED TO REST ON A
7 TRUE AGENCY RELATIONSHIP. IT GOES ON TO EXPLAIN IN GREAT
8 DETAIL HOW IT IS THAT YOU COULD PUNISH SOMEBODY WHO DIDN'T,
9 WHO WASN'T THE ACTUAL WRONGDOER IN THE FAMILY PURPOSE
10 DOCTRINE SET CAUSE IT'S A SPECIAL DOCTRINE, A SPECIAL
11 SETTING FOR ONLY THOSE FOLKS WHO ARE OWNERS OF CARS.

12 THE COURT: I UNDERSTAND YOUR ARGUMENT. BRIEF?

13 MR. NICHOLS: WELL, JUDGE, THE ARGUMENT IN
14 O'NEIL V. SMITH LET ME JUST GIVE YOU SOME BACKGROUND
15 INFORMATION ON THAT CASE. THE PLAINTIFF SETTLED AGAINST
16 THE AT FAULT UNDER A COVENANT NOT TO EXECUTE AND PROCEEDED
17 AGAINST THE UNDER INSURED MOTORIST COVERAGE AND MY GOOD
18 FRIEND MR. MCKENZIE ARGUED THAT WELL SINCE THE PUNITIVE
19 DAMAGES NOW BECAUSE OF THIS DEFENDANT HAS A COVENANT AND HE
20 IS NOW IMMUNE FROM SUIT, SO TO SPEAK, BECAUSE IF YOU GET TO
21 PUNITIVES YOU'RE NOT GOING TO PUNISH THE INDIVIDUAL
22 DEFENDANT. IT'S A VIOLATION OF DUE PROCESS AND THERE WERE
23 A LOT OF ARGUMENTS THAT WERE RAISED IN THAT CASE AND THE
24 SUPREME COURT BASICALLY SAID A COUPLE OF THINGS THERE.
25 NUMBER ONE, WHEN INSURERS SELL INSURANCE IN THIS CASE THEY

1 INSURE DAMAGES WHICH OUR LEGISLATURE HAS SPECIFICALLY
2 DEFINED TO INCLUDE PUNITIVE AND ACTUAL DAMAGES. I WOULD, I
3 HAVE NOT LOOKED AT ARIZONA BUT I SUSPECT THAT DAMAGES ARE
4 DEFINED A LITTLE BIT DIFFERENTLY THERE BUT, SECONDLY, BUT
5 MORE IMPORTANTLY, AND AGAIN I HAVEN'T, I'M GLANCING AT THE
6 ARIZONA CASE, THEY FOCUSED ON THE ONE PURPOSE OF PUNITIVE
7 DAMAGES IN ARIZONA. AND, JUDGE, I DID A LOT OF RESEARCH
8 WHENEVER I, WE WERE PREPARING FOR ARGUMENT IN THAT CASE
9 BECAUSE I ANTICIPATED A NUMBER OF THESE ARGUMENTS AND THERE
10 IS A, A BROAD SPECTRUM OF, OF WAYS THAT PUNITIVE DAMAGES
11 ARE DEALT WITH AROUND THE COUNTRY. TENNESSEE DEALS WITH IT
12 DIFFERENTLY, NORTH CAROLINA DEALS WITH IT DIFFERENTLY. IN
13 SOUTH CAROLINA WE ARE ONE OF THE FEW STATES THAT, THAT
14 DESCRIBE FOUR POLICIES.

15 I SPOKE WITH PROFESSOR HUBBARD ABOUT THAT ONE
16 TIME WHEN WE WERE OVER AT THE LEGISLATURE ON ONE OF THE
17 MANY SO CALLED TORT REFORM BILLS AND PROFESSOR HUBBARD SAID
18 STAY AWAY FROM THE VINDICATION OF THE RIGHTS THING. HE
19 WASN'T SURE THAT OUR SUPREME COURT WOULD, YOU KNOW, THERE
20 HAD BEEN A FEW YEARS SINCE OUR COURT HAD SAID THAT.

21 IF YOU WILL LOOK AT O'NEIL V. SMITH THAT IS A
22 FOCUS OF THAT OPINION, THAT IS AT LEAST ONE FOCUS OF THAT
23 OPINION. JUSTICE BEATTY IS VERY PLAIN THAT YOU CAN GET
24 PUNITIVE DAMAGES IN A UIN EVEN THOUGH YOU'RE NOT GOING TO
25 GO PUNISH THE INDIVIDUAL DEFENDANT BECAUSE YOU CAN STILL,

1 AND, AND YOU PROBABLY NOT GOING TO MAKE AN EXAMPLE FOR HIM
2 BECAUSE HE'S OUT OF THE CASE, BUT CAN STILL MAKE GENERAL
3 DETERRENTS AND VINDICATION OF THE PLAINTIFFS RIGHT. THAT'S
4 A POLICY IN SOUTH CAROLINA. IT APPARENTLY DOESN'T APPLY IN
5 ARIZONA. THIS CASE WOULD NOT CONTROL AND I AM, AS I RECALL
6 AND I'LL JUST HAVE TO SCROLL DOWN PRETTY QUICKLY CAUSE I'M
7 PRETTY SURE O'NEIL WAS A FOUR TO ONE DECISION. JUSTICE
8 KITTREDGE HE DISSENTED BUT HIS DISSENT WASN'T ON THE MERIT.

9 I HAD ALSO MADE AN ARGUMENT FOR COMPLETENESS THAT
10 MAYBE THE ISSUE WASN'T RIGHT CAUSE THERE WASN'T A VERDICT
11 AND IT WOULDN'T EVEN GET PAST THE LIMIT, EXCUSE ME, JUDGE.
12 THE MAJORITY FELT LIKE THE ISSUE WAS RIGHT AND THEY WENT
13 AHEAD AND RULED ON IT. JUSTICE KITTREDGE, I'LL TELL YOU
14 THE ORAL ARGUMENT HE DID NOT DISAGREE WITH ANYTHING THAT
15 WAS, THAT THE OTHER JUSTICES BUT IN ANY EVENT THAT'S A
16 UNANIMOUS VIEW OF THIS COURT.

17 THE COURT: TELL YOU WHAT I'M GOING TO DO RIGHT
18 NOW, WE'RE GOING TO GO AHEAD AND PROCEED WITH THE TRIAL.
19 I'M GOING TO LET YOU PRESENT YOUR CASE. WE WILL REVISIT
20 THE ISSUE AT THE END OF THE PLAINTIFF'S CASE, THAT WILL
21 GIVE US TIME TO READ SOME OF THIS STUFF.

22 MR. CONNELL: YOUR HONOR, IN LIGHT OF THAT I
23 REQUEST THAT YOU MAKE A RULING ON WHETHER OR NOT TO LIMIT
24 THEIR ABILITY ---

25 THE COURT: I'M NOT GOING TO LIMIT THEIR ABILITY

1 TO TESTIFY, JUST THE ALCOHOL.

2 MR. CONNELL: ALL RIGHT, YOUR HONOR, THE
3 PREVIOUS RULING ABOUT THE ISSUE OF WHAT HE SAID ABOUT MR.
4 HUNT'S SITUATION STANDS?

5 THE COURT: YES. YOU KNOW, MY THEORY THERE IS
6 WILL GIVE IT ICE CREAM, THE MELTED ICE CREAM, THE NUTS ON
7 TOP AND THE WHIP CREAM, I'M JUST TAKING THE CHERRY OFF THE
8 TOP AND CHILL IT OUT.

9 MR. CONNELL: SO, YOUR HONOR, CAN WE HAVE SOME
10 SPECIFIC UNDERSTANDING ABOUT WHAT ---

11 THE COURT: WHAT HE SAYS IS UP TO HIM AND IF THE
12 DOOR OPENS UP THEN IT JUST ROCKS ON; HOWEVER, UP TO THAT
13 POINT I'VE TOLD YOU WHAT I THOUGHT AND I THINK YOU CAN
14 FIGURE THAT OUT.

15 MR. ROTHSTEIN: AND, JUDGE, IF HE TESTIFIES
16 CONSISTENTLY WITH THE WAY HE TESTIFIED IN HIS DEPOSITION --

17 THE COURT: WELL I HAVEN'T SEEN HIS DEPOSITION
18 BUT IF HE OPENS THE DOOR WE'LL GO FROM THERE.

19 MR. ROTHSTEIN: I UNDERSTAND, I'M VERY FAMILIAR
20 WITH HIS DEPOSITION.

21 THE COURT: ALL RIGHT, GO AHEAD AND BRING OUT
22 THE JURY.

23 MR. NICHOLS: BUT, YOUR HONOR, I'VE GOT ONE MORE
24 ISSUE.

25 THE COURT: ALL RIGHT.

1 MR. ROTHSTEIN: IT DOESN'T HAVE TO BE RIGHT NOW,
2 IT DOES NEED TO BE DONE OUTSIDE THE PRESENCE OF THE JURY.
3 I WANT TO PROFFER THE 10-YEAR DRIVING RECORD OF NATHAN DALE
4 SMITHERS AND I BELIEVE THAT, I GUESS WE COULD MARK IT AS A
5 COURT'S EXHIBIT PROBABLY BE THE BEST THING TO DO.

6 THE COURT: YOU CAN, SURE..

7 (WHEREUPON, COURT'S EXHIBIT NUMBER 2 MARKED FOR
8 IDENTIFICATION.)

9 MR. ROTHSTEIN: AND I BELIEVE THE DOOR HAS BEEN
10 OPENED IN THIS CASE AT GETTING IN THAT MR. CONNELL I MEAN
11 MR. LAWSON SAID IN HIS OPENING STATEMENT THAT IF MR.
12 SMITHERS WERE HERE HE WOULD BASICALLY SAY, YOU KNOW, I'M
13 SORRY, I MADE A MISTAKE, IT WON'T HAPPEN AGAIN. AND THE
14 DRIVING RECORD WILL SHOW, YOUR HONOR, THAT AFTER HE WAS
15 CONVICTED AND IN AUGUST OF 2004 HE WAS ARRESTED
16 SUBSEQUENTLY ON A DUI AND WAS ALSO ARRESTED LATER FOR
17 CONTROLLED SUBSTANCES VIOLATION AND HIS LICENSE HAS BEEN
18 SUSPENDED NOW AS A HABITUAL OFFENDER. AGAIN I THINK IT'S
19 RELEVANT AND IMPORTANT ON THE ISSUE OF WILLFULNESS.

20 THE COURT: I THINK IT'S RELEVANT, I'M JUST NOT
21 GOING TO ALLOW IT UNDER 403 ANALYSIS.

22 MR. ROTHSTEIN: THANK YOU.

23 THE COURT: GO AHEAD AND BRING OUT THE JURY.

24 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
25 9:48 A.M.)

1 THE COURT: GOOD MORNING. ALL RIGHT, CALL YOUR
2 NEXT WITNESS.

3 MR. NICHOLS: YES, SIR, WE'D CALL EDWARD W.
4 HUNT, THE FATHER.

5 EDWARD W. HUNT

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 MADAM CLERK: STATE YOUR NAME FOR THE COURT,
8 PLEASE, SIR.

9 THE WITNESS: EDWARD WILLIAM HUNT.

10 DIRECT EXAMINATION

11 BY MR. NICHOLS:

12 Q GOOD MORNING, MR. HUNT, MY NAME IS JOHN
13 NICHOLS, AND I'M HERE WITH MR. GAUSE. JUST HAVE A FEW
14 QUESTIONS I'M GOING TO ASK YOU. NOW LET ME ASK YOU A
15 LITTLE BIT ABOUT YOUR BACKGROUND, WHERE WERE YOU BORN,
16 WHERE WERE YOU RAISED?

17 A I WAS BORN AND RAISED IN ROCHESTER, NEW
18 YORK.

19 Q I'M SORRY?

20 A I WAS BORN AND RAISED IN ROCHESTER, NEW
21 YORK.

22 Q OKAY, AND BUT YOU LIVE NOW IN --

23 A SOUTH CAROLINA, BEEN HERE 15 YEARS.

24 Q OKAY, VERY GOOD, NOW IN NOVEMBER OF 2003,
25 WHICH IS THE TIME PERIOD WE'RE FOCUSED ON DID YOU, WHERE

W.

EDWARD R. HUNT - DIRECT EXAMINATION BY MR. NICHOLS

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1 DID YOU LIVE?

2 A IN CONWAY ON D STREET.

3 Q HERE IN CONWAY, AT WHAT ADDRESS?

4 A 130 D STREET.

5 Q IS THAT WHERE YOU STILL LIVE?

6 A YES.

7 Q OKAY, AND WHO LIVED THERE WITH YOU IN

8 NOVEMBER 2003?

9 A MY SON AND MY DAUGHTER BOTH LIVE THERE.

10 Q OKAY ---

11 A AND MY WIFE.

12 Q I'M SORRY --

13 A MY WIFE OF 37 YEARS.

14 Q AND ARE THOSE YOUR ONLY CHILDREN THE ONE

15 SON AND DAUGHTER?

16 A YES.

17 Q AND SO THE SON YOU MENTIONED IS EDWARD R.

18 HUNT WHO IS HERE?

19 A YES.

20 Q OKAY --

21 A I'M SCARED TO DEATH SO IF MY VOICE CRACKS

22 YOU KNOW WHY.

23 Q I UNDERSTAND.

24 A I'VE NEVER BEEN IN A TRIAL COURT.

25 Q YOU'RE PERFECTLY FINE AND IF YOU NEED TO

W.

EDWARD R. HUNT - DIRECT EXAMINATION BY MR. NICHOLS

269

1 GET SOME WATER OR SOMETHING, PLEASE, PLEASE, DO THAT. NOW
2 AT THE TIME IN NOVEMBER 2003 WHAT AUTOMOBILES DID YOU OWN?

3 A I OWNED THREE AUTOMOBILES.

4 Q YES, SIR, OKAY, AND WHAT AUTOMOBILES WERE
5 THOSE?

6 A I HAVE A CHEVY TRUCK, IT'S A 2002, BUT
7 SINCE THEN IT'S BEEN SOMEBODY RAN INTO THE BACK OF IT AND
8 MY WIFE'S BLAZER IS IN MY NAME, TOO, AND THE FIREBIRD THAT
9 MY SON DRIVES IS IN MY NAME.

10 Q OKAY, SO IF I UNDERSTOOD YOU SAID THAT YOU
11 HAVE THE CHEVY TRUCK, YOU HAVE A BLAZER THAT YOUR WIFE
12 DROVE, AND THE FIREBIRD?

13 A YEAH.

14 Q DID YOU ALSO OWN A 1991 IMPALA OR DID YOU
15 EVER OWN A CHEVY IMPALA?

16 A NO.

17 Q OKAY, NOW LET'S TALK ABOUT THE FIREBIRD,
18 WHEN DID YOU GET THE FIREBIRD?

19 A MY WIFE BOUGHT IT BEFORE WE MOVED FROM NEW
20 YORK SO PROBABLY 1992 I THINK.

21 Q 1990?

22 A 1990, 1992, IT WAS THE YEAR WE BOUGHT IT.

23 Q OKAY, SO IT WAS A 1991 AND IT WAS A YEAR
24 OLD WHEN YOU BOUGHT IT?

25 A YEAH.

W.

EDWARD R. HUNT - DIRECT EXAMINATION BY MR. NICHOLS

270

1 Q OKAY, AND YOUR WIFE PURCHASED IT?

2 A YES.

3 Q WHERE DID SHE BUY IT, DO YOU REMEMBER?

4 A CHEVY DEALER IN WINCHESTER NEW YORK.

5 Q ALL RIGHT, AND THEN WHEN YOU MOVED DOWN
6 HERE YOU BROUGHT THE CAR WITH YOU?

7 A YES.

8 Q OKAY, WHO USED THE CAR WHEN YOU FIRST
9 BOUGHT IT?

10 A MY WIFE DID.

11 Q OKAY, DID YOU EVER USE THE CAR?

12 A YEAH, IF I HAD TO, YEAH.

13 Q ALL RIGHT, WHAT ABOUT YOUR SON?

14 A HE WASN'T DRIVING.

15 Q BUT AT THE TIME, LET ME ASK YOU THIS, IN
16 2003 HOW OLD WAS YOUR DAUGHTER?

17 A I DON'T KNOW, SHE'S 36 NOW.

18 Q SHE'S 36 NOW SO SHE WOULD HAVE BEEN ABOUT
19 29?

20 A YEAH.

21 Q SHE WAS LIVING WITH YOU AT THE TIME?

22 A YES.

23 Q AND WAS SHE, DID SHE USE THE FIREBIRD?

24 A NO, SHE HAD HER OWN CAR.

25 Q OKAY, AND HOW OLD IS YOUR SON?

1 A RIGHT NOW?

2 Q YES, SIR?

3 A HE'S 32.

4 Q OKAY, SO BACK IN 2003, NOVEMBER OF 2003
5 WHICH IS A LITTLE OVER SEVEN YEARS AGO HE WAS ABOUT 25?

6 A YEAH.

7 Q WAS HE, DID HE USE THE CAR WHEN HE FIRST
8 GOT HIS DRIVERS LICENSE AND BY THE CAR I MEAN THE FIREBIRD?

9 A I DON'T REMEMBER.

10 Q WHEN DID ---

11 A I DON'T THINK SO, I THINK MY WIFE STILL HAD
12 IT THEN.

13 Q OKAY, WHEN DID YOU GET THE BLAZER?

14 A IT'S A '95.

15 Q DID YOU BUY THAT NEW?

16 A SO PROBABLY ABOUT '98 OR SOMETHING,
17 PROBABLY '97 OR '98.

18 Q '97 OR '98?

19 A YEAH, IT WAS LIKE THREE YEARS OLD.

20 Q AND, MR. HUNT, I KNOW YOU'RE NERVOUS AND
21 BUT COULD I ASK YOU RAISE YOUR VOICE JUST A LITTLE BIT?

22 A OKAY.

23 Q OKAY, THANKS, CAUSE THE JURY NEEDS TO,
24 THANK YOU VERY MUCH. I GET NERVOUS, TOO.

25 A I TALK QUIET ALL THE TIME SO --

W.

EDWARD R. HUNT - DIRECT EXAMINATION BY MR. NICHOLS

272

1 Q RIGHT, ALL RIGHT, SO YOU THINK YOU GOT THE
2 BLAZER IN '97 OR '98?

3 A YEAH.

4 Q ALL RIGHT, AND DID YOUR WIFE USE THE
5 BLAZER?

6 A SHE USES IT EXCLUSIVELY.

7 Q OKAY, DO YOU USE THE BLAZER AT ALL?

8 A IF I HAVE TO.

9 Q DID YOUR SON USE THE BLAZER?

10 A NO, NEVER.

11 Q OKAY, NOW YOU, DO YOU STILL OWN THE
12 FIREBIRD?

13 A YES.

14 Q AND WHERE IS THE FIREBIRD?

15 A IT'S PARKED OUT BEHIND MY GARAGE.

16 Q OKAY---

17 A IT'S STILL SMASHED UP FROM THE ACCIDENT.

18 Q OKAY, IS IT LICENSED?

19 A NO.

20 Q ALL RIGHT, BUT YOU DON'T TAKE IT OUT ON THE
21 ROADWAY?

22 A NO, IT'S NOT.

23 Q JUST KIND OF USE IT AROUND THE PROPERTY?

24 A NO, I DON'T USE IT AT ALL, JUST SITS THERE.

25 Q DON'T USE IT AT ALL?

W.

EDWARD ~~R.~~ HUNT - DIRECT EXAMINATION BY MR. NICHOLS

273

1 A I START IT TWICE A YEAR TO MAKE SURE THE
2 ENGINE IS STILL GOOD.

3 Q ALL RIGHT, BUT AT THE TIME IN NOVEMBER OF
4 2003 YOU WERE THE TITLED OWNER OF THE FIREBIRD?

5 A YES.

6 Q AND YOU'RE STILL THE TITLED OWNER TODAY?

7 A YES, NO, NO.

8 Q WHO'S THE TITLED OWNER?

9 A MY SON BOUGHT IT.

10 Q WHEN DID YOUR SON BUY THAT? WHEN DID YOU,
11 LET ME ASK ---

12 A BEFORE THE ACCIDENT HE GAVE US \$200 DOWN
13 AND THEN HE WAS MAKING PAYMENTS TO \$500 AND THEN WE, BUT WE
14 HAD IT, WE HAD TO USE THE \$200 THAT HE GAVE US TO GET HIM
15 OUT OF JAIL AT THE ACCIDENT.

16 Q HAVE YOU TRANSFERRED TITLE TO YOUR SON?

17 A YES, HE'S HAD IT QUITE A WHILE.

18 Q WHEN DID YOU TRANSFER TITLE TO THE SON?

19 A PROBABLY I DON'T KNOW, I DON'T KNOW, QUITE
20 A WHILE AGO.

21 Q WAS IT BEFORE THE ACCIDENT?

22 A NO, IT WAS JUST AFTER.

23 Q WAS IT, HOW LONG AFTER THE ACCIDENT?

24 A PROBABLY FOUR MONTHS MAYBE, I DON'T REALLY
25 KNOW.

W.

EDWARD R. HUNT - DIRECT EXAMINATION BY MR. NICHOLS

274

1 Q SO THE CAR, IS THE CAR, BUT AT THE TIME OF
2 THE WRECK THE CAR WAS REGISTERED IN YOUR NAME?

3 A YES.

4 Q AT THE TIME OF THE WRECK WHO PAID THE
5 PROPERTY TAXES ON THE CAR?

6 A I DID.

7 Q OKAY, AT THE TIME OF THE WRECK COULD YOU
8 HAVE TAKEN THE CAR AWAY FROM YOUR SON?

9 A YEAH, SURE.

10 Q NOW --

11 A I NEEDED TO GO WORK AND BACK.

12 Q BEFORE YOU LET HIM USE THE CAR HOW DID HE
13 GET TO WORK AND BACK?

14 A HE HAD ANOTHER CAR.

15 Q AND WHAT, WHAT WAS HIS OWN CAR?

16 A HE HAD A PONTIAC 6000.

17 Q OKAY, SO HE HAD A PONTIAC 6000; DID YOU OR
18 YOUR WIFE DRIVE HIM TO WORK?

19 A NO, NO, HE DROVE HIMSELF.

20 Q MR. HUNT, YOU REMEMBER IN SEPTEMBER OF '09,
21 2009 YOU MET WITH MR. ROTHSTEIN AND I THINK MR. CONNELL ---

22 A YES.

23 Q --- TO DO YOUR DEPOSITION; DO YOU REMEMBER
24 THAT?

25 A YES.

W.

EDWARD R. HUNT - DIRECT EXAMINATION BY MR. NICHOLS

275

1 Q DO YOU REMEMBER GIVING TESTIMONY AT THAT
2 DAY?

3 A YES.

4 Q ALL RIGHT, I'M GOING TO SHOW YOU YOUR
5 DEPOSITION ON PAGE 14 LINES 3 THROUGH 5; I'M GOING TO SHOW
6 IT TO YOU AND ASK YOU IF YOU WOULD HAND IT BACK TO ME?

7 THE COURT: ANY OBJECTIONS?

8 MR. CONNELL: AS LONG AS HE CAN LOOK AT WHATEVER
9 HE'S ASKING THE QUESTION THAT'S FINE.

10 MR. NICHOLS: HE'S GOT IT, I JUST DIDN'T HAVE A
11 COPY.

12 MR. CONNELL: OKAY, JUST HAVE ONE COPY.

13 MR. NICHOLS: (CONTINUING)

14 Q MR. HUNT, I'M SHOWING YOU YOUR DEPOSITION
15 PAGE 14; I'M GOING TO READ A QUESTION AND ANSWER? IT SAYS
16 "SO HE WAS USING THE CAR FOR HIS CONVENIENCE AND GENERAL
17 USE, WOULD YOU AGREE WITH THAT?" AND YOU, THE ANSWER IS,
18 "YEAH, WE GOT TIRED OF DRIVING HIM TO WORK SO." DID I READ
19 THAT ACCURATELY?

20 A YEAH.

21 Q OKAY, SO IS IT FAIR TO SAY THAT AT THE TIME
22 YOU AND YOUR WIFE WERE DRIVING HIM TO WORK AND THAT YOU
23 PROVIDED THE FIREBIRD TO HIM SO THAT HE COULD DRIVE HIMSELF
24 TO WORK?

25 A YES.

1 Q SO IT WAS FOR THAT PURPOSE BECAUSE THAT
2 PURPOSE, YOU AND YOUR WIFE HAD BEEN TAKING CARE OF THAT
3 PURPOSE UP UNTIL THAT TIME?

4 A YES.

5 Q BACK IN NOVEMBER OF 2003 WHO DID THE
6 MAINTENANCE ON THE CAR?

7 A EDWARD.

8 Q I'M SORRY?

9 A EDWARD, WHILE HE WAS DRIVING IT HE DID ALL
10 THE WORK ON IT.

11 Q OKAY ---

12 A CHANGE OIL AND FIX PROBLEMS.

13 Q WAS THERE ANY MAJOR MAINTENANCE THAT NEEDED
14 TO BE DONE?

15 A NO.

16 Q NEW TIRES, BATTERY?

17 A NO, I HAD THAT ALL DONE BEFORE I SOLD IT TO
18 HIM.

19 Q OKAY, BUT YOU HAD THAT ALL DONE BEFORE?

20 A YEAH, I HAD PUT NEW TIRES ON IT, YEAH.

21 Q OKAY, DID YOU HAVE A SET OF KEYS TO THE
22 CAR?

23 A YES.

24 Q DO YOU STILL HAVE A SET?

25 A I SUPPOSE, THERE'S A SET IN THE CAR.

W.

EDWARD R. HUNT - DIRECT EXAMINATION BY MR. NICHOLS

277

1 Q NOW AFTER THE WRECK THAT NIGHT DO YOU KNOW
2 WHAT HAPPENED TO THE CAR THAT NIGHT?

3 A I GOT A CALL TO COME UP, I DIDN'T KNOW THE
4 CAR WAS SMASHED UP AND HE DIDN'T KNOW THE CAR WAS SMASHED
5 UP CAUSE HE WASN'T THERE AND SO WE DIDN'T KNOW THE CAR WAS
6 SMASHED UP UNTIL WE WENT TO GET IT OUT OF THE IMPORT YARD,
7 THE IMPOUND YARD AND WHEN WE WENT THERE BOTH OF US WAS
8 SHOCKED TO SEE. HE WAS, TOO, HE DIDN'T KNOW IT WAS IN THE
9 ACCIDENT.

10 Q SO YOU, DID YOU AND YOUR WIFE RETRIEVE IT
11 FROM THE IMPOUND?

12 A NO, MY SON DID, YEAH.

13 Q DID YA'LL HAVE TO PAY ANY KIND OF FEE TO
14 GET THE CAR OUT OF IMPOUND?

15 A YES, I DON'T REMEMBER HOW MUCH IT WAS.

16 Q OKAY, BUT YOU PAID THAT FEE?

17 A I THINK SO.

18 Q OKAY, NOW I THINK, I THINK YOU TESTIFIED IN
19 YOUR DEPOSITION, BUT LET ME JUST ASK YOU THIS; DO YOU KNOW
20 THE EXTENT OF DAMAGE THAT WAS DONE TO THE CAR?

21 A THEY TOTALED IT BECAUSE THE FRAME WAS BAD.

22 Q OKAY, AND DID YOU HAVE THE FRAME
23 STRAIGHTENED?

24 A YES.

25 Q OKAY ---

1 A MY SON DID.

2 Q OKAY ---

3 A YEAH, WITH THE MONEY, YEAH.

4 Q OKAY ---

5 A IT'S STILL ALL SMASHED UP JUST --

6 Q I'M SORRY?

7 A ALL WE COULD, ALL HE COULD AFFORD WAS TO

8 HAVE THE FRAME STRAIGHTENED, THE CAR IS STILL SMASHED UP.

9 Q OKAY, BUT WITH THE FRAME STRAIGHTENED IT

10 COULD BE USED?

11 A YEAH, HE DROVE IT HOME FROM THE IMPARK YARD

12 SO --

13 Q OKAY, NOW WOULD IT BE FAIR TO SAY THAT

14 YOU'RE THE HEAD OF YOUR FAMILY?

15 A YEAH, I GUESS, MY WIFE WOULD SAY THAT.

16 Q WELL ---

17 A WOULDN'T SAY THAT.

18 Q WELL I NOTICE SHE WASN'T IN THE COURTROOM

19 THAT'S WHY I ASKED YOU THAT QUESTION?

20 A OKAY.

21 Q AND THIS VEHICLE WAS FOR THE GENERAL USE OF

22 YOUR WIFE AND YOUR SON?

23 A NO, HE EXCLUSIVELY USED IT. WE ALL HAD OUR

24 OWN CARS.

25 Q DID YOU NEVER USE THE CAR AFTER YOUR SON

1 STARTED USING IT?

2 A NO, I HAD MY OWN, I HAD A NEW PICKUP
3 MYSELF.

4 Q BUT IT WAS AVAILABLE FOR YOUR USE IF YOU
5 NEEDED IT?

6 A I DIDN'T, I DIDN'T HAVE A REASON, I HAD A
7 CAR.

8 Q NOW THAT, THAT NIGHT DID YOU KNOW, AND I
9 DON'T WANT YOU TO TELL ME ANYTHING OTHER THAN WHETHER YOU
10 KNEW WHERE YOUR SON WAS GOING OR WHAT HE WAS DOING THAT
11 NIGHT?

12 A NO, I HAVE NO IDEA.

13 MR. NICHOLS: I DON'T HAVE ANY OTHER QUESTIONS,
14 THANK YOU VERY MUCH, MR. HUNT.

15 MR. LAWSON: I DON'T HAVE ANY QUESTIONS, YOUR
16 HONOR.

17 THE COURT: ANYTHING, MR. CONNELL?

18 MR. CONNELL: JUST GOT A COUPLE.

19 CROSS EXAMINATION

20 BY MR. CONNELL:

21 Q MR. HUNT, YOU WEREN'T THERE THAT NIGHT,
22 WERE YOU?

23 A NO.

24 Q WHERE WERE YOU?

25 A I WAS IN BED SLEEPING.

1 Q OKAY, SO YOU DON'T KNOW ANYTHING ABOUT WHAT
2 HAPPENED; IS THAT RIGHT?

3 A NO, RIGHT.

4 Q AND TELL ME A LITTLE BIT ABOUT YOUR PAST
5 WORK HISTORY, YOU'RE RETIRED; IS THAT RIGHT?

6 A YES.

7 Q AND YOU'RE A SIGNIFICANT DIABETIC; IS THAT
8 RIGHT?

9 A YES.

10 Q AND SO YOU HAVE TO GO TO THE DOCTOR ON A
11 REGULAR BASIS?

12 A YES.

13 Q AND YOU AND YOUR WIFE OWN A LITTLE HOUSE IN
14 CONWAY?

15 A YEAH.

16 Q IS THAT RIGHT?

17 A YEAH.

18 Q AND AT THE TIME THAT THIS WRECK HAPPENED
19 YOUR SON WAS LIVING IN AN OLD BROKEN DOWN MOTOR HOME NEXT
20 TO YOUR HOUSE; IS THAT RIGHT?

21 A YES.

22 Q AND HE HAD HIS OWN JOB?

23 A YEAH.

24 Q AND HE WAS BUYING THIS CAR; IS THAT RIGHT?

25 A YES.

1 Q NOW MY UNDERSTANDING IS THIS CAR WAS NOT A,
2 A FANCY CAR, IT HAD A LOT OF MILES ON IT; IS THAT RIGHT?

3 A YES, IT DID, IT HAD 160,000 OR SO, YEAH.

4 Q AND THE DEAL WAS IS THAT YOU WOULD SELL THE
5 CAR TO HIM FOR HOW MUCH, FIVE, \$600 OR SOMETHING LIKE THAT?

6 A YEAH.

7 Q AND HE HAD MADE A COUPLE OF PAYMENTS; IS
8 THAT RIGHT?

9 A YEP.

10 Q AND HE WAS A GROWN MAN; IS THAT RIGHT?

11 A YES.

12 Q AND YOU DIDN'T CONTROL WHERE HE WENT?

13 A NOPE.

14 Q WHO HE SAW?

15 A NOPE.

16 Q OR WHAT HE DID?

17 A NOPE.

18 Q AND YOU DIDN'T KNOW WHERE HE WAS THE NIGHT
19 THIS THING HAPPENED, DID YOU?

20 A NOPE.

21 Q AND HE DIDN'T TELL YOU, DID HE?

22 A NO.

23 Q HE CAME AND WENT AS HE PLEASED?

24 A YEP.

25 Q AND THE OLD BROKEN DOWN MOTOR HOME THAT HE

1 WAS LIVING IN NEXT TO YOUR HOUSE WHO WAS PAYING THE
2 ELECTRICITY FOR THAT?

3 A I WAS, IT WAS PLUGGED INTO THE HOUSE.

4 Q AND HE WAS PAYING FOR THE PROPANE GAS; IS
5 THAT RIGHT?

6 A YES.

7 Q AND IF THE CAR BROKE DOWN DURING THE TIME
8 THAT HE WAS EXCLUSIVELY USING IT HE WAS THE ONE TO FIX IT;
9 IS THAT CORRECT?

10 A YES.

11 Q NOW DO YOU KNOW NATHAN SMITHERS, THAT'S
12 THE, THAT'S THE DRUNK MAN ---

13 A NO, NEVER SAW HIM.

14 Q --- WHO RAN INTO MR. GAUSE?

15 A ~~NEVER, EVER.~~

16 Q NEVER MET HIM, NEVER SAW HIM?

17 A NO.

18 Q NEVER TALKED TO HIM?

19 A NO.

20 Q NEVER HEARD OF HIM?

21 A NO, WELL JUST FROM THE LETTERS I GET.

22 Q YOU UNDERSTAND, DO YOU NOT, THAT THESE
23 FOLKS ARE TRYING TO GET ACTUAL AND PUNITIVE DAMAGES FROM
24 YOU; THEY'RE SUING YOU?

25 A YEAH.

1 Q TELL THESE FOLKS WHAT, IF ANYTHING, YOU DID
2 WRONG ON THE NIGHT OF THIS ACCIDENT JUSTIFYING YOU HAVING
3 TO PAY PUNITIVE AND ACTUAL DAMAGES?

4 MR. NICHOLS: JUDGE, THIS, THIS CONTINUES, IT'S
5 A MISREPRESENTATION OF WHAT THE LAW IS IN SOUTH CAROLINA
6 BASED ON THE FAMILY PURPOSE DOCTRINE AND I OBJECT TO THIS
7 QUESTION.

8 THE COURT: MR. CONNELL?

9 MR. CONNELL: YOUR HONOR, THEY'RE GOING TO ASK
10 THE JURY TO HOLD THIS MAN RESPONSIBLE.

11 THE COURT: I'M GOING TO OVERRULE THE OBJECTION,
12 CONTINUE.

13 MR. CONNELL: THANK YOU, YOUR HONOR.

14 Q (CONTINUING) TELL THEM, TELL US ALL, THEY
15 WANT TO TAKE YOUR HOUSE?

16 A I KNOW.

17 MR. NICHOLS: JUDGE?

18 THE COURT: SUSTAINED.

19 MR. CONNELL: (CONTINUING)

20 Q TELL US WHAT YOU DID WRONG THAT NIGHT?

21 A I EXPECT THE JURY WOULD KNOW THAT I DIDN'T
22 HAVE NOTHING TO DO WITH THIS AT ALL.

23 THE COURT: I'M GOING TO ASK THE JURY TO
24 DISREGARD THAT COMMENT ABOUT TAKING THE HOUSE.

25 THE WITNESS: (CONTINUING)

1 A I WASN'T THERE AND I HAD NOTHING TO DO WITH
2 IT.

3 THE COURT: HOLD ON ONE SECOND, IF YOU WOULD, HE
4 MADE SOME QUESTION OR A COMMENT ABOUT TAKING HIS HOUSE. I
5 WANT YOU TO DISREGARD THAT COMMENT BY MR. CONNELL, THAT WAS
6 NOT PROPER. IT'S NOT APPLICABLE AND YOU DON'T NEED TO
7 CONSIDER THAT, BUT YOU CAN ANSWER HIS QUESTION NOW.

8 THE WITNESS: (CONTINUING)

9 A I THINK THE JURY COULD SEE THAT I HAD
10 NOTHING TO DO WITH THIS AT ALL, I WAS HOME IN BED SLEEPING.

11 MR. CONNELL: ALL RIGHT, THANK YOU, SIR.

12 THE COURT: REDIRECT?

13 MR. NICHOLS: I HAVE A MATTER OF LAW I'D LIKE TO
14 TAKE UP.

15 THE COURT: SURE.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
17 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
18 OF THE JURY AND THE COURT REPORTER.)

19 MR. NICHOLS: I DO HAVE A FEW FOLLOW UP
20 QUESTIONS.

21 THE COURT: SURE.

22 REDIRECT EXAMINATION

23 BY MR. NICHOLS:

24 Q MR. HUNT, JUST A FEW THINGS, YOU STILL HAVE
25 YOUR DEPOSITION THERE?

1 A YEAH.

2 Q WOULD YOU TELL ---

3 MR. CONNELL: YOUR HONOR, I OBJECT, I DIDN'T ASK
4 ANYTHING ABOUT HIS DEPOSITION AND IT'S NOT A PROPER
5 RECROSS.

6 MR. NICHOLS: I HAVEN'T ASKED THE QUESTION YET.

7 THE COURT: I AGREE WITH MR. NICHOLS. IF YOU'D
8 GO AHEAD AND ASK THE QUESTION AND THEN YOU CAN OBJECT IF
9 YOU NEED TO.

10 MR. CONNELL: ALL RIGHT, THANK YOU.

11 MR. NICHOLS: (CONTINUING)

12 Q WOULD YOU TURN TO PAGE 21, PLEASE? ALL
13 RIGHT, I'M GOING TO READ A QUESTION AND ANSWER FROM PAGES 6
14 THROUGH 11, EXCUSE ME, LINE 6 THROUGH 11? YOU, YOUR
15 ANSWER, THERE WAS A QUESTION ABOUT MOVING THE CAR AND YOUR
16 ANSWER WAS "ABOUT THREE MONTHS AGO I HAD IT UP ON BLOCKS
17 AND WORKING ON IT AND I DROVE IT BACK AGAIN." IS THAT, IS
18 THAT AN ACCURATE ANSWER? DO YOU SEE THERE RIGHT WHERE LINE
19 6?

20 A YEAH.

21 Q DID I READ THAT RIGHT?

22 A I DON'T KNOW WHAT IT MEANS BY I DROVE IT
23 BACK AGAIN.

24 Q OKAY, WELL THEN LET'S GO ON TO THE NEXT
25 QUESTION, "DID YOUR SON HELP YOU WORK ON IT?" AND YOUR

1 ANSWER WAS, "NO, I WAS WORKING ON IT, WELL HE DID SOME OF
2 IT." DO YOU SEE THAT?

3 A YEAH.

4 Q SO YOU ACTUALLY DID DO SOME WORK ON THE
5 CAR?

6 A YEAH, I'D BEEN GETTING IT READY FOR HIM TO
7 USE.

8 Q DID YOU EVER, WHEN DID YOU TRANSFER TITLE?

9 A I DON'T REMEMBER.

10 Q OKAY, DID YOU, BUT AT THE TIME OF THIS
11 WRECK THIS CAR WAS TITLED IN YOUR NAME?

12 A YES.

13 Q AND IT WAS AVAILABLE FOR YOU TO USE AS WELL
14 IF YOU HAD TO GO TO ---

15 A YEAH, BUT I DIDN'T NEED TO.

16 Q --- GO TO THE DOCTOR?

17 A YEAH, I DIDN'T HAVE ANY USE FOR IT. MY
18 ORIGINAL PLAN WAS TO SAVE IT FOR, IN FOUR OR FIVE YEARS IT
19 WOULD HAVE BEEN CLASSIFIED AS AN ANTIQUE SO THAT'S WHY I
20 ALWAYS TRIED TO KEEP IT UP AND --

21 Q I'M SORRY, SAY IT AGAIN?

22 A I WANTED TO SAVE IT FOR AN ANTIQUE CAUSE
23 IT'S GOT TEE TOPS AND IT'S 25 YEARS OLD.

24 Q SO AT SOME POINT YOU WANTED TO HAVE IT AS
25 AN ANTIQUE OR RESTORED ANTIQUE?

1 A YES, I WAS GOING TO STORE IT IN MY GARAGE
2 AND THEN HE ASKED ME IF HE COULD BUY IT AND HE NEEDED A
3 RIDE TO WORK SO --

4 Q SO YOU WANTED HIM TO HAVE A CAR TO GET A
5 RIDE TO WORK?

6 A YEAH.

7 Q I THINK YOU SAID THAT YOU GOT THE CAR TO
8 YOUR SON SEVERAL MONTHS, SEVERAL MONTHS AFTER THIS WRECK
9 AND THIS WRECK WAS IN NOVEMBER, NOVEMBER 15TH OF 2003, DID
10 YOU GIVE THE CAR TO YOUR SON FOR CHRISTMAS THAT YEAR?

11 A I DON'T REMEMBER.

12 MR. NICHOLS: OKAY, I DON'T HAVE ANYTHING ELSE,
13 JUDGE.

14 THE COURT: MR. LAWSON, ANYTHING FROM YOU?

15 MR. LAWSON: NO, SIR.

16 THE COURT: MR. CONNELL?

17 MR. CONNELL: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT, YOU MAY STEP DOWN. YOU
19 CAN GO AHEAD AND CALL YOUR NEXT WITNESS.

20 MR. NICHOLS: ALL RIGHT, JUDGE, WE'D CALL EDWARD
21 R. HUNT.

22 EDWARD R. HUNT

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 MADAM CLERK: STATE YOUR NAME FOR THE COURT,
25 PLEASE, SIR.

1 THE WITNESS: EDWARD RAYMOND HUNT.

2 DIRECT EXAMINATION

3 BY MR. NICHOLS:

4 Q GOOD MORNING, MR. HUNT.

5 A GOOD MORNING.

6 Q MR. HUNT, WHERE DO YOU LIVE?

7 A I LIVE AT 130 D STREET IN CONWAY, SOUTH
8 CAROLINA.

9 Q IS THAT WITH YOUR PARENTS?

10 A YES, SIR.

11 Q OKAY, IN NOVEMBER OF 2003 WHERE WERE YOU
12 LIVING?

13 A THE SAME PLACE, WITH MY PARENTS.

14 Q WITH YOUR PARENTS?

15 A YEAH.

16 Q NOW LET'S TALK ABOUT WHAT HAPPENED THAT
17 NIGHT, WHAT DO YOU REMEMBER ABOUT THE WRECK THAT NIGHT?

18 A I DON'T REMEMBER ANYTHING ABOUT THE WRECK
19 CAUSE I WASN'T THERE.

20 Q OKAY, WELL LET'S TALK ABOUT HOW YOU GOT TO,
21 YOU GOT THERE BEFORE YOU WERE TAKEN FROM THE SCENE; DO YOU
22 RECALL HOW YOU GOT, HOW YOUR CAR GOT TO THAT POSITION ON
23 HIGHWAY 401?

24 A YES, SIR.

25 Q I MEAN, EXCUSE ME, 501?

1 A 501, YEAH, I WAS STOPPED FOR A BLUE LIGHT
2 FROM AN OFFICER THAT CAME UP BEHIND ME.

3 Q DID THE OFFICER TELL YOU WHY HE PUT HIS
4 BLUE LIGHT ON?

5 A NOT, WELL HE DIDN'T TELL ME WHY, AFTER HE
6 PULLED ME HE CALLED, HE SAID HE HAD TO GO SOMEWHERE SO HE
7 CALLED CONWAY P.D. TO SEND OUT A COUPLE OF OFFICERS.

8 Q WHY DID YOU STOP THE CAR IN THE LEFT HAND
9 LANE ON 501?

10 A I JUST, I'VE ALWAYS BEEN TOLD AND I'VE
11 ALWAYS THOUGHT THAT THAT'S JUST WHAT YOU DO. YOU SEE A
12 BLUE LIGHTS ARE TELLING YOU TO STOP YOU STOP.

13 Q DID YOU NOT KNOW THAT IT WAS THE LAW THAT
14 YOU WERE SUPPOSED TO PULL OVER TO THE RIGHT?

15 A WELL, YEAH, I DID BUT I JUST, I DON'T KNOW
16 WHY I DID IT, I MEAN THAT'S ALL I CAN SAY.

17 Q WHY DIDN'T YOU AFTER THE STOP AFTER YOU
18 TALKED TO THE POLICE OFFICER WHY DIDN'T YOU MOVE YOUR CAR
19 TO THE RIGHT SIDE OF THE ROAD?

20 A HE WOULDN'T HAVE LET ME.

21 Q DID HE SAY WHY HE WOULDN'T LET YOU?

22 A NO, SIR.

23 Q DID HE OFFER TO MOVE IT?

24 A NO, SIR.

25 Q DO YOU RECALL YOUR DEPOSITION BEING TAKEN

1 ON SEPTEMBER 28TH, 2009?

2 A FOR THE MOST PART, YES.

3 Q OKAY, AND MR. ROTHSTEIN WAS THERE AND I
4 THINK MR. BAXTER AND A COUPLE OF OTHER FOLKS WERE THERE?

5 A UH-HUH.

6 Q IN THAT DEPOSITION I'M GOING TO, I'M GOING
7 TO ASK YOU TO TURN TO PAGE 27 OF THAT DEPOSITION, I'LL TURN
8 TO THERE FOR YOU, MR. HUNT?

9 MR. CONNELL: YOUR HONOR, COULD WE HAVE A WORD
10 ABOUT THIS?

11 THE COURT: SURE.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
13 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
14 OF THE JURY AND THE COURT REPORTER.)

15 MR. NICHOLS: I APOLOGIZE FOR THAT.

16 Q (CONTINUING) IF YOU'D TURN TO PAGE 27, ARE
17 YOU THERE?

18 A YES, SIR.

19 Q ALL RIGHT, I'M GOING TO READ A QUESTION AT
20 LINE 15, OKAY, YOU SEE THAT?

21 A YES, SIR.

22 Q ALL RIGHT, "WHAT DID THE TROOPER SAY TO YOU
23 WHEN HE STOPPED YOU?" ANSWER, "HE TOLD ME THAT HE WAS
24 PULLING ME OVER BECAUSE I WAS SWERVING IN AND OUT OF
25 LANES." DID I READ THAT RIGHT?

1 A YES, SIR.

2 Q OKAY, SO YOU DO KNOW WHY HE PULLED YOU
3 OVER?

4 A YES, SIR, WHEN YOU ASKED ME IF I REMEMBERED
5 THE DEPOSITION THAT I GAVE, LIKE I SAID I MAINLY REMEMBER
6 IT. I MEAN I WASN'T ALL TOO GOOD ON ALL THE VITAL POINTS
7 OF IT BUT I MEAN IT'S BEEN A WHILE SINCE THE DEPOSITION SO,
8 I MEAN I DON'T REMEMBER EVERYTHING THAT WAS ASKED.

9 Q I UNDERSTAND. LET ME, LET ME ASK YOU THIS,
10 THE NIGHT BEFORE NOVEMBER 14TH, WHAT, DO YOU RECALL WHAT
11 YOU DID THAT NIGHT?

12 A I WENT OUT TO A CLUB.

13 Q WHAT WAS THE NAME OF THAT CLUB?

14 A MASTER GENTLEMENS CLUB.

15 Q WHAT KIND OF CLUB IS THAT?

16 A IT'S A, WELL IT'S A STRIP CLUB.

17 Q DO YOU KNOW HOW LONG YOU WERE THERE?

18 A A FEW HOURS.

19 Q DO YOU KNOW WHAT TIME YOU LEFT?

20 A IT WAS RIGHT AROUND FOUR IN THE MORNING,
21 BETWEEN THREE AND FIVE IN THE MORNING, SOMEWHERE OUT IN
22 THERE.

23 Q WHAT ---

24 A WHEN I GOT OUT OF THE CLUB ACTUALLY I WENT
25 OUT AND SLEPT IN MY CAR.

1 Q DID YOU ACTUALLY SLEEP?

2 A YES, SIR.

3 Q I'M GOING TO ASK YOU TO TURN, IF YOU'D TURN
4 TO PAGE 22; ARE YOU THERE, I'M SORRY?

5 A YES, SIR.

6 Q ALL RIGHT, I'M GOING TO GO TO LINE 20 AND
7 I'M GOING TO SKIP A FEW WORDS, OKAY?

8 A UH-HUH.

9 Q AND YOU SAID, "I JUST LAID THE SEAT BACK
10 AND CLOSED MY EYES AND WOKE UP ABOUT AN HOUR LATER."

11 A YES, SIR.

12 Q OKAY, SO DID YOU ACTUALLY, DID YOU ACTUALLY
13 GO COMPLETELY TO SLEEP?

14 A WELL, YES, FOR THE MOST PART. I MEAN I
15 LIKE I SAID I SLEPT THERE FOR A LITTLE WHILE. I MEAN I
16 DON'T REMEMBER ACTUALLY SLEEPING BUT I MEAN I CLOSED MY
17 EYES AND WOKE UP AN HOUR OR SO LATER.

18 Q DO YOU RECALL WHAT TIME YOU GOT TO THE
19 CLUB?

20 A RIGHT OFF HAND, NO, I DON'T.

21 Q ALL RIGHT, TURN TO PAGE 21, IF YOU WOULD;
22 ARE YOU THERE?

23 A YES, SIR.

24 Q ALL RIGHT, DO YOU SEE, LET'S GO BACK TO
25 PAGE 20 THERE WAS A QUESTION THAT SAID "WHAT TIME DID YOU

1 SAY YOU GOT THERE THAT NIGHT?" AND THERE WAS AN ANSWER
2 THAT SAYS "BETWEEN 10 AND 11." YOU SEE THAT?

3 MR. CONNELL: WHAT LINE ARE YOU ON?

4 MR. NICHOLS: I'M SORRY, THAT'S LINE, PAGE 21
5 LINE 2.

6 MR. NICHOLS: (CONTINUING)

7 A YES, SIR.

8 Q SO AND THIS WAS NOT THE FIRST TIME YOU HAD
9 GONE TO THAT CLUB, WAS IT?

10 A NO, SIR.

11 Q WOULD YOU CALL YOURSELF A REGULAR CUSTOMER?

12 A YES, SIR, FOR A LITTLE WHILE.

13 Q ALL RIGHT, NOW DO YOU, YOU WERE ACTUALLY
14 THERE BETWEEN FOUR AND FIVE HOURS; IS THAT RIGHT?

15 A YEAH, AROUND ABOUT FOUR HOURS.

16 Q OKAY, SO AFTER YOU WENT TO YOUR CAR AND YOU
17 SLEPT FOR A LITTLE WHILE THEN WHAT DID YOU DO?

18 A I WOKE UP, SET THERE A LITTLE BIT AND DROVE
19 HOME.

20 Q WAS THE CLUB STILL OPEN?

21 A NO, SIR.

22 Q NOW I'M NOT FAMILIAR WITH THAT CLUB, WHERE
23 IS IT, IS IT ON 501?

24 A IT'S ON 10TH AVENUE NORTH IN MYRTLE BEACH.

25 Q IS THAT NEAR 501?

1 A IT'S OFF OF HIGHWAY 17.

2 Q OKAY ---

3 A OR BYPASS 17.

4 Q ALL RIGHT, SO WHAT ROUTE DID YOU TAKE FROM,
5 FROM THAT CLUB TO GET TO 501?

6 A JUST 10TH AVENUE TO 17 TO 501.

7 Q OKAY, AND THEN YOU DROVE FROM THERE TO THE
8 POINT THAT THE OFFICER PULLED YOU OVER?

9 A YES, SIR.

10 Q BECAUSE YOU WERE WEAVING AND NOT STAYING IN
11 THE LANE?

12 A YES, SIR.

13 Q NOW WHAT, THE OFFICER WHO PULLED YOU OVER
14 DO YOU KNOW WHETHER IT WAS A CITY POLICEMAN OR WHO?

15 A I REALLY DON'T REMEMBER. I THOUGHT IT WAS
16 AN Horry COUNTY POLICEMAN BUT I THINK IT WAS, IT MIGHT HAVE
17 BEEN A STATE TROOPER ACTUALLY.

18 Q OKAY, BUT, I'M SORRY. WERE YOU, DID YOU,
19 WERE YOU ALLOWED TO DRIVE AWAY FROM THE SCENE?

20 A NO, SIR.

21 Q HOW WERE YOU, HOW DID YOU LEAVE THE SCENE?

22 A IN THE BACK OF ANOTHER OFFICER'S VEHICLE.

23 Q OKAY, WHERE DID THEY TAKE YOU?

24 A TO J. REUBEN LONG DETENTION CENTER.

25 Q DO YOU KNOW MR. SMITHERS?

1 A NO, SIR, I MET HIM IN JAIL AFTER THE FACT.

2 Q DID, DID MR. SMITHERS SAY ANYTHING TO YOU
3 IN THE JAIL?

4 A WHEN HE CAME IN HE WAS TALKING ABOUT
5 HITTING A COP CAR.

6 Q DO YOU REMEMBER EXACTLY WHAT HE SAID?

7 A NO, NO, I DON'T.

8 Q LET'S TURN TO PAGE 50, LET'S ACTUALLY TURN
9 TO PAGE 51, MR. HUNT, AND I'M GOING TO READ THE QUESTION
10 AND ANSWER AND LET ME KNOW IF THAT ACCURATELY REFLECTS OR
11 REFRESHES YOUR MEMORY?

12 MR. CONNELL: WHAT LINE NUMBER?

13 MR. NICHOLS: I'M GOING TO READ FROM LINE 1 DOWN
14 TO LINE 17.

15 MR. NICHOLS: (CONTINUING)

16 Q AND THAT'S MY NEXT QUESTION, "YOU SEEN
17 HIM?" "I MET HIM AT J. REUBEN, YEAH, IN THE HOLDING CELL
18 BECAUSE HE CAME IN BOASTING ABOUT REAR ENDING A COP AND I'M
19 LIKE, YEAH, SURE, OKAY, NO PROBLEM. I DIDN'T EVEN KNOW
20 THERE WAS DAMAGE TO MY CAR UNTIL I GOT OUT OF J. REUBEN."
21 "DID HE TELL YOU WHAT HAPPENED?" "HE JUST, I MEAN I KNOW
22 HE WAS HEAVILY INTOXICATED AND HE CAME IN TALKING ABOUT HE
23 REAR ENDED A COP AT LIKE 65 MILES AN HOUR. I DON'T, LIKE I
24 SAID I DIDN'T EVEN KNOW, WHEN THEY CAME AND MY PARENTS CAME
25 AND GOT ME OUT OF J. REUBEN THEY WERE ASKING ME WHAT

1 HAPPENED TO THE CAR AND I HAD NO IDEA." DID I READ THAT
2 CORRECTLY?

3 A YES, SIR.

4 Q OKAY, SO DOES THAT REFRESH YOUR MEMORY
5 ABOUT WHAT MR. SMITHERS MIGHT HAVE SAID TO YOU?

6 A YEAH, I MEAN FOR THE MOST PART. I MEAN HE
7 WAS INTOXICATED SO, I MEAN --

8 Q NOW AT THE TIME OF THE WRECK IN NOVEMBER OF
9 2003 WHO OWNED THE CAR THAT YOU WERE DRIVING?

10 A MY FATHER.

11 Q AT SOME POINT IN TIME DID HE, DID HE SELL
12 OR GIVE THAT CAR TO YOU?

13 A YES, SIR.

14 Q WHEN DID HE DO THAT?

15 A ORIGINALLY HE WAS SELLING ME THE CAR AND I
16 HAD ALREADY GIVEN HIM MONEY FOR THAT AND AFTER THE ACCIDENT
17 HE ENDED UP GIVING ME THE CAR AS A GIFT.

18 Q OKAY, WELL LET'S TALK ABOUT A 1991 IMPALA,
19 HAVE YOU EVER OWNED A 1991 IMPALA?

20 A NO, SIR.

21 Q ALL RIGHT, LET'S GO, IF YOU'LL TURN TO PAGE
22 34 OF YOUR DEPOSITION, OKAY, DO YOU SEE LINE, I'M GOING TO
23 READ FROM LINE 11 TO LINE 12; DO YOU SEE THAT?

24 A UH-HUH.

25 Q "OKAY, WHEN DID YOU BUY THE '91 IMPALA?"

1 "'96, I BELIEVE." IS THAT ACCURATE, DID I READ THAT RIGHT?

2 A WELL, YES, BUT IT WASN'T A '91 IMPALA.

3 Q OKAY, BUT THE TESTIMONY HERE WAS THAT IT
4 WAS A '91 IMPALA?

5 A WELL I BOUGHT, I BOUGHT THE IMPALA IN '91.

6 Q OKAY, SO YOUR QUARREL WITH ME IS THAT I GOT
7 THE YEAR WRONG?

8 A RIGHT.

9 Q OKAY --

10 A IT WAS ACTUALLY A '79 IMPALA.

11 Q OKAY, AND BUT WHAT I JUST READ IT SAYS 1996
12 IS WHEN YOU BOUGHT IT; DO YOU SEE THAT?

13 A '96.

14 Q IT'S LINE 11 AND 12 ON THAT PAGE?

15 A I DON'T SEE '96 ON HERE AT ALL.

16 Q WELL YOU DON'T SEE THE NUMBER, IT'S
17 ACTUALLY THE WORDS?

18 A OH, '96, OKAY, YES.

19 Q SO AT SOME POINT YOU IN FACT DID OWN AN
20 IMPALA?

21 A YES, SIR.

22 Q AND THIS RECORD WHICH SAYS A '91 IMPALA IS
23 JUST WRONG?

24 A RIGHT.

25 Q OKAY, YOU DIDN'T CLEAR IT UP THAT DAY?

1 A OKAY, I'M SORRY ABOUT THAT.

2 Q THAT'S OKAY, I MAKE MISTAKES ALL THE TIME
3 LIKE THAT, MR. HUNT. WAS THE, BUT THE FIREBIRD WAS NOT
4 YOURS THE NIGHT OF THE WRECK?

5 A NO, NO, I WAS IN THE PROCESS OF BUYING IT
6 BUT IT WAS STILL IN MY FATHER'S NAME.

7 Q AS IT IS TODAY?

8 A NO, IT IS IN MY NAME TODAY.

9 Q WHEN WAS IT TITLED INTO YOUR NAME?

10 A SHORTLY AFTER THE, AFTER THE WRECK IT WAS
11 WITHIN THREE OR FOUR MONTHS AFTER THE WRECK.

12 Q WAS IT A GIFT AT CHRISTMAS?

13 A THAT'S WHAT WE WERE ORIGINALLY SAYING THAT
14 IT WAS GOING TO BE IT WAS A GIFT FOR CHRISTMAS.

15 Q OKAY, SO YOUR FATHER WHO OWNED THE CAR WAS
16 GOING TO GIVE IT TO YOU AT CHRISTMAS?

17 A YES, AND WE JUST DIDN'T GET THE TITLE
18 CHANGED OVER TO MY NAME FOR A WHILE AFTERWARDS.

19 Q NOW, MR. HUNT, YOU KNEW THAT IT WAS
20 DANGEROUS TO PULL YOUR CAR OVER AND STOP IN THE ROADWAY;
21 DIDN'T YOU?

22 A YES, SIR.

23 Q AND YOU KNEW THAT THE LAW ACTUALLY REQUIRED
24 YOU TO PULL OFF TO THE RIGHT?

25 A YES, SIR.

1 Q AND YOU, CAN YOU EXPLAIN WHY YOU DIDN'T DO
2 THAT?

3 A NO, I REALLY CAN'T. I REALLY DON'T KNOW
4 WHY I DIDN'T PULL OVER. I JUST, LIKE I SAID I STOPPED FOR
5 THE BLUE LIGHTS AND I DON'T KNOW WHY I DIDN'T PULL OVER.

6 Q AND THE REASON THAT YOU, YOU UNDERSTAND THE
7 REASON THAT THE CAR SHOULDN'T BE IN THAT LEFT LANE IS IT'S
8 A DANGER TO PEOPLE WHO ARE ON THE ROADWAY?

9 A YES, SIR.

10 MR. NICHOLS: ONE MOMENT.

11 Q (CONTINUING) LET ME ASK YOU A COUPLE OF
12 MORE QUESTIONS, MR. HUNT. GO TO PAGE 35, I TELL YOU WHAT,
13 LET'S, LET'S START AT PAGE 34 THE QUESTION BEGINNING AT
14 LINE 23 AND I'M GOING TO READ DOWN TO, DOWN TO LINE 9,
15 OKAY?

16 A ALL RIGHT.

17 Q THE QUESTION WAS ---

18 MR. CONNELL: YOUR HONOR, WE NEED TO TALK ABOUT
19 THAT.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
21 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
22 OF THE JURY AND THE COURT REPORTER.)

23 MR. NICHOLS: (CONTINUING)

24 Q ALL RIGHT, SORRY ABOUT THAT, MR. HUNT. ON
25 PAGE 34 LINE 23?

1 A YES, SIR.

2 Q ALL RIGHT, THE QUESTION WAS, "WAS THE
3 IMPALA IMPOUNDED OR WAS IT, DID YOU SELL IT OR WHAT
4 HAPPENED TO THE IMPALA?" ANSWER, "I JUST, I SOLD IT."
5 "HOW LONG DID YOU HAVE THE IMPALA? WAS IT LESS THAN A
6 WEEK?" "YEAH." "WHY DID YOU BUY THE IMPALA IF YOU HAD THE
7 FIREBIRD?" "BECAUSE THE FIREBIRD WASN'T ACTUALLY MINE AND
8 STILL IN HIS NAME AND EVERYTHING SO I WAS TRYING TO GET A
9 CAR OF MY OWN." DID I READ THAT CORRECTLY?

10 A YES, SIR.

11 Q OKAY, NOW YOU DID LEAVE THE CAR IN THE, IN
12 THE PASSING LANE WHEN YOU WERE PULLED OVER BY THE TROOPER;
13 WAS THE CAR DISABLED IN ANY WAY?

14 A NO, SIR.

15 Q THE CAR WAS DRIVABLE AT THAT TIME?

16 A YES, SIR.

17 Q WAS THERE ANYTHING ABOUT THE ROADWAY ITSELF
18 THAT WOULD HAVE PREVENTED YOU FROM PULLING THE CAR OFF TO
19 THE RIGHT?

20 A NO, SIR.

21 Q WAS THERE TRAFFIC THAT WOULD HAVE PREVENTED
22 YOU FROM PULLING THE CAR OVER TO THE RIGHT AT THAT TIME OF
23 DAY?

24 A NO, SIR.

25 MR. NICHOLS: I DON'T HAVE ANY OTHER QUESTIONS,

1 JUDGE.

2 THE COURT: ALL RIGHT, MR. CONNELL, CROSS,
3 ANYBODY?

4 MR. LAWSON: NOTHING, YOUR HONOR.

5 MR. CONNELL: JUST A COUPLE OF THINGS.

6 CROSS EXAMINATION

7 BY MR. CONNELL:

8 Q YOU UNDERSTAND YOU HAVE TO STOP FOR A BLUE
9 LIGHT; IS THAT RIGHT?

10 A YES, SIR.

11 Q AND THAT'S WHAT YOU DID; IS THAT RIGHT?

12 A YES, SIR.

13 Q AND IN RETROSPECT YOU PROBABLY SHOULD HAVE
14 PULLED TO THE RIGHT; IS THAT WHAT YOU'RE SAYING?

15 A YES, SIR.

16 Q YOU, WERE YOU PANICKED THAT NIGHT?

17 A YEAH, BLUE LIGHTS COME UP BEHIND YOU YOU
18 PANIC A LITTLE BIT.

19 Q AND THE CAR ITSELF YOU WERE ACTUALLY PAYING
20 YOUR DAD FOR THE CAR; IS THAT RIGHT?

21 A YES, SIR.

22 Q AND YOU LIVE IN A TRAILER OUTSIDE, OLD
23 MOTOR HOME OUTSIDE HIS HOUSE; IS THAT RIGHT?

24 A YES, SIR.

25 Q AND YOU'RE AN ADULT?

1 A YES, SIR.

2 Q AND HE DIDN'T KNOW WHERE YOU WERE GOING?

3 A NO, SIR.

4 Q AND YOU DIDN'T TELL HIM?

5 A NO, SIR.

6 Q AND HE WASN'T THERE?

7 A NO, SIR.

8 Q AND HE WAS SLEEPING AT HOME; IS THAT RIGHT?

9 A YES, SIR.

10 MR. CONNELL: THANK YOU, SIR.

11 THE COURT: REDIRECT?

12 MR. NICHOLS: VERY BRIEFLY, JUDGE.

13 REDIRECT EXAMINATION

14 BY MR. NICHOLS:

15 Q MR. HUNT, WHERE WERE YOU WORKING AT THAT
16 TIME?

17 A I WAS WORKING FOR KANGAROO, THE PANTRY INC.

18 Q AT THAT PARTICULAR TIME?

19 A YES, SIR, OR WAS I WORKING --

20 Q THAT WOULD HAVE BEEN NOVEMBER 15TH --

21 A 2003, NO, I DIDN'T START AT THE PANTRY
22 UNTIL 2004.

23 Q RIGHT?

24 A I THINK I MIGHT HAVE BEEN WORKING FOR AN
25 ELECTRIC COMPANY, I THINK, HARDWICK ELECTRIC LIGHTING AND

1 PLUMBING, I BELIEVE. I'M NOT, I'M NOT QUITE SURE.

2 Q IS IT POSSIBLE YOU WERE UNEMPLOYED AT THAT
3 TIME?

4 A I MIGHT HAVE BEEN IN BETWEEN JOBS, YEAH, I
5 MIGHT HAVE BEEN UNEMPLOYED, I CAN'T REMEMBER RIGHT OFF
6 HAND.

7 MR. NICHOLS: THAT'S ALL.

8 THE COURT: ANYTHING FURTHER?

9 MR. CONNELL: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT, YOU MAY STEP DOWN, CALL
11 YOUR NEXT WITNESS.

12 MR. ROTHSTEIN: THE PLAINTIFF RESTS ITS CASE AT
13 THIS TIME, YOUR HONOR.

14 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.
15 MEMBERS OF THE JURY, WE HAVE TO TAKE UP SOME MATTERS OF LAW
16 OUTSIDE OF YOUR PRESENCE, IF YOU WOULD TAKE A MOMENT, STEP
17 INTO THE JURY ROOM, GET A SNACK, GET A DRINK, USE THE
18 RESTROOM, AND I'LL BE BACK WITH YOU AS SOON AS WE FINISH,
19 DO NOT DISCUSS THE CASE.

20 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
21 10:40 A.M.)

22 THE COURT: BE GLAD TO HEAR FROM YOU, MR.
23 ROTHSTEIN?

24 MR. ROTHSTEIN: THIS IS DAVID ROTHSTEIN FOR THE
25 PLAINTIFF, MR. LAWSON AND I HAVE REACHED AN AGREEMENT, AT

1 LEAST TO RESOLVE PART OF THIS CASE OR TO PUT WHAT'S CALLED
2 A HIGH/LOW AGREEMENT INTO PLACE. I'LL AGREE THAT I WILL
3 NOT SEEK TO RECOVER A VERDICT IN ACCESS OF \$95,000 FROM THE
4 INSURANCE COMPANY AND MR. LAWSON HAS AGREED THAT THE
5 INSURANCE COMPANY WILL PAY AT LEAST \$75,000 TO MY CLIENT.

6 THE COURT: IS THAT IN ADDITION TO WHAT YOU'VE
7 ALREADY BEEN PAID?

8 MR. ROTHSTEIN: THAT'S A TOTAL OF 75.

9 MR. LAWSON: YES, WE WOULD GET CREDIT FOR ---

10 THE COURT: THIS IS NEW MONEY.

11 MR. LAWSON: THIS IS NEW MONEY.

12 THE COURT: OKAY.

13 MR. LAWSON: CREDIT FOR THE \$45,000 WE'VE
14 ALREADY ADVANCED AND WE WILL NOT BE TAKING ANY SORT OF
15 OFFSET OR CREDIT FOR THE MONIES THAT WE PAID THE INSURANCE
16 RESERVE FUND ON THE VEHICLE THAT MR. GAUSE WAS OCCUPYING AT
17 THE TIME OF THE COLLISION WHICH I BELIEVE ---

18 THE COURT: SO THE ONLY OFFSET IS 45?

19 MR. LAWSON: YEAH, MY OFFSET WILL BE \$45,000.
20 WE'LL STILL HAVE OUR SUBROGATION RIGHTS AGAINST MR.
21 SMITHERS SHOULD HE HIT THE LOTTERY, ONLY UP TO THE POINT OF
22 WHAT WE'VE PAID. IF THEY GET A VERDICT MORE THAN THAT
23 THEN, OF COURSE, THEY WOULD BE --

24 MR. ROTHSTEIN: AND OBVIOUSLY THIS IS GOING TO
25 BE ON A POLICE RELEASE TYPE OF AGREEMENT, DOESN'T AFFECT

1 MR. SMITHERS' LIABILITY AT ALL. WE'RE STILL GOING TO GO
2 FORWARD ---

3 MR. LAWSON: RIGHT.

4 MR. ROTHSTEIN: --- AND ALSO DOESN'T AFFECT ANY
5 UI, WE HAVE POTENTIAL UIM WITH STATE FARM AS WELL AND HAS
6 NO AFFECT ON THAT.

7 MR. LAWSON: RIGHT, AND WHILE I'M NOT PART OF
8 THAT I WILL SAY THAT THAT'S CORRECT THAT IF THEY FIND A
9 VERDICT AGAINST MR. HUNT FOR MORE THAN \$15,000 I BELIEVE IT
10 WOULD BE A UIM POLICY IN PLACE FOR THAT.

11 THE COURT: ALL RIGHT.

12 MR. LAWSON: THANK YOU, YOUR HONOR.

13 MR. NICHOLS: JUDGE, I HAVE ONE MATTER THAT WE
14 TALKED ABOUT AT SIDE BAR THAT I'D LIKE TO ACTUALLY JUST PUT
15 ON THE RECORD IF I COULD?

16 THE COURT: SURE.

17 MR. NICHOLS: DURING MR. CONNELL'S CROSS
18 EXAMINATION OF MR. HUNT, SR., HE, HE MADE THE REMARK ABOUT
19 PUTTING HIM OUT OF HIS HOUSE.

20 THE COURT: CORRECT.

21 MR. NICHOLS: AND I UNDERSTAND YOU GAVE A
22 CURATIVE INSTRUCTION AND I DIDN'T WANT TO DRAW ANY FURTHER
23 ATTENTION TO IT BUT YOU GAVE THE CURATIVE INSTRUCTION BUT
24 I'M NOT SO SURE THAT STILL DOESN'T ANSWER MY QUESTION ABOUT
25 MY ABILITY UNDER RULE 411 TO THEN GO INTO THE FACT BECAUSE

1 THAT IS ESSENTIALLY POOR MOUTHING AND I UNDERSTAND YOU
2 INSTRUCTED THE JURY BUT THIS IS NOT, IN SOUTH CAROLINA RULE
3 411 CHANGED THE LAW ON INSURANCE. THE SUPREME COURT SAID
4 THAT IN YOHO AND THEY'VE SAID IT IN SOME OTHER CASES, CAN'T
5 GET IT IN TO SHOW LIABILITY BUT I CAN GET IT IN FOR OTHER
6 REASONS AND COURTS AROUND THE COUNTRY, I'VE GOT A FEW
7 COURTS AROUND THE COUNTRY SAY THAT THIS EXACT, THIS EXACT
8 THING, POOR MOUTHING THE DEFENDANT IS ONE REASON WHY I
9 SHOULD BE ABLE TO COME BACK IN AND, AND LET THEM KNOW THAT
10 WE'RE NOT GOING TO PUT HIM OUT OF HIS HOUSE. FURTHERMORE
11 THERE'S A HOMESTEAD EXEMPTION. WE CAN'T PUT HIM OUT OF HIS
12 HOUSE ANYWAY. IT'S A MISREPRESENTATION OF THE LAW. IT'S A
13 MISREPRESENTATION AND I FEEL LIKE WE HAVE THE RIGHT TO GO
14 INTO THE FACT THAT HE'S COVERED BY LIABILITY INSURANCE,
15 ALLSTATE IS HERE, AND --

16 THE COURT: HE'S COVERED BY, WHAT, 15,000?

17 MR. CONNELL: YES, SIR, THAT'S NOT WHAT THE YOHO
18 SAYS. YOHO WAS ACTUALLY MY CASE THAT WENT UP TO THE
19 SUPREME COURT.

20 THE COURT: I UNDERSTAND AND I'M NOT GOING TO
21 ALLOW YOU TO GO INTO IT ANY FURTHER. IT WAS MORE OR LESS A
22 COMMENT BY HIM, HE HAD ALREADY ASKED THE QUESTION AND THEN
23 MADE THAT COMMENT. I CAN ADD SOMETHING INTO THE JURY
24 CHARGE IF YOU WANT TO WRITE A LITTLE ONE OR TWO SENTENCE,
25 SOMETHING THAT WOULD MAKE YOU FEEL BETTER AND LET THEM KNOW

1 AGAIN THAT THAT IS NOT APPLICABLE, NOT SOMETHING THEY
2 SHOULD THINK ABOUT OR TALK ABOUT.

3 MR. NICHOLS: I UNDERSTAND, I JUST ---

4 THE COURT: I'LL BE GLAD TO DO IT.

5 MR. NICHOLS: I JUST WANTED THAT ON THE RECORD.

6 THE COURT: I UNDERSTAND. DO YOU WANT ANYTHING
7 IN THE CHARGE OR ARE YOU GOOD WITH WHAT I SAID?

8 MR. NICHOLS: WE, I'LL TALK WITH MR. ROTHSTEIN
9 ABOUT THAT AND I UNDERSTAND THAT THE LAW MATTER IS ABOUT TO
10 BE TAKEN UP AND WE'LL TALK ABOUT THAT.

11 THE COURT: OKAY.

12 MR. NICHOLS: THANK YOU.

13 MR. ROTHSTEIN: YOUR HONOR, I'VE GOT THREE
14 MOTIONS ON BEHALF OF THE PLAINTIFF. THE PLAINTIFF, MR.
15 GAUSE, WOULD MOVE INITIALLY FOR A DIRECTED VERDICT ON
16 LIABILITY AS TO MR. SMITHERS. MR. SMITHERS, THE GUILTY
17 PLEA, I MEAN NOT GUILTY PLEA, BUT THE CONVICTION FOR DUI
18 ARISING OUT OF THIS RECORD IS IN EVIDENCE, IT'S COLLATERAL
19 ESTOPPEL ---

20 THE COURT: LET ME JUST ASK YOU THIS, ANY
21 OBJECTIONS TO THAT?

22 MR. LAWSON: NO, SIR, WE'D STIPULATE TO THE, AT
23 LEAST TO THE NEGLIGENCE PART OF IT, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 MR. ROTHSTEIN: YOUR HONOR, I'D ALSO MOVE FOR A

1 DIRECTED VERDICT ON LIABILITY OF MR. HUNT, THE FATHER,
2 UNDER THE FAMILY PURPOSE DOCTRINE. HE ADMITTED THAT HE
3 OWNED, MAINTAINED, AND FURNISHED THE CAR. ALL WE HAVE TO
4 DO IS SHOW ONE OF THOSE, MAINTAIN, OWNED, MAINTAINED OR
5 FURNISHED THE CAR. HE NOTED HE WAS THE HEAD OF THE
6 HOUSEHOLD AND THE CAR WAS AVAILABLE FOR THE GENERAL USE,
7 CONVENIENCE, PLEASURE OF THE FAMILY MEMBERS, AND THERE'S NO
8 EVIDENCE TO CONTRADICT THAT. THEY BOTH ADMITTED IT AND THE
9 SON WAS USING THE CAR AT THE TIME. I BELIEVE THAT WE
10 SHOULD HAVE A DIRECTED VERDICT, YOU SHOULD INSTRUCT THE
11 JURY THAT, THAT HE IS LIABLE UNDER THE FAMILY PURPOSE
12 DOCTRINE AND THE ONLY ISSUE WOULD BE, YOU KNOW, THE
13 PROXIMATE CAUSE AND WHETHER THE SON WAS NEGLIGENT.

14 THE COURT: ALL RIGHT, WOULD YOU LIKE TO RESPOND
15 TO THAT, MR. CONNELL?

16 MR. CONNELL: YOUR HONOR, THE TESTIMONY IS IS
17 THAT THE CAR WAS BEING BOUGHT, THAT HE HAD MADE PAYMENTS,
18 THAT THE SON WAS LIVING NEXT DOOR. THE TESTIMONY IS ALSO
19 CLEAR THAT THERE'S A QUESTION WHERE THIS IS AN INDEPENDENT
20 INTERVENING ACT AND AS YOUR HONOR KNOWS THE LAW IS PRETTY
21 CLEAR THAT THE PROXIMATE CAUSE OF THE ACCIDENT HAS TO BE
22 PROVEN. THERE'S NO PROXIMATE CAUSES OF INDEPENDENT ACTOR
23 BY SOMEONE ELSE.

24 THE COURT: I THINK THERE'S ENOUGH TO SEND THAT
25 TO THE JURY, I'M GOING TO DENY THAT MOTION.

1 MR. ROTHSTEIN: AND, YOUR HONOR, WE'D ALSO MOVE
2 AT THIS TIME FOR A DIRECTED VERDICT ON THE DEFENDANT'S
3 DEFENSE OF COMPARATIVE NEGLIGENCE ON MR. GAUSE'S BEHALF.
4 THERE'S NO EVIDENCE, ACTUALLY NO EVIDENCE TO STANDARD OF
5 CARE EVEN MUCH LESS THAT MR. GAUSE DID ANYTHING THAT HE
6 ACTED UNREASONABLY OR IN ANY MANNER THAT VIOLATED THE
7 STANDARD OF CARE OF A POLICE OFFICER. AGAIN THERE'S NO,
8 THERE'S NO EXPERT TESTIMONY ABOUT THE STANDARD OF CARE AND
9 I DON'T THINK THERE'S ANY TESTIMONY OF ANY ACT THAT MR.
10 GAUSE DID THAT WOULD HAVE VIOLATED THE STANDARD OF CARE.

11 THE COURT: ALL RIGHT, ANY RESPONSE TO THAT?

12 MR. LAWSON: YOUR HONOR, THE ONLY THING IN THE
13 RECORD IS, IS THE, AND I THINK AT THIS POINT IT'S THE LIGHT
14 MOST FAVORABLE TO US, IS THAT THE CAR WAS LEFT IN THE LEFT
15 LANE, THAT SOME TESTIMONY FROM CORPORAL GRAHAM THAT WOULD
16 HAVE DONE SOMETHING ABOUT MOVING, YOU KNOW, IT WAS NOT
17 PERFECT TESTIMONY BUT HE DID MAKE SOME COMMENT ABOUT HE
18 WOULD PREFER TO MOVE THE CAR TO THE RIGHT LANE. THEY LEFT
19 THE CAR IN THE LEFT LANE WITH THREE ABLE BODIES PEOPLE OUT
20 THERE THAT COULD HAVE MOVED THE CAR OFF THE ROADWAY AND,
21 YOU KNOW, THEY CHOSE NOT TO DO THAT. I THOUGHT IT WAS
22 INTERESTING THAT MR. GAUSE TESTIFIED ABOUT THE POLICY OF
23 CONWAY AT THE TIME NOT TO MOVE CARS AND THEN THE DETECTIVE
24 SAID HE WASN'T AWARE OF ANY WRITTEN POLICY LIKE THAT, SO I
25 THINK THERE'S ENOUGH IF YOU WANTED TO CHARGE IT BUT THAT

1 WOULD BE MY POSITION ON IT.

2 MR. ROTHSTEIN: AND MR. GAUSE'S TESTIMONY WAS
3 ACTUALLY UNREFUTED. DETECTIVE WILLIAMSON SAID HE DOESN'T
4 RECALL ANY POLICY. HE DIDN'T SAY THAT WAS NOT THE POLICY;
5 HE JUST SAYS HE DOESN'T RECALL. THE ONLY TESTIMONY ABOUT
6 THE POLICY WAS MR. GAUSE SAYING THE POLICY OF THE
7 DEPARTMENT WAS TO LEAVE THE CAR THERE WHEN A SUSPECT IS
8 TAKEN FROM THE SCENE, SO --

9 THE COURT: I'M NOT GOING TO CHARGE COMPARATIVE
10 NEGLIGENCE.

11 MR. ROTHSTEIN: OKAY, WE'LL JUST NOTE THE
12 RECORD, YOUR HONOR. YOUR HONOR, COULD WE JUST BRIEFLY TALK
13 ABOUT THE CHARGE? I DON'T KNOW IF THIS IS A GOOD TIME TO
14 DO IT OR NOT BUT I WOULD SUGGEST, I DIDN'T HAND UP ANY KIND
15 OF A SPECIAL INTERROGATORY BUT I THINK THE JURY HAVE A
16 PLACE WHERE THEY CAN APPORTION ---

17 THE COURT: I THINK YOU DO THAT AFTER THE
18 VERDICT COMES BACK THEN WE CHARGE THEM AND THEY GO BACK.

19 MR. LAWSON: THIS IS PRE 2005, YOUR HONOR.

20 MR. CONNELL: YEAH, THIS IS A 2003 CASE.

21 THE COURT: THAT'S RIGHT.

22 MR. CONNELL: THERE IS NO APPORTIONMENT ---

23 THE COURT: THAT'S RIGHT.

24 MR. CONNELL: --- AS A MATTER OF LAW. YOUR
25 HONOR, AS TO THE COMPARATIVE NEGLIGENCE I'D LIKE TO PUT ON

1 THE RECORD ---

2 THE COURT: SURE.

3 MR. CONNELL: --- THAT WE ALSO WOULD REQUEST THE
4 COURT CHARGE COMPARATIVE NEGLIGENCE.

5 MR. ROTHSTEIN: YOUR HONOR, I'M GOING TO
6 WITHDRAW THE MOTION ON COMPARATIVE NEGLIGENCE. IF THEY
7 WANT TO CHARGE IT THAT'S FINE, YOU DO HAVE TO DO AN
8 APPORTIONMENT FOR THAT SO WE'LL WITHDRAW OUR MOTION FOR
9 THAT.

10 MR. CONNELL: NO, IT'S A PRE 2005, IT'S A JOINT
11 SEVERAL LIABILITY.

12 THE COURT: I BELIEVE MR. CONNELL'S RIGHT.

13 MR. ROTHSTEIN: I THINK IT'S DIFFERENT ON
14 COMPARATIVE, YOU COMPARE THE NEGLIGENCE OF, THE COMBINED
15 NEGLIGENCE OF BOTH DEFENDANTS. THIS DOESN'T HAVE TO DO
16 WITH THE CONTRIBUTION INDEMNIFICATION.

17 THE COURT: CAN YOU SHOW ME ANYTHING?

18 MR. ROTHSTEIN: IT'S JOINT AND SEVERAL LIABILITY
19 BUT THE NEW APPORTION SO THEY SAY, THE JURY CAN SAY MR.
20 GAUSE'S 10 PERCENT AT FAULT, MR. SMITHERS IS 90 PERCENT AT
21 FAULT, OR I'M SORRY, 80 PERCENT FAULT, AND THE OTHER GUY IS
22 5 PERCENT AT FAULT. AS LONG AS IT ADDS UP TO 100 AND IF
23 THAT'S WHAT THE JURY DOES IT CAN, A COMPARATIVE NEGLIGENCE
24 ONLY COMES IN IF MY CLIENT'S FAULT IS GREATER, I MEAN IF
25 HE'S BARRED IT'S 50 PERCENT OR MORE, OR LET'S SEE, LET ME

1 MAKE SURE I'VE GOT THIS RIGHT, THE COMBINED NEGLIGENCE OF
2 THESE TWO GUYS HAS TO BE AT LEAST GREATER THAN 50 PERCENT
3 BEFORE MY CLIENT CAN RECOVER SO I THINK YOU DO HAVE TO SET
4 THE APPORTIONMENT IN THERE.

5 THE COURT: ANYTHING FURTHER?

6 MR. CONNELL: YOU WANT TO HEAR MY MOTION?

7 THE COURT: SURE.

8 MR. CONNELL: YOUR HONOR, WE HAD, IN THE
9 BEGINNING WE HAD ASKED THAT THE COURT FIND THAT THERE WAS
10 INDEPENDENT INTERVENING ACT, SO WE WOULD MOVE AT THIS TIME
11 FOR INVOLUNTARY NON SUIT AS TO THE FAMILY PURPOSE DOCTRINE
12 AND THAT'S BASED UPON THE CASE OF GIBSON V. GROSS 311 S.C.
13 736. IT WAS A CASE WHERE SOMEBODY STOPPED TO RENDER AID TO
14 ANOTHER GROUP OF PEOPLE WHO WERE INVOLVED IN A WRECK.
15 ANOTHER CAR CAME ALONG RAN OFF THE HIGHWAY AND WOUND UP
16 INJURING THIS PERSON, SO HE SUED THE PERSON WHO HAD BEEN IN
17 THE FIRST WRECK AND THE PERSON WHO HAD BEEN IN THE SECOND
18 WRECK TOGETHER AND THE COURT RULED IN THAT CASE, YOUR
19 HONOR, THAT THAT WAS AN INDEPENDENT INTERVENING ACT AND AS
20 A RESULT THERE WAS NO PROXIMATE CAUSE AND AS A MATTER OF
21 LAW THE CASE WAS DISMISSED AGAINST THE PERSON WHO WAS
22 INVOLVED IN THE WRECK THAT WAS ON THE SIDE OF THE ROAD.

23 YOUR HONOR, I PASSED THAT CASE UP TO YOU EARLY IN
24 THE, IN THE TRIAL AND WE WOULD MOVE THAT YOUR HONOR, ALL OF
25 THE EVIDENCE IN THE CASE CLEARLY INDICATES THAT MR.

1 SMITHERS WAS AN INDEPENDENT INTERVENING ACT DRIVING UNDER
2 THE INFLUENCE, STRUCK THE OFFICER'S CAR FROM THE REAR AND
3 THAT THE, THERE'S NO OTHER CAUSE OF THE ACCIDENT BUT FOR
4 THAT..

5 THE COURT: BRIEF RESPONSE, IF YOU'D LIKE?

6 MR. ROTHSTEIN: YOUR HONOR, I DON'T KNOW THAT I
7 NEED TO RESPOND A LOT. PROXIMATE CAUSE IS ALWAYS A
8 QUESTION OF FACT FOR THE JURY AND IT HAS TO BE MORE THAN AN
9 INTERVENING CAUSE, IT HAS TO BE AN INTERVENING SUPERSEDING
10 CAUSE.. HERE THE CAR WAS IN THE ROADWAY BUT, THE TROOPER
11 TESTIFIED BUT FOR THE FACT THAT THAT CAR WAS ILLEGALLY
12 PARKED IN THE ROADWAY, YOU KNOW, MR. SMITHERS MAY HAVE GONE
13 ON DOWN THE ROAD AND KILLED HIMSELF OR SOMEBODY ELSE BUT IT
14 WOULDN'T HAVE HURT MR. GAUSE, SO I THINK THAT IT'S FOR THE
15 JURY TO DECIDE.

16 THE COURT: ALL RIGHT, I'M GOING TO DENY THE
17 MOTION.

18 MR. CONNELL: ALL RIGHT, YOUR HONOR, CAN I ASK
19 THAT WE HAVE THE CASE WE GAVE YOU CAN I ASK THAT YOU MARK
20 THAT AS AN EXHIBIT, COURT'S EXHIBIT FOR THE FILE.

21 THE COURT: CAN YOU FIND IT?

22 LAW CLERK: WHICH CASE?

23 MR. CONNELL: THAT'S GIBSON V. GROSS, 280 S.C.
24 194, 311, S.E. 2ND, 736.

25 THE COURT: EITHER WAY IF WE DON'T HAVE IT

1 THEY'VE GOT IT ON THE RECORD.

2 MR. CONNELL: OKAY, YOUR HONOR, WE WOULD ALSO
3 MOVE FOR A INVOLUNTARY NON SUIT AS TO THE ISSUE OF PUNITIVE
4 DAMAGES, YOUR HONOR'S HEARD EXTENSIVE TESTIMONY OF ARGUMENT
5 ABOUT THAT. THE BASIS OF OUR ARGUMENT, OF COURSE, IS
6 JACOBSON V. SUPERIOR COURT AN ARIZONA CASE, BRYNE V.
7 BORDEAUX THE NORTH CAROLINA CASE, AND FRANZ V. BRENNAN A
8 WISCONSIN CASE. YOUR HONOR SAID THAT YOU WERE GOING TO
9 MAKE A RULING ON THAT AFTER THE TESTIMONY, WE WOULD REQUEST
10 THAT YOU MAKE ONE NOW.

11 THE COURT: SURE, I GIVE YOU A CHANCE TO
12 RESPOND, MR. NICHOLS?

13 MR. NICHOLS: AND, JUDGE, I WOULD JUST POINT OUT
14 THAT THE BRYNE CASE AND THE ARIZONA CASE AND ALL ARE BASED
15 ON LAW THAT'S DIFFERENT. I'VE HAD A CHANCE TO GO BACK AND
16 LOOK AT SMITH V. O'NEIL AGAIN AND DECIDED IN JUNE JUSTICE
17 BEATY VERY CLEARLY SAID THAT, AND HE FOCUSED ON THE
18 VINDICATION OF THE PLAINTIFF'S RIGHT AS A POLICY THAT'S
19 STILL ALIVE AND WELL IN SOUTH CAROLINA, THAT THERE IS NO
20 DISCUSSION OF THAT IN ARIZONA, NORTH CAROLINA, ANY OF THESE
21 OTHER CASES, SO WE WOULD, YOU KNOW, YOU SHOULD DENY THE
22 MOTION.

23 THE COURT: I'M GOING TO DENY THE MOTION AND I
24 AGREE WITH YOU IN THAT REGARD AND I HAVE ALSO EXAMINED THE
25 EVANS V. STEWARD, 636 S.E. 2ND, 632 WHICH WOULD ALSO LEAVE

1 ME TO BELIEVE THAT PUNITIVES WOULD BE APPLICABLE IN A CASE
2 SUCH AS THIS.

3 ALSO IT JUST LOGICALLY MAKES SENSE THAT OF COURSE
4 IN A STATE AGENCY CAN ALLOW PUNITIVES TO TRICKLE ON DOWN
5 THE CHAIN AND IN THIS PARTICULAR CASE THE NEGLIGENCE OF THE
6 DRIVER CAN BE IMPUTED TO THE OWNER OF THE CAR IF A JURY SO
7 FINDS SO I DON'T SEE WHY GROSS NEGLIGENCE COULDN'T ALSO BE
8 IMPUTED TO THE OWNER OF THE CAR, AND AGAIN AS I SAID I
9 DON'T LIKE IT ESPECIALLY WITH A 15-YEAR-OLD-SON BUT BASED
10 ON EVERYTHING I'M READING RIGHT NOW I'M GOING TO LEAN THAT
11 WAY AND DECIDE THAT WAY AND WE'LL LET SMARTER PEOPLE THAN
12 MYSELF FIGURE IT OUT.

13 MR. CONNELL: YOUR HONOR, COULD WE ASK THAT YOU
14 TELL US WHAT IN EVANS V., CAUSE I HAVE THAT CASE ALSO, WHAT
15 IN EVANS V. STEWARD THAT YOU BELIEVE ALLOWS FOR PUNITIVE
16 DAMAGES, THIS IS FOR PURPOSES OF ANY REVIEW AT A LATER
17 TIME?

18 THE COURT: THERE'S A SENTENCE IN THERE THAT
19 SAYS THE DOCTRINE HAS ITS GENESIS IN THE LAW OF AGENCY AND
20 IT WILL IMPOSE LIABILITY ON A PARENT WHEN A CHILD IS ACTING
21 AS AN AGENT AND IN SOUTH CAROLINA PUNITIVE DAMAGES CAN
22 TRICKLE TO THE MASTER, SO THAT CASE AS WELL LEAVES ME TO
23 BELIEVE THAT THE PUNITIVES CAN TRICKLE ALSO.

24 MR. CONNELL: YOUR HONOR ---

25 THE COURT: THAT MAY CHANGE AFTER THIS CASE, I

1 DON'T KNOW.

2 MR. CONNELL: AND THAT'S ---

3 THE COURT: THAT'S JUST MY LOGICAL THINKING AT
4 THIS POINT IN TIME.

5 MR. CONNELL: AND IN THAT VEIN, YOUR HONOR,
6 WOULD YOU ENTERTAIN MAKING A RULING AS TO WHETHER OR NOT
7 PUNITIVE DAMAGES APPLIES IN A CASE OF VICARIOUS LIABILITY
8 CAUSE THAT'S CERTAINLY GOING TO BE THE ISSUE IF WE GO
9 BEYOND WHERE WE ARE TODAY?

10 THE COURT: I THINK I'VE ALREADY RULED ON THE
11 ISSUE WE NEED TO FOR THIS PARTICULAR TRIAL.

12 MR. CONNELL: ALL RIGHT.

13 THE COURT: I THINK THAT'S GOOD.

14 MR. CONNELL: YOUR HONOR, WE WOULD ALSO MOVE
15 THAT YOUR HONOR DISMISS THE CASE AS AN INVOLUNTARY NON SUIT
16 ISSUE BASED ON THE FACT THAT THE PARENT CHILD FAMILY
17 PURPOSE DOCTRINE IS AN INDIVISIBLE SITUATION. YOU CAN'T
18 HAVE FAMILY PURPOSE LIABILITY WITHOUT THE, WITHOUT THE
19 CHILD INVOLVED WHO WAS ALLEGED TO BE THE WRONGDOER AND WE,
20 WE RELY ON THE CASE OF PAYTON V. JORDAN WHICH I HANDED UP
21 TO YOUR HONOR EARLIER THAT SAYS THAT THE, THAT THE FAMILY
22 PURPOSE DOCTRINE IS AN INDIVISIBLE DOCTRINE AND AS A RESULT
23 THEREIN COULDN'T HAVE A VERDICT AGAINST THE PARENT WITHOUT
24 A VERDICT AGAINST THE CHILD. IN THIS CASE THE CHILD IS NOT
25 IN THE CASE BECAUSE THE COURT OF APPEALS LET THEM OUT IN A

1 PREVIOUS HEARING THAT WE HAD.

2 THE COURT: WOULD YOU LIKE TO RESPOND?

3 MR. ROTHSTEIN: YES, YOUR HONOR, THAT CASE
4 INVOLVED THE SERVICE OF A COMPLAINT AND IT WAS SERVED ON,
5 ON, ON THE CHILD AND THE FATHER. THE CASE WENT INTO
6 DEFAULT AND THEY GOT A DEFAULT JUDGMENT AGAINST THE FATHER
7 AND THE CHILD. UNDER SOUTH CAROLINA LAW THEY CAN'T, THEY
8 DIDN'T SERVE IT PROBABLY CAUSE THERE WAS NO GUARDIAN AD
9 LITEM APPOINTED AND ALL THAT KIND OF STUFF AND SO THE
10 PLAINTIFF SAID WELL WE'LL JUST DROP THE SON AND KEEP THE
11 CASE AGAINST THE FATHER AND THE COURT SAYS, YOU KNOW, YOU
12 CAN'T DO THAT, THAT WOULD BE INCONSISTENT.

13 ALSO SUBSEQUENT TO THAT CASE CAME OUT IN SOUTH
14 CAROLINA AND WE ARGUED THIS ON SUMMARY JUDGMENT THAT SAYS
15 WHEN YOU HAVE VICARIOUS LIABILITY YOU DON'T HAVE TO SUE THE
16 AGENT. YOU CAN SUE JUST THE PRINCIPAL FOR THE ACTS OF THE
17 AGENT AND SO WE BELIEVE THAT LAW IS CONTROLLING. THE
18 JORDAN CASE ACTUALLY RELIED ON A CASE FROM ANOTHER STATE,
19 YOUR HONOR, AND IN THAT CASE IT SAID IT'S GOING TO BE
20 INCONSISTENT, I MEAN YOU CAN'T HAVE AN INCONSISTENT VERDICT
21 BETWEEN THE FATHER AND THE SON SO IF YOU WENT TO TRIAL AND
22 THE JURY SAID THE SON IS NOT NEGLIGENT OR WE'RE GOING TO
23 HOLD THE FATHER LIABLE THAT WOULD BE AN IMPOSSIBILITY AND
24 THAT'S ALL THAT JORDAN CASE SAYS.

25 THE COURT: ALL RIGHT, I'M GOING TO DENY THE

1 MOTION, ANYTHING FURTHER?

2 MR. CONNELL: YES, YOUR HONOR, WE WOULD ALSO
3 MOVE THAT INVOLUNTARY NON SUIT WITH PREJUDICE BASED ON THE
4 TESTIMONY THAT, THAT MR. HUNT, MR. RAYMOND HUNT WAS NOT
5 ACTUALLY LIVING AT THE HOUSE, HE WAS LIVING IN A MOTOR HOME
6 NEXT DOOR TO THE HOUSE ITSELF AND AS A RESULT THERE WAS NO
7 HEAD OF HOUSEHOLD WHERE HE WAS LIVING. HE WAS LIVING NEXT
8 DOOR; HE WAS PAYING FOR HIS OWN PROPANE. HE WORKED, HE HAD
9 A CAR, AND SO IT'S OUR POSITION THAT, THAT THERE COULD BE
10 NO HEAD OF HOUSEHOLD ARGUMENT WHEN HE WENT AND CAME AND
11 WENT AS HE PLEASED, DROVE HIS OWN VEHICLE, AND DID WHAT HE
12 WANTED TO, SO WE WOULD ARGUE, YOUR HONOR, THAT, THAT HE WAS
13 AN ADULT CHILD LIVING NEXT DOOR IN THIS MOTOR HOME AND THAT
14 MR. HUNT WAS NOT HEAD OF HOUSEHOLD IN THAT SITUATION. WE
15 WOULD ASK ----

16 THE COURT: IT'S MY UNDERSTANDING HE WAS LIVING
17 IN A TRAILER ON MR. HUNT'S PROPERTY.

18 MR. CONNELL: YES, SIR.

19 THE COURT: ALL RIGHT, WOULD YOU LIKE TO
20 RESPOND?

21 MR. NICHOLS: JUST BRIEFLY IF I HAVE TO, JUDGE,
22 CAUSE I THINK THE TESTIMONY AT LEAST MR. CONNELL'S
23 QUESTIONS INDICATED THAT HE WAS, THERE WAS A POWER, I THINK
24 THE WITNESS ACTUALLY VOLUNTEERED BEYOND THE TESTIMONY
25 COMING OUT OF THE QUESTION THAT THE POWER CORD RAN FROM THE

1 TRAILER INTO THE HOUSE, SO AND THEN, WHEN I SPECIFICALLY
2 ASKED MR. HUNT JR. WHERE WAS HE LIVING AND HE SAID WITH HIS
3 PARENTS. HE SAID HE WAS LIVING WITH THEM THEN, HE'S LIVING
4 WITH THEM NOW. IT AT LEAST CREATES AN ISSUE FOR THE JURY
5 TO DECIDE WHERE HE WAS LIVING BUT IT'S CERTAINLY NOT PROPER
6 FOR A INVOLUNTARY NON SUIT.

7 THE COURT: I'M GOING TO DENY THE MOTION,
8 ANYTHING FURTHER?

9 MR. CONNELL: YES, SIR, YOUR HONOR, WE WOULD
10 ALSO MOVE FOR INVOLUNTARY NON SUIT WITH PREJUDICE BASED
11 UPON THE FAMILY PURPOSE DOCTRINE THAT SAYS THAT THE VEHICLE
12 MUST HAVE BEEN USED FOR THE GENERAL USE OF THE FAMILY. THE
13 TESTIMONY FROM MR. HUNT AND HIS SON IS IS THAT THIS WAS A
14 CAR THAT HE WAS PURCHASING. THIS WAS A CAR THAT MR. HUNT
15 THE SON ONLY DROVE. THIS WAS A CAR THAT MR. HUNT THE DAD
16 DID NOT DRIVE AND THAT THIS WAS A CAR IN WHICH MR. HUNT THE
17 SON MAINTAINED AND USED, USED, AND FURTHERMORE THIS WAS NOT
18 A FAMILY PURPOSE FOR WHAT HE WAS ABOUT ON THE NIGHT OF
19 WRECK.

20 THE COURT: ANY RESPONSE?

21 MR. ROTHSTEIN: WELL IT WAS MY RECOLLECTION THAT
22 HE SAID HE HAD A PAIR OF KEYS, HE COULD TAKE THE CAR AWAY
23 FROM HIM, AND THAT IT WAS AVAILABLE FOR HIS USE OR HIS
24 WIFE'S USE. IN FACT HE BOUGHT THE CAR FOR WIFE AND THEN HE
25 LATER SAID BUT HE BOUGHT THE CAR WITH THE INTENT OF KEEPING

1 IT AS, AS AN ANTIQUE AND RESTORING IT AND HANGING ONTO IT
2 AND THAT'S, AND HE STILL HAS IT TODAY, JUDGE, AND SO AGAIN
3 THAT'S SOMETHING FOR THE JURY TO SORT OF SQUARE AWAY AND
4 IT'S NOT PROPER FOR RULE 41 ---

5 THE COURT: I'M GOING TO LEAVE IT TO THE JURY.
6 I'M GOING TO DENY IT, ANYTHING FURTHER?

7 MR. CONNELL: YOUR HONOR, WE, I THINK THIS IS
8 CLEAR BUT I WANT TO MAKE SURE I UNDERSTAND THAT YOUR HONOR
9 HAS ALREADY GRANTED A, GRANTED OUR REQUEST THAT THE
10 NEGLIGENT TRUST CAUSE OF ACTION IS NOT IN THE CASE.

11 THE COURT: THEY DISMISSED THAT VOLUNTARILY IF
12 I'M NOT MISTAKEN, THE PLAINTIFF DID, IS THAT CORRECT?

13 MR. ROTHSTEIN: YES, SIR.

14 THE COURT: ALL RIGHT.

15 MR. CONNELL: ALL RIGHT, YOUR HONOR, THAT'S ALL
16 I HAVE AT THIS TIME.

17 THE COURT: ANYTHING FROM YOU, MR. LAWSON?

18 MR. LAWSON: NO, SIR.

19 THE COURT: ARE YOU GOING TO CALL YOUR CLIENT TO
20 TESTIFY?

21 MR. LAWSON: NO, SIR.

22 THE COURT: ALL RIGHT.

23 MR. NICHOLS: HE'S GOING TO TESTIFY FOR HIM.

24 THE COURT: YOU READY TO GO AHEAD AND BRING THE
25 JURY OUT -- ARE YOU GOING TO READ THE DEPOSITION INTO THE

1 MR. LAWSON: ALL RIGHT, THANK YOU, SIR.

2 A OKAY.

3 MR. LAWSON: AND MR. ROTHSTEIN SAYS THANK YOU
4 FOR YOUR TIME.

5 AND, YOUR HONOR, WE WOULD MOVE TO INTRODUCE
6 EXHIBITS 1 AND 4 AND THE DEPOSITION, 2 IS THE SUBPOENA
7 WHICH WE PUT IN, 3 IS ALREADY IN WHICH ARE THE OFFICE
8 NOTES.

9 MR. ROTHSTEIN: AND I OBJECT TO 4, YOUR HONOR,
10 IT'S HEARSAY.

11 THE COURT: I HAVEN'T EVEN SEEN IT. I DON'T
12 KNOW WHAT 4 IS.

13 MR. ROTHSTEIN: IT WAS THE E.R. NOTE HE SAID HE
14 HAD NEVER SEEN BEFORE.

15 MR. LAWSON: THIS WAS THE HISTORY AND PHYSICAL
16 NOTES.

17 MR. ROTHSTEIN: YOUR HONOR, ARE YOU GOING TO
18 SEND THE DEPOSITION BACK WITH THE JURY; IS THAT HOW YOU'RE
19 GOING TO DO THAT?

20 THE COURT: I DON'T THINK WE NEED TO, THEY'VE
21 HEARD IT.

22 MR. ROTHSTEIN: I WAS JUST WONDERING.

23 MR. LAWSON: WE'LL JUST TAKE THOSE OUT AND HAVE
24 THEM MARKED AS DEFENDANT'S EXHIBITS, WHATEVER THEY WOULD
25 BE, 2 AND 3, OR 1 AND 2, THE SUBPOENA DOESN'T NEED TO GO SO

1 1 AND 2.

2 THE COURT: 1 AND 2.

3 MR. LAWSON: THE C.V. AND --

4 (WHEREUPON, DEFENDANT'S EXHIBITS 1 AND 2 MARKED
5 AND ENTERED INTO EVIDENCE.)

6 THE COURT: ALL RIGHT, IF YOU WOULD CALL YOUR
7 NEXT WITNESS.

8 MR. LAWSON: YOUR HONOR, THAT WOULD BE THE
9 SHOWING FOR MR. SMITHERS.

10 THE COURT: ALL RIGHT, THANK YOU. MR. CONNELL?

11 MR. CONNELL: YOUR HONOR, THE HUNT'S HAVE
12 ALREADY TESTIFIED, WE DON'T HAVE ANY OTHER WITNESSES.

13 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.
14 MEMBERS OF THE JURY, WE'LL TAKE A LUNCH BREAK NOW. IF YOU
15 WOULD BE BACK AT 2:00 WE WILL FINISH THE CASE.

16 (WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT
17 12:29 P.M.)

18 THE COURT: ALL RIGHT, ANY MOTIONS?

19 MR. ROTHSTEIN: YOUR HONOR, THE PLAINTIFF WOULD
20 RENEW THE MOTIONS WE MADE AT THE END OF OUR CASE.

21 THE COURT: ALL RIGHT, I UNDERSTAND. ANY
22 MOTIONS FROM THE DEFENSE, ANYTHING FROM THE DEFENSE?

23 MR. LAWSON: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT, YOU WANT TO GO OVER THE
25 CHARGE?

1 MR. CONNELL: YOUR HONOR, ALL THE MOTIONS I MADE
2 AT THE INVOLUNTARY NON SUIT STAGE DO YOU WANT ME TO STATE
3 THEM ALL AGAIN?

4 THE COURT: NO, NO, THEY'RE RENEWED, THEY'RE
5 FINE.

6 MR. CONNELL: ALL RIGHT, YOUR HONOR, YOU'RE
7 DENYING ALL THOSE MOTIONS AGAIN SO WE'D MAKE A CLEAR
8 RECORD?

9 THE COURT: CORRECT, CORRECT.

10 MR. CONNELL: EVERYTHING I OFFERED BEFORE DOES
11 YOUR RULING STILL STAND AT THE DIRECTED VERDICT STAGE?

12 THE COURT: CORRECT.

13 MR. CONNELL: THANK YOU, YOUR HONOR.

14 THE COURT: YA'LL WANT TO COME BACK AT 1:30 AND
15 LET'S GO OVER THE CHARGE?

16 MR. CONNELL: YES, SIR.

17 THE COURT: THAT WILL GIVE ME A LITTLE BIT
18 LONGER TO WORK ON IT AND TAKE THEM WITH ME.

19 MR. ROTHSTEIN: YOU DON'T HAVE A PROPOSAL OR
20 DRAFT OR ANYTHING. I'M NOT TRYING TO RUSH YOU BUT --

21 THE COURT: WE HAVE SOME, DO YOU WANT TO TELL
22 HIM WHAT WE'RE CHARGING?

23 MR. CONNELL: I WANT TO SEE WHAT YOU'RE GOING TO
24 CHARGE. I WANT TO SEE THE VERDICT FORM, TOO, AND I KNOW
25 YOUR HONOR --

1 THE COURT: OKAY, UNLESS YOU JUST WANT --

2 MR. ROTHSTEIN: IF IT'S NOT IN SUFFICIENT SHAPE
3 YET SO WE CAN LOOK OVER IT AT LUNCH THAT'S FINE. I'M NOT
4 TRYING TO RUSH YOU OR ANYTHING.

5 LAW CLERK: ON THE CONTRIBUTORY NEGLIGENCE THERE
6 IS A CASE, A 2010 CASE THAT WAS DEALING WITH A 2002 CASE,
7 OR 2001 CASE, AND IT SAYS SPECIFICALLY IN THERE THAT IT IS
8 JOINT AND SEVERAL LIABILITY FOR DEFENDANTS PRE THAT 2005
9 AND YOU DO NOT APPORTION.

10 THE COURT: AND THAT IS BROWN V. FORD MOTOR
11 COMPANY.

12 MR. ROTHSTEIN: THEN I'LL RENEW MY MOTIONS --

13 THE COURT: 701 S.E. 2ND, 5.

14 MR. ROTHSTEIN: I'LL RENEW MY MOTIONS FOR THEY
15 DID NOT CHARGE COMPARATIVE NEGLIGENCE.

16 THE COURT: AND YOU WANT COMPARATIVE NEGLIGENCE
17 AS A DEFENSE; IS THAT CORRECT?

18 MR. ROTHSTEIN: YOUR HONOR, I THINK THERE'S
19 ENOUGH IN THERE.

20 THE COURT: YEAH, I'M GOING TO GO AHEAD AND
21 CHARGE IT AND WE'LL LET THEM FIGURE IT OUT.

22 MR. ROTHSTEIN: I MEAN YOU PROBABLY WON'T HEAR
23 MUCH FROM US ON THAT BUT I THINK THERE'S ENOUGH IN THERE TO
24 AT LEAST, IF SOMEBODY ON THE JURY WANTED TO THINK ABOUT IT
25 THEY COULD.

1 THE COURT: AS TO BOTH DEFENDANTS OR JUST TO --

2 LAW CLERK: WELL HERE'S THE ISSUE IN THE VERDICT
3 FORM, MR. CONNELL'S CLIENT DOES NOT ACTUALLY CHARGE
4 NEGLIGENCE. IT'S NEGLIGENCE IS AN ELEMENT OF THE ---

5 MR. CONNELL: I WANT A SEPARATE VERDICT FORM.

6 LAW CLERK: --- THE OTHER TORT, OKAY, JUST WANT
7 TO DO TWO VERDICT FORMS?

8 MR. ROTHSTEIN: WAIT, I THINK YOU HAVE TO. YOU
9 CAN'T DO IT, YOU HAVE TO COMPARE THE JOINT NEGLIGENCE THE
10 TWO DEFENDANTS TOGETHER. MR. HUNT'S CLIENT IS IN THE
11 SHOES, HE'S IN THE SHOES OF THE SON, I MEAN THE SON. HE
12 BASICALLY HAS THE SAME RIGHTS AND RESPONSIBILITIES AND
13 LIABILITIES AS THE SON DOES SO IF THE SON IS NEGLIGENT YOU,
14 YOU KNOW, YOU ---

15 THE COURT: HIS NEGLIGENCE WOULD BE REDUCED BY -
16 -

17 MR. ROTHSTEIN: YEAH, YOU'RE JUST IMPUTING
18 NEGLIGENCE TO THE FATHER. HE'S STANDING IN THE SHOES OF
19 THE SON.

20 THE COURT: SO THE ISSUE IS WHETHER OR NOT
21 COMPARATIVE APPLIES TO BOTH DEFENDANTS, COMPARATIVE
22 NEGLIGENCE?

23 MR. CONNELL: IF THE JURY FINDS THAT THESE TWO
24 GUYS WERE LESS THAN 50 PERCENT AT FAULT MR., MR. GAUSE IS
25 BARRED FROM RECOVERY SO YOU HAVE TO COMBINE THEIR TWO

1 LIABILITIES TOGETHER. THAT'S WHY I WAS ASKING TO APPORTION
2 THE FAULT BETWEEN THE TWO OF THEM.

3 MR. CONNELL: BUT THE JURY CAN FIND AS FAR MR.
4 HUNT THAT THERE IS NO NEGLIGENCE WHATSOEVER SO SEPARATE
5 VERDICT FORM --

6 LAW CLERK: THAT'S MY ISSUE IS THAT YOU CAN'T
7 HAVE CONTRIBUTORY NEGLIGENCE.

8 MR. ROTHSTEIN: THAT'S WHY I'M ASKING FOR THE
9 APPORTIONMENT IN THE CHARGE. IF YOU PUT IN APPORTIONMENT
10 THAT SAYS HOW MUCH AT FAULT IS MR. GAUSE AND HOW MUCH AT
11 FAULT IS MR. SMITHERS, HOW MUCH AT FAULT IS MR. HUNT, THE
12 JURY CAN MAKE THAT ALLOCATION AND THAT WOULD BE THE EASIEST
13 WAY TO DO IT.

14 THE COURT: ALL RIGHT, GIVE ME SOMETHING TO
15 THINK ON AND WE'LL BE BACK.

16 MR. NICHOLS: AND, JUDGE, ONE OTHER THING MR.
17 HUNT, JR., ADMITTED THAT HE KNEW HE SHOULDN'T HAVE PARKED
18 THE CAR THERE. HE KNEW THAT THE LAW REQUIRED HIM TO PULL
19 OFF. HE'S ADMITTED AT LEAST SOME NEGLIGENCE IN THIS CASE
20 AND THAT'S IMPUTABLE TO THE FATHER CAUSE THE JURY REALLY
21 CAN'T FIND NO NEGLIGENCE HERE BASED ON THAT TESTIMONY.

22 THE COURT: I HEAR YOU.

23 MR. NICHOLS: SO IT'S AT LEAST FOR THEIR
24 DETERMINATION.

25 THE COURT: RIGHT.

1 MR. NICHOLS: AND, JUDGE, DURING THE DEPOSITION
2 I'VE BEEN TRYING TO FASHION A CHARGE THAT WOULD ADDRESS MR.
3 CONNELL'S COMMENT TO MR. HUNT.

4 THE COURT: OKAY, KEEP IT SHORT.

5 MR. NICHOLS: I THINK I'VE GOT, I THINK I'VE GOT
6 SOMETHING PRETTY SHORT. I'LL GIVE IT TO THE --

7 THE COURT: THEN GO AHEAD AND BRING IT TO MATT.

8 MR. NICHOLS: MY EMAIL IS NOT WORKING. I'M
9 GOING TO PROBABLY HAVE TO, FOR SOME REASON IT DOESN'T WORK.

10 LAW CLERK: IF IT'S SUPER SHORT, I MEAN, YOU
11 KNOW, CAN YOU LIKE, IS IT SHORT ENOUGH YOU CAN LIKE
12 HANDWRITE IT?

13 MR. NICHOLS: I DID HANDWRITE IT.

14 MR. ROTHSTEIN: WE'LL MAKE THIS EASY, YOUR
15 HONOR, WE'LL WAIVE, WE'LL GIVE UP OUR COMPARATIVE
16 NEGLIGENCE DEFENSE.

17 THE COURT: THANK YOU.

18 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE
19 FOLLOWING TAKES PLACE ON THE RECORD AFTER THE LUNCH
20 RECESS.)

21 (WHEREUPON, JUROR NUMBER 336, VIRGINIA SMITH
22 ENTERS THE COURT ROOM.)

23 THE COURT: FIRST OF ALL WHAT IS YOUR NAME AND
24 YOUR JURY NUMBER?

25 JURY PANEL MEMBER: MY NAME IS VIRGINIA SMITH,

1 MY JUROR NUMBER IS 336.

2 THE COURT: 336, ALL RIGHT. I'LL JUST NEED TO
3 ASK YOU HAVE YOU TALKED WITH ANYBODY OUT THERE IN THE
4 AUDIENCE EITHER ON THE ELEVATOR OR COMING IN THE COURTROOM
5 OR ANYBODY LIKE THAT?

6 JURY PANEL MEMBER: NO, I JUST TALKED TO MY
7 SISTER, THAT'S ALL.

8 THE COURT: YOUR SISTER?

9 JURY PANEL MEMBER: YES, SIR.

10 THE COURT: NEITHER ONE OF THOSE TWO LADIES, ARE
11 YOU HER SISTER?

12 FAMILY MEMBER: YES, SIR.

13 THE COURT: DOES THAT ANSWER YOUR QUESTION?

14 MR. ROTHSTEIN: YES, SIR.

15 MR. CONNELL: YES, SIR.

16 JUROR NUMBER 326: I WON'T TALK TO HER NO MORE.

17 THE COURT: ALL RIGHT, NO, YOU HAVEN'T DONE A
18 THING WRONG, I JUST WANTED TO TALK TO YOU. I ENJOYED
19 TALKING TO YOU.

20 JURY PANEL MEMBER: SHE'S JUST MY CAREGIVER,
21 THAT'S ALL.

22 THE COURT: YOU'RE FINE, YOU'RE GOOD TO GO, YOU
23 GO ON BACK THERE AND RELAX AND I APPRECIATE YOU BEING HERE.
24 WE THOUGHT IT WAS SOMEBODY ELSE.

25 HOW DO YA'LL WANT TO GO OVER THE CHARGE, IT'S 32

1 PAGES LONG. I MEAN YA'LL WANT TO SIT THERE AND READ THAT
2 OR DO YOU WANT ME TO JUST TELL YOU WHAT'S IN IT OR HAVE MY
3 CLERK TELL YOU WHAT'S IN IT? WHY DON'T YOU DO THAT AND
4 LET'S SEE IF THAT LEADS TO ANY PROBLEMS?

5 MR. ROTHSTEIN: I'M SORRY.

6 THE COURT: GO AHEAD, MATT. I'M GOING TO READ
7 TO YOU WHAT WE'RE PUTTING IN THE CHARGE THE CAPTIONS, THE
8 INDEX. IF THERE'S ANYTHING SPECIFIC YOU WANT TO SEE LET ME
9 KNOW AND WE'LL GO FROM THERE BUT IT WOULD TAKE AN HOUR AND
10 A HALF TO HAVE EVERYBODY READ THAT THING AND -- START WITH
11 THE INDEX, GO THE TOP.

12 LAW CLERK: ALL RIGHT, ARE YA'LL READY?

13 MR. ROTHSTEIN: YES, SIR.

14 MR. CONNELL: YES, SIR.

15 MR. ROTHSTEIN: HANG ON ONE SECOND, PLEASE.

16 **CHARGE CONFERENCE**

17 LAW CLERK: ALL RIGHT, THE STANDARD INTRODUCTION
18 DUTIES OF JUDGE AND JURY, DIRECT AND CIRCUMSTANTIAL
19 EVIDENCE, PREPONDERANCE OF THE EVIDENCE, EXPERT WITNESSES,
20 DEPOSITION TESTIMONY, THEN WE HAVE A SHORT CHARGE AS TO
21 SMITHERS ADMITTED NEGLIGENCE. BEHIND THAT WE HAVE GROSS
22 NEGLIGENCE AND RECKLESS DRIVING AND A CHARGE ON
23 RECKLESSNESS. ALL RIGHT, NOW WOULD BE FAMILY PURPOSE
24 DOCTRINE AND THE LANGUAGE OF THAT TAILORS ONLY TO HUNT NOT
25 SMITHERS, JUST FOR CLARITY. THEN WE HAVE A NEGLIGENT, A

1 STANDARD NEGLIGENCE CHARGE WHICH HAS BEEN ADJUSTED TO
2 EXPLAIN THAT'S THE DRIVER NOT THE ACTUAL DEFENDANT, AND BY
3 THAT I MEAN I JUST CHANGED THE WORD DEFENDANT TO DRIVER,
4 VOLUNTARY ACTS, CONCURRING CAUSES, INTERVENING CAUSES,
5 WHICH INCLUDES SUPERSEDING CAUSES, NEGLIGENCE PER SE.

6 DEFINE OR STATUTORY CHARGES RELATED TO NEGLIGENCE
7 PER SE, MOTOR VEHICLE, SPEED OF VEHICLE, STOPPING, PARKING
8 OR LEAVING VEHICLE STANDING ON ROADWAY, EMERGENCY SCENE,
9 YIELD TO EMERGENCY VEHICLES,

10 NOW WE'RE NOT IN STATUTORY CHARGES ANYMORE,
11 DRIVERS DUTY OF CARE, NEEDING TO KEEP A PROPER LOOKOUT,
12 DUTY TO KEEP VEHICLE UNDER CONTROL.

13 NOW WE HAVE, I'LL MOVE THIS BACK TO THE OTHER
14 STATUTORY CHARGES, DRIVING UNDER THE INFLUENCE.

15 ALL RIGHT, NOW DAMAGES, THE CHARGE ABOUT A LEVY
16 AGAINST THE HOUSE.

17 THE COURT: AND I CHANGED IT JUST A LITTLE BIT.
18 I HAVE "I CHARGE YOU THAT UNDER THE LAW OF SOUTH CAROLINA A
19 DEFENDANT'S HOME IS EXEMPT FROM ATTACHMENT, LEVY, AND
20 SALE." I DIDN'T SAY ALL OF HIS PROPERTY AND ALL THAT
21 STUFF, JUST THE HOME AND THAT'S ALL HE SAID WAS THE HOME.

22 MR. NICHOLS: THAT'S APPROPRIATE, JUDGE, THANK
23 YOU.

24 THE COURT: ALL RIGHT.

25 LAW CLERK: ALL RIGHT. NOW CONTINUING WITH

1 DAMAGES, PAIN AND SUFFERING, LOSS OF ENJOYMENT OF LIFE,
2 MENTAL ANGUISH AND ANXIETY, LOSS OF EARNING CAPACITY, PRE-
3 EXISTING CONDITIONS, LIFE EXPECTANCY TABLE.

4 I HAVE THAT AT THE TIME OF THE ACCIDENT HE WAS 33
5 YEARS OLD; IS THAT CORRECT?

6 ACTUAL DAMAGES, THE BURDEN OF PROOF, DAMAGES FROM
7 A COLLATERAL SOURCE RULE, ACTUAL DAMAGES, PERSONAL
8 INJURIES, PUNITIVE DAMAGES, AND THEN A CLOSING WHICH IS THE
9 STANDARD LANGUAGE.

10 MR. NICHOLS: ON PUNITIVE DAMAGES CAN YOU JUST
11 GIVE ME A LITTLE BIT OF, IS THAT GOING TO BE THE GAMBLE
12 FACTORS OR -- I DON'T THINK IT'S APPROPRIATE TO CHARGE THE
13 GORE GUIDEPOST UNDER THE MITCHELL CASE, I THINK THAT'S WHAT
14 THE JUDGE RESERVES FOR THE POST VERDICT REVIEW BUT IF THE
15 CHARGE COMES FROM ONEIL V. SMITH THEN I THINK WE'RE OKAY.

16 THE COURT: I THINK IT DOES.

17 MR. NICHOLS: THANK YOU, JUDGE.

18 THE COURT: TALKS ABOUT THE VINDICATE OF PRIVATE
19 RIGHT AND ALL THAT KIND OF STUFF.

20 LAW CLERK: NO, NO, NO, THE --

21 THE COURT: JUST THE LANGUAGE.

22 LAW CLERK: IT'S FROM THE, IT'S FROM THE CIVIL
23 BENCH BOOK, THE FACTORS, I MEAN IT GOES THROUGH
24 RECKLESSNESS AND WHAT IT'S NOT AND THEN THE FIVE FACTORS
25 FOR YOUR CONSIDERATION OF PUNITIVE DAMAGES ARE THE

1 CHARACTER OF THE DEFENDANT'S ACTS, THE NATURE AND EXTENT OF
2 HARM TO THE PLAINTIFF WHICH DEFENDANT CAUSED OR INTENDED TO
3 CAUSE, DEFENDANT'S DEGREE OF CULPABILITY, PUNISHMENT THAT
4 SHOULD BE IMPOSED, DURATION OF CONDUCT, DEFENDANT'S
5 AWARENESS OR CONCEALMENT, EXISTENCE OF SIMILAR PAST
6 CONDUCT, LIKELY THE AWARD WILL DETER THE DEFENDANT OR
7 OTHERS FROM THIS CONDUCT, WHETHER THE AWARD IS REASONABLY
8 RELATED TO THE HARM LIKELY TO RESULT FROM SUCH CONDUCT,
9 DEFENDANT'S WEALTH OR ABILITY TO PAY. THOSE ARE THE TEN
10 FACTORS.

11 MR. ROTHSTEIN: CAN I ASK ON, YOU WENT THROUGH
12 THE STATUTORY CHARGES, THERE'S A SEPARATE CHARGE, SEPARATE
13 STATUTE FOR RECKLESS DRIVING, IS THAT GOING TO BE IN THERE?

14 LAW CLERK: IT IS, IT IS, IT IS WITH THE, SORRY,
15 SO I HAVE THE SHORT CHARGE ON SMITHERS ADMITTED NEGLIGENCE.
16 IT SAYS THAT DEFENDANT SMITHERS, IT'S SHORT, I'LL READ IT
17 TO YOU. "DEFENDANT SMITHERS ADMITS HE WAS NEGLIGENT IN HIS
18 ACTIONS. HE DOES NOT, HOWEVER, ADMIT THAT HE ACTED WITH
19 GROSS NEGLIGENCE OR IN A RECKLESS, WILLFUL, OR WANTON
20 MANNER." WE THEN GO INTO GROSS NEGLIGENCE. WE THEN GO
21 WITH RECKLESSNESS AND RECKLESS DRIVING RIGHT THERE, BUT IT
22 SAYS IT'S THE STATUTE AND THEN WE GO INTO THE HUNT AND SAYS
23 IT'S THE STATUTE SO THEY SHOULD BE ABLE TO PUT TOGETHER
24 THAT WOULD ALSO QUALIFY FOR NEGLIGENCE PER SE.

25 MR. ROTHSTEIN: WOULD IT BE APPROPRIATE INSTEAD

1 OF PUTTING DEFENDANT SMITHERS IN THERE IT'S PUTTING
2 DEFENDANT SMITHERS ATTORNEY ADMITS OR ON THROUGH HIS
3 ATTORNEY ADMITS CAUSE, YOU KNOW, SMITHERS OBVIOUSLY WASN'T
4 HERE AND MR. SMITHERS HASN'T DONE ANYTHING IN THE TRIAL.
5 IT WAS ALL MR. CONNELL, I MEAN MR. LAWSON?

6 THE COURT: DOESN'T MATTER TO ME; DOES IT MATTER
7 TO YOU, IS THAT THE WAY YOU WANT TO DO IT?

8 MR. ROTHSTEIN: I WOULD PREFER TO HAVE
9 DEFENDANT'S ATTORNEY ADMITS OR SMITHERS ATTORNEY ADMITS.

10 THE COURT: ALL RIGHT, GO AHEAD AND DO THAT.

11 LAW CLERK: ALL RIGHT.

12 MR. ROTHSTEIN: AND I STOPPED YOU AT THE
13 PUNITIVE DAMAGE, I APOLOGIZE FOR THAT.

14 LAW CLERK: NO PROBLEM.

15 MR. ROTHSTEIN: THOUGHT WE WOULD TAKE IT AS IT
16 WENT.

17 THE COURT: WHO'S GOING TO DO THE CLOSINGS?
18 ARE YA'LL READY?

19 MR. CONNELL: YOUR HONOR, I'D LIKE TO SEE THE
20 VERDICT FORMS.

21 THE COURT: THANK YOU.

22 MR. CONNELL: CAN I MAKE A COMMENT?

23 THE COURT: SURE.

24 MR. CONNELL: SHOULD, SHOULD THE, I'M JUST
25 WONDERING WHETHER OR NOT THE QUESTION SHOULD BE ADDRESSED

1 BEFORE YOU HAVE A YES AND NO, DO YOU SEE WHERE I'M COMING
2 FROM? THE FIRST THING I SEE IS THERE FOR US TO, OF COURSE
3 YOU'RE GOING TO EXPLAIN IT TO THEM BUT --

4 THE COURT: OF COURSE DEFENDANT SMITHERS HAS
5 ADMITTED THAT HE'S NEGLIGENT SO THERE WE NEED TO FIND OUT
6 IF HUNT IS NEGLIGENT OR NOT.

7 MR. CONNELL: NOW WOULD BE THE QUESTION IS THIS
8 HUNT NEGLIGENT? YES OR NO, NOT THEREFORE AS TO DEFENDANT
9 HUNT THE JURY FINDS FOR THE PLAINTIFF, NO OR YES, DO YOU
10 SEE WHERE I'M COMING FROM?

11 THE COURT: HOW DO YOU WANT IT WRITTEN?

12 MR. ROTHSTEIN: I'M FINE, YOUR HONOR, BUT WE
13 FIND IN FAVOR OF COLON, FOR PLAINTIFF OR THE DEFENDANT
14 HUNT.

15 THE COURT: WHAT'S WRONG WITH HOW IT IS?

16 MR. ROTHSTEIN: I THINK IT'S FINE THE WAY IT IS.

17 THE COURT: I SEE WHAT YOU'RE SAYING, YEAH.

18 MR. CONNELL: MY POINT IS IS WHEN YOU READ IT
19 AND YOU READ THE FIRST PART YOU THINK WELL WHAT DOES THAT
20 MEAN. YOU HAVE TO GO AND LOOK AT THE SECOND FULL PARAGRAPH
21 TO COME UP WITH THAT. IT SEEMS LIKE IT WOULD BE --

22 THE COURT: IS THERE AN EASY WAY YOU CAN MODIFY
23 IT?

24 MR. CONNELL: I THINK WHAT ED SAID SOUNDED --

25 LAW CLERK: WE THE JURY FIND FOR, AND THEN JUST

1 HAVE DEFENDANT HUNT OR PLAINTIFF, AND THEN THEY CHOOSE ONE
2 OF THOSE TWO.

3 MR. ROTHSTEIN: IN OPENING STATEMENT MR. CONNELL
4 MADE TWO REMARKS THAT I THOUGHT WERE HIGHLY OBJECTIONABLE.
5 I DON'T LIKE TO OBJECT TO A PHRASE OPENING RIGHT AT THE
6 BEGINNING BUT ONE OF THEM WAS ESSENTIALLY A JURY
7 NULLIFICATION ARGUMENT. HE SAID, YOU KNOW, WE DON'T VISIT
8 THE SINS OF A SON ON THE FATHER, THAT'S NOT THE LAW, AND HE
9 SAID THAT IT'S NOT FAIR TO DO THAT. THAT'S A JURY NULL,
10 THE JURY WOULD HAVE TO DISREGARD YOUR CHARGE TO ACCEPT HIS,
11 HIS ARGUMENT.

12 THE COURT: YOU'RE NOT GOING TO SAY THAT AGAIN,
13 ARE YOU?

14 MR. CONNELL: WELL, NO, SIR, THEY WOULDN'T HAVE,
15 ALL THEY'D HAVE TO FIND WAS THAT HE SOLD THE CAR TO HIS SON
16 AND HE'S NOT RESPONSIBLE, AND THAT'S WHAT MY POINT IS.

17 MR. ROTHSTEIN: BUT YOU DO ---

18 THE COURT: I SEE WHAT HE'S SAYING NOW AS WELL,
19 TRY TO STICK TO THE FACTS.

20 MR. CONNELL: ALL RIGHT, SIR.

21 MR. ROTHSTEIN: AND, YOUR HONOR, THE OTHER ISSUE
22 HE RAISED WAS NOWADAYS ANYBODY CAN SUE ANYTHING, I MEAN
23 IT'S A TORT REFORM ARGUMENT AND IT'S, IT'S COMPLETELY
24 IMPROPER FOR HIM TO SAY THAT AND ---

25 THE COURT: YOU'RE NOT GOING TO SAY THAT AGAIN,

1 ARE YOU?

2 MR. CONNELL: YOUR HONOR, AS YOU KNOW ---

3 THE COURT: YOU CAN.

4 MR. CONNELL: --- SEVERAL JUDGES CHARGE THAT, I
5 CAN SAY IT, AND SEVERAL JUDGES ACTUALLY PUT THAT IN THEIR
6 CHARGE AND JUST CAUSE YOU FILE A LAWSUIT DOESN'T MEAN
7 ANYTHING UNTIL THEY SAY SOMETHING, SO --

8 MR. ROTHSTEIN: WELL THAT'S DIFFERENT, THAT'S A
9 DIFFERENT STATEMENT. I MEAN YOU'RE ---

10 MR. CONNELL: NO ---

11 MR. ROTHSTEIN: --- IMPLYING THAT THIS WAS, YOU
12 KNOW, A FRIVOLOUS LAWSUIT.

13 MR. CONNELL: --- I'M IMPLYING THAT THEY CAN
14 FILE, A LAWSUIT CAN BE FILED JUST WHAT I SAID.

15 THE COURT: AND THAT MAY BE THE WAY YOUR CLIENT
16 SEES IT, I THINK YOU CAN SAY THAT.

17 MR. CONNELL: YOUR HONOR, JUST SO CAUSE I
18 HAVEN'T TRIED MANY CASES WITH MR. ROTHSTEIN, I WANT TO MAKE
19 SURE I UNDERSTAND WHAT HIS CLOSING IS GOING TO BE. YOUR
20 HONOR'S IS GOING TO REQUIRE HIM TO OPEN AND CLOSE ON THE
21 LAW AND ON THE DAMAGES; ISN'T THAT RIGHT, FULLY IN THE
22 BEGINNING?

23 THE COURT: YEAH.

24 MR. CONNELL: THEN HE'S GOING TO GET ONE REPLY
25 TO OUR TWO ARGUMENTS; IS THAT RIGHT?

1 THE COURT: YEAH, HIM, YOU, YOU, HIM.

2 MR. CONNELL: ALL RIGHT.

3 THE COURT: HOW ABOUT A TIME FRAME, GENTLEMEN?
4 WHAT KIND OF TIME, HOW MUCH TIME DO YOU NEED?

5 MR. ROTHSTEIN: I HAVE, I'M GOING TO TRY AND BE
6 AS QUICK AS I CAN.

7 THE COURT: FORTY-FIVE MINUTES, IT'S COMPLICATED
8 BUT IT'S NOT COMPLICATED.

9 MR. ROTHSTEIN: I DON'T DO A LOT OF LONG WINDED,
10 I'M GOING TO TRY, THERE'S A LOT TO COVER HERE. THERE'S A
11 LOT OF ISSUES WITH PROXIMATE CAUSE THAT NEED TO BE
12 EXPLAINED, A LOT OF ISSUES WITH THE COLLATERAL SOURCE RULE
13 THAT NEED TO BE EXPLAINED, AND, AND I THINK IT'S GOING TO
14 TAKE SOME TIME. I HATE TO SAY 45 MINUTES AND ME GET, YOU
15 KNOW, TWO THIRDS OF THE WAY THROUGH THE ARGUMENT. I
16 PROMISE I WON'T GO, I'M NOT A LONG WINDED PERSON, I MEAN
17 BELIEVE IT OR NOT.

18 THE COURT: ALL RIGHT, IF YOU GO AN HOUR WE'LL
19 START KNOCKING ON THE TABLE, AND I KNOW YA'LL ARE NOT, YOU
20 HAVEN'T GOT MUCH TO TALK ABOUT.

21 MR. CONNELL: TEN OR 15 MINUTES.

22 THE COURT: ALL RIGHT, SOUNDS GOOD TO ME. ALL
23 RIGHT, EVERYBODY READY TO GO?

24 MR. ROTHSTEIN: YOUR HONOR, ONE THING THAT JUST
25 OCCURRED TO ME ON THE VERDICT FORM, YOU DO HAVE TO

1 APPORTION PUNITIVES SEPARATELY AND I THINK THE WAY IT'S ON
2 THERE YOU HAVEN'T, I THINK THE JURY HAS TO AWARD, AS THEY
3 DO HAVE TO SAY THE PUNITIVE DAMAGE AWARD AS TO SMITHERS OR
4 AS TO HUNT SO IT JUST OCCURRED TO ME THAT WE NEED TO CHANGE
5 THAT.

6 MR. LAWSON: I WOULD AGREE WITH THAT, YOUR
7 HONOR.

8 THE COURT: HOW DO YOU WANT TO CHANGE IT?

9 MR. LAWSON: JUST SAY WE THE JURY FIND FOR THE
10 PLAINTIFF AND THEN DEFENDANT SMITHERS IN THE AMOUNT OF
11 BLANK DOLLARS IN PUNITIVE DAMAGE, WE THE JURY FIND FOR THE
12 PLAINTIFF AGAINST DEFENDANT HUNT IN THE AMOUNT OF BLANK
13 DOLLARS IN PUNITIVE DAMAGES, JUST EXPLAIN THEY CAN PUT
14 ANYTHING OR NOTHING,

15 THE COURT: LET'S GO AHEAD AND GET THEM OUT AND
16 GET IT GOING.

17 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
18 2:06 P.M.)

19 THE COURT: ALL RIGHT, MR. ROTHSTEIN, YOU ARE
20 RECOGNIZED FOR YOUR CLOSING STATEMENT.

21 MR. ROTHSTEIN: THANK YOU, MAY IT PLEASE THE
22 COURT?

23 THE COURT: SURE.

24 CLOSING ARGUMENT

25 BY MR. ROTHSTEIN:

1 GOOD AFTERNOON, LADIES AND GENTLEMEN, ONE OF MY
2 FAVORITE AMERICAN HEROES IS BENJAMIN FRANKLIN AND HE ONCE
3 SAID "HE WHO IS GOOD FOR MAKING EXCUSES IS SELDOM GOOD FOR
4 ANYTHING ELSE". THE OTHER DAY I READ A COMMENTARY WHERE
5 THE AUTHOR OF THE COMMENTARY LAMENTED THAT BASEBALL IS
6 RAPIDLY BEING REPLACED AS THE NATIONS PASTTIME AND IT'S
7 BEING REPLACED BY THE SPORT OF DUCKING RESPONSIBILITY HE
8 SAID. I THOUGHT IT WAS INCREDIBLE, INCREDIBLY IRONIC
9 YESTERDAY AT OPENING STATEMENT WHEN MR. LAWSON, WHO IS
10 REPRESENTING MR. SMITHERS, SAID SOMETHING TO THE AFFECT IF
11 MR. SMITHERS WERE HERE TODAY HE WOULD ADMIT THAT IT WAS
12 WRONG FOR HIM TO DRINK AND DRIVE ON NOVEMBER 15TH, 2003,
13 REALLY. IF MR. SMITHERS TRULY WANTED TO ADMIT THAT HE WAS
14 WRONG WOULDN'T HE BE HERE TO SAY IT HIMSELF RATHER THAN
15 HAVING THE LAWYER SAY IT FOR HIM.

16 MR. LAWSON ALSO STARTED TO SAY IN THE OPENING
17 THAT SMITHERS AGREES HE WAS WRONG, THAT HE PLEADED GUILTY
18 TO DUI AND THEN HE CORRECTED HIMSELF AND SAID, OH, NO, HE
19 WAS FOUND GUILTY BY A JURY. HE DIDN'T ACCEPT
20 RESPONSIBILITY HERE AND HE STILL HASN'T ACCEPTED
21 RESPONSIBILITY.

22 YOU REMEMBER TROOPER GRAHAM WAS ON THE STAND AND
23 MR. LAWSON ASKED, AS A DEFENSE LAWYER CROSS EXAMINING
24 SOMEBODY YOU GET TO LEAD, ASK LEADING QUESTIONS, AND HE LED
25 THE TROOPER INTO THINKING THAT, THAT MR. SMITHERS HAD

1 AGREED TO A BREATHALYZER TEST, YOU REMEMBER THAT? MR.
2 NICHOLS GETS BACK UP ON REDIRECT AND HE ASKED THE TROOPER
3 LET ME DIRECT YOUR ATTENTION TO THE SECOND PAGE OF YOUR,
4 YOUR ACCIDENT REPORT, CAN YOU TELL ME WHAT'S IN THE MIDDLE
5 THERE AND IT SAID REFUSED. NATHAN DALE SMITHERS REFUSED
6 THE BREATHALYZER TEST. HE WAS NOT COOPERATIVE. HE HASN'T
7 ACCEPT ANYTHING.

8 THIS MORNING THERE WAS SOME INTERESTING
9 TESTIMONY. I DON'T KNOW IF YA'LL PICKED IT UP OR NOT BUT
10 EDWARD RAYMOND HUNT WAS ON THE STAND AND HE SAID THAT HE
11 WAS TAKEN TO JAIL AND THE QUESTION WAS, HAVE YOU EVER MET
12 NATHAN DALE SMITHERS, AND HE SAID, YEAH, HE CAME IN THE
13 JAIL THAT MORNING AFTER HE HAD BEEN BROUGHT IN AND HE WAS
14 BRAGGING, HE WAS ACTUALLY BRAGGING ABOUT RUNNING INTO THE
15 BACK OF MR. GAUSE'S POLICE CAR AT 65 MILES AN HOUR; DID
16 YA'LL HEAR THAT? INCREDIBLE, AND FOR SOMEONE TO SAY HE'S
17 NOW ACCEPTING RESPONSIBILITY IS, IS JUST AMAZING TO ME.

18 I'VE GOT TO HAND IT TO MR. LAWSON, HE'S A
19 FANTASTIC LAWYER AND HE'S GOT PROBABLY THE HARDEST JOB IN
20 THE COURTROOM TODAY, DEFENDING SOMEONE WHO DOESN'T HAVE,
21 YOU KNOW, THE NERVE TO SHOW UP AND DEFEND HIMSELF IN, IN,
22 IN COURT.

23 NOW THEIR DEFENSE, AND AGAIN THEY HAVE TO SAY
24 SOMETHING, BUT THEIR DEFENSE IS WELL EVEN IF WE WERE WRONG
25 IT DIDN'T REALLY HURT MR. GAUSE THAT BAD. HIS INJURIES,

1 THE NEED FOR HIS SURGERY WAS CAUSED WHEN HE WAS PUSHING A
2 CAR OUT OF THE ROAD ABOUT LESS THAN A YEAR LATER; DO YOU
3 REMEMBER THAT TESTIMONY, THAT ARGUMENT?

4 LET'S LOOK AT THE PHOTOS, YOU'LL HAVE THESE WITH
5 YOU IN EVIDENCE WHEN YOU GO BACK TO DELIBERATE. THEY'RE
6 NOT THE GREATEST PHOTOS IN THE WORLD BECAUSE THEY'RE OLD
7 POLAROIDS. BACK THEN I GUESS THE CITY OF CONWAY DIDN'T
8 HAVE DIGITAL PHOTOS AND THINGS BUT YOU CAN CLEARLY SEE HOW
9 BAD THIS CAR WAS DESTROYED. THIS IS THE TROOPER, YOU'LL
10 SEE THAT THE WHITE CAR AGAIN IS, IS THE PATROL CAR. THIS
11 ONE IS INCREDIBLE TO ME. THIS ONE REALLY SHOWS THE ENTIRE
12 BACK END OF THE CAR. THERE'S THE BACK TIRE AND THERE'S THE
13 TRUNK, IT'S COMPLETELY SMASHED. FOR THEM TO SUGGEST THAT
14 THIS 300 POUND PERSON PUSHING A CAR OUT OF THE ROAD ABOUT A
15 YEAR LATER IS A SMALL, NOT A BIG CAR, A FAIRLY SMALL CAR,
16 ON FLAT GROUND, ABOUT 75 FEET, HE SAID, DID THAT REALLY
17 CAUSE THE HERNIATED DISC? WELL YOU HEARD DR. MILLS SAY THE
18 HERNIATED DISC WAS ALREADY THERE. HE WAS ALREADY HAVING
19 THE PAIN SO THIS IS JUST A SMOKE SCREEN, LADIES AND
20 GENTLEMEN, AND IT'S AN EFFORT TO PUSH THE RESPONSIBILITY
21 FOR THIS TRAGEDY ON SOMEBODY ELSE.

22 I DON'T THINK I NEED TO SAY MUCH MORE ABOUT
23 SMITHERS AND THE JUDGE WILL ACTUALLY TELL YOU BECAUSE HE
24 WAS FOUND GUILTY BY A JURY THAT ISSUE HAS ALREADY BEEN
25 DECIDED IN CRIMINAL COURT, OKAY, SO HE IS NEGLIGENT. HE'S

1 NEGLIGENT PER SE, HE'S RECKLESS AND, AND THE JUDGE WILL
2 INSTRUCT YOU THAT THAT ISSUE HAS ALREADY BEEN DECIDED.
3 THAT'S REALLY ALL I'VE GOT TO SAY ABOUT MR. SMITHERS, NOW
4 LET ME, UNTIL WE GET TO THE ISSUE OF PUNITIVE DAMAGES.

5 LET'S LOOK AT DEFENDANT HUNT. NOW MR. CONNELL
6 SPENT MOST OF THE TRIAL ON THIS CASE, YOU PROBABLY GOT
7 TIRED OF HEARING THE SAME THING, HE'D ASK EVERY WITNESS,
8 WELL YOU DIDN'T SEE MR. HUNT, THE FATHER, AT THE SCENE OF
9 THE CRIME, DID YOU, YOU DIDN'T SEE HIM DRIVING THE CAR THAT
10 NIGHT, DID YOU. YOU HEARD HIM SAY THAT FIVE OR SIX TIMES.
11 I'LL ACKNOWLEDGE, I'LL CONCEDE THAT. THERE'S NO EVIDENCE
12 AND THERE NEVER WILL BE EVIDENCE THAT THE FATHER EDWARD W.
13 HUNT WAS AT THE SCENE THAT NIGHT. I'LL TAKE MR. CONNELL'S
14 WORD THAT HE WAS AT HOME IN BED THAT NIGHT.

15 BUT THE PROBLEM FOR MR. HUNT IS THIS THING CALLED
16 THE FAMILY PURPOSE DOCTRINE, AND I'M GOING TO EXPLAIN A
17 LITTLE BIT ABOUT THAT TO YOU, BUT IF YOU REMEMBER YESTERDAY
18 MR., MR. CONNELL GOT UP IN HIS OPENING AND HE SAID, I WAS
19 SO SHOCKED I ACTUALLY WROTE IT DOWN, HE SAID IN SOUTH
20 CAROLINA WE DO NOT VISIT THE SINS OF THE SON ON THE FATHER.
21 YOU REMEMBER WHEN HE SAID THAT? WE DO NOT VISIT THE SINS
22 OF THE SON ON THE FATHER. WELL WITH ALL DUE RESPECT MR.
23 CONNELL IS FLATLY WRONG ON THIS ISSUE, LADIES AND
24 GENTLEMEN, THIS, THIS FAMILY PURPOSE DOCTRINE IN SOUTH
25 CAROLINA HAS BEEN THE LAW OF THIS STATE SINCE 1914. I

1 DIDN'T REALIZE THERE WAS A LOT OF CARS BACK THEN, THAT WAS
2 BEFORE WORLD WAR 1.

3 THERE WAS A CASE IN 1914 THAT SAID IF THE FATHER,
4 THE FATHER HAS THE, A PART OF HIS BUSINESS IS SORT OF
5 OVERSEEING HIS FAMILY AND PROVIDING FOR HIS FAMILY AND IF
6 PART OF THAT BUSINESS HE PROVIDES AN AUTOMOBILE, WHICH AT
7 THAT TIME WAS PROBABLY NOT NEARLY AS AND THEY'RE PROBABLY
8 NOT MANY CARS ON THE ROAD BACK IN 1914, BUT IF YOU PROVIDED
9 DEADLY INSTRUMENT TO ONE OF YOUR FAMILY MEMBERS AND THAT
10 FAMILY MEMBER HURTS SOMEBODY ELSE YOU AS THE HEAD OF THE
11 HOUSEHOLD ARE RESPONSIBLE IF THREE THINGS. NUMBER ONE, YOU
12 ARE THE HEAD OF THE HOUSEHOLD; NUMBER TWO, YOU OWN, FURNISH
13 OR MAINTAIN THE CAR IN QUESTION; NUMBER THREE, FOR THE
14 PLEASURE, CONVENIENCE, AND GENERAL USE OF YOUR FAMILY
15 MEMBERS. IF THOSE THREE THINGS HAPPEN AND ONE OF THE
16 FAMILY MEMBERS HURT SOMEBODY USING THAT CAR YOU AS THE
17 FATHER ARE RESPONSIBLE UNDER THE FAMILY PURPOSE DOCTRINE.

18 NOW MR. CONNELL MAY NOT THINK THAT'S FAIR. HE
19 MAY NOT THINK THAT HIS CLIENT MAY NOT THINK IT'S FAIR, BUT,
20 LADIES AND GENTLEMEN, LISTEN CLOSELY WHEN THE JUDGE
21 INSTRUCTS YOU ON THE LAW, THAT'S EXACTLY WHAT THE LAW IN
22 SOUTH CAROLINA IS FOR THE FAMILY PURPOSE DOCTRINE, AND
23 AGAIN THAT'S BEEN THE LAW OF THIS STATE CONSISTENTLY ALMOST
24 A HUNDRED YEARS.

25 NOW THE FACTS OF THIS CASE THE UNDERLYING THINGS

1 ARE NOT REALLY IN THAT MUCH DISPUTE. I MEAN YOU HEARD OUR
2 CASE IN CHIEF, WE PUT UP THE TROOPER, WE PUT UP MR. GAUSE
3 TOLD HIS, THIS STORY. WE PUT UP THE OTHER DETECTIVE. THE
4 DEFENSE LAWYERS DIDN'T CALL A WITNESS. THEIR ENTIRE CASE,
5 LADIES AND GENTLEMEN, WAS READING THE DEPOSITION OF DR.
6 MILLS. DR. MILLS WAS UP HERE YESTERDAY, THEY COULD HAVE
7 ASKED HIM ANY QUESTION THEY WANTED YESTERDAY WHEN DR. MILLS
8 WAS HERE TESTIFYING. THEY HAD TO PUT UP SOMETHING SO THEY
9 PUT UP DR. MILLS BY DEPOSITION, SO WHAT, WHAT WE DO KNOW
10 ABOUT THIS CASE IS THAT DEFENDANT, DEFENDANT SMITHERS WAS
11 FOUND GUILTY OF DUI, NO QUESTION, THAT'S, THAT'S
12 UNDISPUTED.

13 EDWARD RAYMOND HUNT, LET'S LOOK AT HIM FOR A
14 SECOND, HE'S THE SON. YOU SAW HIM; HE TESTIFIED A LITTLE
15 BIT THIS MORNING. WHAT HAD HE BEEN DOING THAT NIGHT? HE
16 HAD BEEN AT THE MASTERS GENTLEMENS CLUB FOR FOUR HOURS. HE
17 GOES OUT TO THE PARKING LOT AND SLEEPS, THE NEXT THING HE
18 REMEMBERS HE WAKES UP AND IT'S AN HOUR LATER AND WHAT DOES
19 HE DECIDE TO DO? HE TRIES TO GO, TO DRIVE HOME BETWEEN
20 3:30, 4:00 IN THE MORNING. HE'S PULLED OVER, BLUE LIGHTS
21 IN HIS REAR VIEW MIRROR, WHAT DOES HE DO? HE STOPS IN THE
22 LEFT HAND LANE OF TRAFFIC ON HIGHWAY 501 COMING INTO TOWN.
23 HE DIDN'T EXPLAIN WHY HE STOPPED THERE, HE DIDN'T KNOW. I,
24 I CAN TELL YOU WHY HE STOPPED THERE, CAUSE HE DIDN'T KNOW
25 WHAT HE WAS DOING. HE SAYS WELL I WAS JUST REAL NERVOUS, I

1 DIDN'T, YOU KNOW, I HAD BLUE LIGHTS AND SO I KIND OF
2 PANICKED AND STOPPED RIGHT THERE. HE KNEW THAT IT WAS
3 DANGEROUS TO PARK THE CAR AND LEAVE THE CAR IN THE MIDDLE
4 OF THE ROADWAY.

5 HE TESTIFIED THAT HE, HE, THERE'S AGAIN NOTHING
6 PREVENTING HIM FROM PULL, WHEN THE BLUE LIGHTS CAME ON HE
7 COULD HAVE JUST PULLED OVER TO THE RIGHT LIKE EVERYBODY
8 ALWAYS DOES AND LIKE YOU'RE TRAINED TO DO OR TAUGHT TO DO
9 WHEN YOU GET YOUR DRIVERS PERMIT YOU PULL OVER TO THE RIGHT
10 IN RESPONSE TO AN EMERGENCY VEHICLE, AND THE JUDGE WILL
11 TELL YOU THAT THAT'S WHAT THE LAW IN SOUTH CAROLINA IS.
12 WHEN YOU SEE AN EMERGENCY VEHICLE WITH ITS LIGHTS ACTIVATED
13 YOU HAVE TO YIELD TO THAT VEHICLE WHICH MEANS YOU PULL OVER
14 TO THE RIGHT AND SLOW DOWN AND STOP. ANYONE WHO'S EVER HAD
15 DRIVERS ED IN SOUTH CAROLINA PROBABLY ANYWHERE KNOWS THAT
16 LAW, SO WHAT DID HE DO? HE, HE STOPS HIS CAR IN THE LEFT
17 AND THEN, AND THEN MR. NICHOLS ASKED HIM, DID THE TROOPER
18 TELL YOU WHY HE STOPPED YOU, AND, AND, AND MR. HUNT, THE
19 SON, SAID NO HE DIDN'T TELL ME WHY HE STOPPED ME. WELL
20 REMEMBER IN MY DEPOSITION, I TOOK THE DEPOSITION OF THAT
21 GENTLEMAN SEVERAL, PROBABLY OVER A YEAR AGO, AND AT THAT
22 TIME HE TOLD ME, YEAH, THE OFFICER TOLD ME THAT I WAS
23 SWERVING IN AND OUT OF THE LANES, THAT'S WHY HE STOPPED ME,
24 AND SO HE'S TAKEN TO JAIL. THE CAR IS THERE IN THE MIDDLE
25 OF THE ROAD.

1 YOU HEARD THE INITIAL TROOPER THAT STOPPED, HAD
2 TO LEAVE THE SCENE SO HE CALLED THE TWO GENTLEMEN FROM THE
3 CITY OF CONWAY POLICE DEPARTMENT. MR. GAUSE ARRIVED FIRST,
4 PARKED BEHIND THE TROOPER. OFFICER WILLIAMSON CAME SECOND,
5 PARKED BEHIND MR. GAUSE. EVERYBODY'S LIGHTS WERE FLASHING.
6 I MEAN THERE'S THREE POLICE CAR AT THE TIME WITH LIGHTS
7 FLASHING. IT'S, IT'S A BIG EMERGENCY SCENE.

8 SO THE TROOPER LEAVES, OFFICER WILLIAMSON WHO'S
9 THE SENIOR OFFICER, THIS IS THE END OF THE SHIFT, IT'S
10 PROBABLY GOING TO BE A LOT EASIER FOR ME TO GET THE PAPER
11 WORK AND BRING SOMEBODY TO JAIL RATHER THAN WAIT FOR THE
12 TOW TRUCK AND ALL THIS KIND OF STUFF. SO HE, THAT'S HIS
13 PREROGATIVE, HE, HE GETS IN THE CAR, TAKES MR. HUNT, THE
14 SON, OFF TO JAIL, AND AT THAT POINT MR., MR. GAUSE PULLS
15 HIS CAR UP A LITTLE CLOSER TO THE BACK OF THE FIREBIRD AND
16 WAITS FOR THE, HE, YOU KNOW, OBVIOUSLY GETS OUT, LOOKS
17 AROUND THE FIREBIRD GETTING READY FOR THE TOW TRUCK AND
18 GETS BACK IN THE CAR, DOES NOT BELT HIMSELF. HE'S NOT
19 GOING TO DRIVE UNTIL THE TOW TRUCK LEAVES SO HE'S SITTING
20 THERE WITH HIS LITTLE METAL TIN BOX FILLING OUT THE PAPER
21 WORK FOR THE TOW TRUCK COMPANY.

22 THE NEXT THING YOU KNOW, BAM, HE'S HIT FROM
23 BEHIND BEFORE HE KNOWS WHAT HAPPENED. NO SCREECHING TIRES,
24 NO HONKING HORN, NO HEADLIGHTS, HE'S JUST HIT FROM BEHIND,
25 AND THAT, THE IMPACT, LET'S, LET'S THINK ABOUT THIS IMPACT

1 FOR A MINUTE. MR. GAUSE IS SITTING THERE WITH THE CAR IN
2 PARK, ABOUT TEN OR FIFTEEN FEET BEHIND THE FIREBIRD. THAT
3 LITTLE CHEVY, I THINK IT WAS AN S-10, IT'S A LITTLE PICKUP
4 TRUCK, ONE OF THOSE SORT OF SMALL SIZE PICKUP TRUCKS, THAT
5 WAS GOING FAST ENOUGH TO TAKE THAT CAR FIFTEEN FEET OUT OF
6 PARK, TOTALED THE LITTLE PICKUP TRUCK, TOTALED THE
7 TROOPER'S CAR, THAT MR. GAUSE'S CAR, AND THEN IT RAN INTO
8 THE CAR AHEAD OF HIM SO MUCH THAT IT BENT THE FRAME OF THE
9 PONTIAC. I MEAN THERE WERE THREE CARS THAT WERE TOTALED IN
10 THIS WRECK AND NOW THEY'RE GOING TO TRY AND SAY, WELL A
11 COUPLE OF, ALMOST TEN MONTHS LATER MR., MR. GAUSE IS
12 PUSHING A CAR OUT OF THE ROAD AND THAT'S REALLY WHAT CAUSED
13 ALL THIS DAMAGES. LADIES AND GENTLEMEN, THAT'S ANOTHER
14 EFFORT BY THE DEFENDANTS TO TRY AND PUT THE BLAME OFF ON TO
15 SOMEBODY ELSE.

16 NOW LET ME TALK TO YOU A LITTLE BIT ABOUT THE
17 LAW. THE JUDGE IS GOING TO INSTRUCT YOU ON THE LAW IN THIS
18 CASE AND, YOU KNOW, IT'S, IT'S FAIRLY STRAIGHT FORWARD.
19 THIS IS A CLAIM FOR WHAT'S CALLED NEGLIGENCE IN SOUTH
20 CAROLINA AND THERE'S NEGLIGENCE, GROSS NEGLIGENCE, AND
21 RECKLESSNESS, AND THEY'RE ALL KIND OF SIMILAR IN THE SENSE.

22 NEGLIGENCE INVOLVES FOUR THINGS IN SOUTH
23 CAROLINA. ONE, A DUTY TO ACT, OKAY, SUCH AS A DUTY BETWEEN
24 A FELLOW DRIVER AND THE REST OF THE WORLD, OKAY. IT
25 INVOLVES A BREACH OF A DUTY WHERE YOU VIOLATE THAT DUTY IN

1 SOME WAY, YOU ACT UNREASONABLY. INVOLVES PROXIMATE CAUSE,
2 AND WE'LL TALK ABOUT THAT IN A MINUTE, BUT PROXIMATE CAUSE
3 JUST, IT HAS TWO COMPONENTS. ONE IS CALLED BUT FOR
4 CAUSATION, IF IT WEREN'T FOR YOUR ACT THE INJURY WOULD HAVE
5 NEVER HAPPENED, THAT'S CALLED BUT FOR CAUSATION, BUT IT
6 ALSO INVOLVES SOMETHING CALLED LEGAL CAUSATION, AND LEGAL
7 CAUSATION JUST IS, IS THE RESULT OF WHAT YOU DID
8 FORESEEABLE. THAT'S ALL IT IS, IT'S FAIRLY STRAIGHTFORWARD
9 AND I'LL TALK A LITTLE BIT MORE ABOUT THAT IN A MINUTE, AND
10 THEN THE LAST THING, THE FOURTH THING YOU HAVE TO PROVE IS
11 THAT DAMAGES OCCURRED AS A PROXIMATE RESULT OF, OF THE
12 BREACH OF THE DUTY, SO LET'S TALK ABOUT THE DUTY FOR A
13 MINUTE.

14 NOW THE DUTY IN SOUTH CAROLINA FOR NEGLIGENCE CAN
15 BE CAUSED BY A COUPLE OF TWO DIFFERENT THINGS. ONE IS, IS
16 WHAT'S CALLED THE COMMON LAW. EVERYBODY HAS A DUTY TO ACT
17 REASONABLY UNDER THE CIRCUMSTANCES THAT EXIST AT THE TIME.
18 THAT'S A COMMON LAW DUTY OF CARE, BUT THERE'S ALSO IN SOUTH
19 CAROLINA, YOU KNOW, WE HAVE A JUDGE-MADE LAW WHICH IS THE
20 COMMON LAW, AND THEN THERE'S ALSO SOMETHING CALLED
21 STATUTORY LAW AND THAT'S THE GENERAL ASSEMBLY AND CALLED
22 COLUMBIA, AND THEY EXPRESS CERTAIN THINGS IN PUBLIC POLICY
23 AND IF THEY PASS AND THEY'RE SIGNED BY THE GOVERNOR THEY
24 BECOME STATUTES, OKAY? AND SO THERE'S A BOOK OF STATUTES
25 IN SOUTH CAROLINA THAT TELL YOU HOW YOU HAVE TO ACT AND ALL

1 THESE DIFFERENT KIND OF THINGS. WELL THE STATUTES FOR
2 DRIVING A MOTOR VEHICLE IN SOUTH CAROLINA ARE FAIRLY
3 SPECIFIC AND THE JUDGE WILL INSTRUCT YOU ABOUT THESE, TOO,
4 BUT LET'S, LET'S GO THROUGH THEM A SECOND.

5 NUMBER ONE, IT'S ILLEGAL BY STATUTE, NOT JUST
6 COMMON LAW, BUT BY STATUTE TO DRIVE RECKLESSLY, TO DRIVE
7 RECKLESSLY, AND RECKLESSLY MEANS THAT YOU'RE DOING
8 SOMETHING THAT YOU KNOW IS DANGEROUS, THAT YOU KNOW IT'S A,
9 IT'S A, IT'S A SORT OF AN ABNORMAL RISK AND YOU'RE DOING IT
10 ANYWAY, OKAY.

11 THERE'S ALSO, THERE'S ALSO SOME THINGS CALLED
12 WILLFULNESS, AND WANTONNESS; THEY'RE VERY SIMILAR KIND OF
13 STANDARDS, AND THAT'S CALLED RECKLESSNESS, AND IF YOU
14 VIOLATE ONE OF THESE STATUTORY DUTIES IN SOUTH CAROLINA
15 THAT'S CALLED NEGLIGENCE PER SE, OKAY, AND THAT'S EVIDENCE
16 THAT YOU AS THE JURY CAN CONCLUDE RECKLESSNESS HAS
17 OCCURRED. IF YOU VIOLATE ONE OF THE WRITTEN POLICIES OF
18 THE STATE OF SOUTH CAROLINA THAT'S EXPRESSED IN THE STATUTE
19 THAT'S CALLED NEGLIGENCE PER SE.

20 SO IN ADDITION TO THIS RECKLESSNESS, RECKLESS
21 DRIVING STATUTE THERE'S A STATUTE THAT SAYS IT'S ILLEGAL TO
22 PARK, I THINK IT SAYS PARK OR LEAVE STANDING A VEHICLE IN
23 THE ROADWAY IF IT'S PRACTICAL TO MOVE IT OUT OF THE WAY AND
24 IF YOUR CAR IS NOT DISABLED, OKAY. IT'S UNDISPUTED THAT,
25 THAT THERE WAS ROOM TO MOVE THIS CAR. EVERYBODY THAT

1 TESTIFIED ON THAT ISSUE ACKNOWLEDGED THAT THERE WAS ROOM,
2 YOU REMEMBER ONE OF THE, I THINK THE TROOPER SAID HE'S
3 HELPED SOMEBODY CHANGE A TIRE OUT THERE AT THAT SAME
4 LOCATION AND THERE'S PLENTY OF ROOM FOR THE TRAFFIC TO GO
5 ON EITHER SIDE. I'M SURE YA'LL HAVE DRIVEN ON THAT ROAD
6 BEFORE. THERE'S, THERE'S RIGHT BY THE STEAM PLANT THERE
7 THERE'S A, A GUARDRAIL THAT'S PROBABLY, YOU KNOW, FIFTEEN
8 OR TWENTY FEET OFF THE SIDE OF THE ROAD AND THERE'S AN
9 EMERGENCY LANE TO THE, TO THE RIGHT AND YOU HAVE TO HAVE AN
10 EMERGENCY LANE THERE BECAUSE IF YOU DIDN'T HAVE AN
11 EMERGENCY LANE AMBULANCES COULDN'T GET THROUGH IF THERE'S A
12 LOT OF TRAFFIC, AND, YOU KNOW, ON THE OTHER SIDE THERE'S A
13 BIG LAKE, THAT LAKE BUSBEE USED AS A COOLING PLANT FOR THE
14 POWER PLANT.

15 OKAY, SO WE'VE GOT THE, THE PARKING IN THE, IN
16 THE ROADWAY, SPEEDING IS ALSO A STATUTE. THAT ESTABLISHES
17 A STATUTORY DUTY AND, YOU KNOW, WE, WE HAVE THE TESTIMONY
18 THAT, THAT THE GENTLEMAN ADMITTED HIMSELF THAT, SMITHERS
19 ADMITTED HIMSELF OR SORT OF WAS BRAGGING AT THE JAIL THAT
20 NIGHT THAT HE WAS GOING ABOUT 65 MILES AN HOUR WHEN HE
21 PLOWED INTO A COP CAR. THE TROOPER TESTIFIED THAT THE
22 SPEED LIMIT, AND AGAIN THAT'S THE POSTED SPEED LIMIT, WAS
23 50 MILES AN HOUR THERE SO HE'S GOING 15 MILES AN HOUR AT
24 LEAST OVER THE SPEED LIMIT.

25 ANOTHER STATUTE IN SOUTH CAROLINA THAT

1 ESTABLISHES A DUTY IS, IT'S, THE STATUTE SAYS YOU HAVE TO
2 YIELD TO AN EMERGENCY VEHICLE. WHENEVER YOU SEE A POLICE
3 CAR OR A FIRE CAR, AN AMBULANCE WITH THE LIGHTS FLASHING
4 THAT'S AN EMERGENCY VEHICLE, THE STATUTE REQUIRES YOU TO
5 GET OUT OF THE WAY, MOVE TO THE RIGHT AND YIELD.

6 THERE'S ALSO A STATUTE THAT SAYS YOU HAVE TO SLOW
7 DOWN AND TAKE EXTRA CARE WHEN YOU APPROACH AN EMERGENCY
8 SCENE. THIS MAKES A LOT OF SENSE, TOO, I MEAN IF YOU SEE A
9 CAR AHEAD OF YOU OR LIKE A WRECK SCENE YOU NEED TO SLOW
10 DOWN BECAUSE THERE COULD BE PEOPLE WORKING AROUND THE WRECK
11 SCENE THAT YOU MIGHT NOT SEE AND SO THE LAW REQUIRES YOU TO
12 TAKE EXTRA CARE AND EXTRA DUTY TO SLOW DOWN AND MOVE OVER
13 FOR AN EMERGENCY SCENE.

14 DUI, DRIVING UNDER THE INFLUENCE ANOTHER, ANOTHER
15 STATUTE, AND AGAIN THE JUDGE IS GOING TO CHARGE YOU HERE IN
16 A MINUTE ON THE LAW AND HE'LL, HE'LL READ THOSE STATUTES TO
17 YOU, YOU DON'T NEED TO TAKE MY WORD FOR IT.

18 AND AGAIN THIS COMMON LAW OF DUTY YOU'VE GOT TO
19 EXERCISE DUE CARE. EVERYBODY IN SOUTH CAROLINA THAT DRIVES
20 A CAR HAS A DUTY TO EXERCISE REASONABLE CARE UNDER THE
21 CIRCUMSTANCES, OKAY. IF IT'S, THE SPEED LIMIT IS 50 MILES
22 AN HOUR AND YOU'RE IN A TORRENTIAL RAIN STORM AND YOU CAN'T
23 SEE THREE FEET AHEAD OF YOU THAT DOESN'T MEAN YOU CAN GO 50
24 MILES AN HOUR, THAT MEANS YOU HAVE TO SLOW DOWN LIKE ANY
25 NORMAL PERSON WOULD DO AND EXERCISE THE CARE THAT A

1 REASONABLE PERSON WOULD EXERCISE UNDER THOSE CIRCUMSTANCES.

2 NOW LET ME TALK SOME MORE ABOUT PROXIMATE CAUSE
3 BECAUSE PROXIMATE CAUSE IS, IT CAN BE TRICKY. ANY FIRST
4 YEAR LAW STUDENT WILL TELL YOU YOU SPEND ABOUT A MONTH
5 STUDYING THIS EXACT CONCEPT OF PROXIMATE CAUSE BUT IF YOU
6 BOIL IT DOWN IT'S REALLY NOT THAT TOUGH. THE FIRST THING
7 YOU NEED TO REMEMBER IS YOU CAN HAVE MORE THAN ONE
8 PROXIMATE CAUSE OF AN INJURY, OKAY. THE JUDGE WILL SAY
9 WHEN HE'S READING HIS INSTRUCTIONS THAT WE HAVE TO SHOW
10 THAT THE NEGLIGENCE OR GROSS NEGLIGENCE WAS A PROXIMATE
11 CAUSE, NOT THE PROXIMATE CAUSE, BUT A PROXIMATE CAUSE, KEEP
12 THAT IN MIND. YOU HAVE TO, YOU CAN HAVE MORE THAN ONE
13 PROXIMATE CAUSE.

14 THE JUDGE WILL ALSO INSTRUCT YOU ON SOMETHING
15 CALLED COMBINING OR CONCURRING PROXIMATE CAUSES AND AGAIN
16 THAT'S MORE THAN ONE THING THAT KIND OF GET TOGETHER AND
17 CAUSE SOMETHING ELSE.

18 HE MAY USE THE TERM INTERVENING ACT AND
19 INTERVENING JUST MEANS ONE THING COMES BETWEEN ANOTHER
20 THING, SO YOU HAVE A CAUSE, SOMETHING IN THE MIDDLE, AND
21 THEN AN EFFECT, OKAY. THAT THING IN THE MIDDLE IS CALLED
22 AN INTERVENING ACT AND THE JUDGE WILL TELL YOU THAT AN
23 INTERVENING ACT ALONE DOES NOT RELIEVE THE ORIGINAL CAUSE,
24 OKAY. IT HAS TO BE SOMETHING THAT'S INTERVENING AND
25 SUPERSEDING, AND WHAT THAT MEANS IS YOU HAVE TO HAVE

1 SOMETHING THAT'S COMPLETELY OUT OF THE ORDINARY, SOMETHING
2 COMPLETELY UNEXPECTED THAT INTERVENES IN THE MIDDLE THERE
3 BEFORE THAT CAUSAL CHAIN IS BROKEN.

4 NOW ONE OF THE BEST EXPRESSIONS OF PROXIMATE
5 CAUSE I'VE EVER HEARD COMES FROM A PROVERB, IT'S SORT OF
6 LIKE A POEM OR SOMETHING, CALLED FOR THE WANT OF A NAIL.
7 LET ME JUST READ THAT TO YOU REAL QUICK. FOR THE WANT OF
8 NAIL THE SHOE WAS LOST, FOR THE WANT OF A SHOE THE HORSE
9 WAS LOST, FOR THE WANT OF A HORSE THE RIDER WAS LOST, FOR
10 THE WANT OF A RIDER THE BATTLE WAS LOST, FOR THE WANT OF A
11 BATTLE THE KINGDOM WAS LOST, AND ALL BECAUSE THE WANT OF A
12 HORSESHOE NAIL, OKAY, AND THIS IS A VERY OLD PROVERB. IT
13 WAS BACK IN, I THINK THERE'S SOME REFERENCES TO IT IN THE
14 FIFTEEN HUNDREDS BUT I DID A LITTLE, A LITTLE LOOKING TO
15 SEE WHERE THIS COMES FROM AND BASICALLY WHAT THIS IS SAYING
16 THIS REFERS TO A BATTLE THAT OCCURRED IN ENGLAND BACK IN,
17 PROBABLY IT WAS, IT WAS ACTUALLY REFERRED TO IN SHAKESPEARE
18 WHICH WAS IN THE FIFTEEN HUNDREDS SO THIS WAS A COUPLE OF
19 HUNDRED YEARS BEFORE SHAKESPEARE, AND I'M SURE YA'LL ARE
20 ALL FAMILIAR WITH THIS THE KING RICHARD'S, MY HORSE, MY
21 HORSE, MY, A HORSE, A HORSE, MY KINGDOM FOR A HORSE; HAVE
22 YOU EVER HEARD THAT QUOTE? WHAT THAT'S REFERRING TO IS
23 KING RICHARD SAYING I CAN'T BELIEVE I LOST MY KINGDOM
24 BECAUSE OF A HORSE AND WHAT HAPPENED WAS THE HORSE THAT
25 KING RICHARD WAS RIDING, NOW BACK IN THE OLD DAYS THE

1 LEADERS OF THE COUNTRY, THE KINGS ACTUALLY WENT TO BATTLE
2 WITH THE SOLDIERS, OKAY? AND SO KING RICHARD WAS THERE ON
3 HIS HORSE. SOMEHOW THE HORSE EITHER STUMBLED OR GOT
4 SPOOKED AND KING RICHARD FELL OFF THE HORSE ONTO THE
5 GROUND, AND WHEN HE FELL OFF THE HORSE ONTO THE GROUND HIS
6 SOLDIERS CAME TO HIS AID. THEY CAME TO SEE, YOU KNOW, ARE
7 YOU OKAY, AND HELPED HIM UP ON THE HORSE. WELL WHEN THEY
8 CAME TO HIS AID THEY, THEY GOT DISTRACTED BY THE BATTLE AND
9 THEY LOST THE BATTLE BECAUSE THEY WERE HELPING KING RICHARD
10 AND BECAUSE KING RICHARD LOST THAT BATTLE THE WHOLE KINGDOM
11 FELL, OKAY? AND IT WAS ALL BECAUSE THE PERSON, BLACKSMITH
12 OR WHATEVER IT IS, THAT'S SUPPOSED TO PUT THAT HORSESHOE IN
13 THE BOTTOM OF THE, OF THE, OF THE HORSE'S FOOT DIDN'T PUT A
14 NAIL IN THERE AND BECAUSE THE NAIL WAS MISSING, YOU KNOW,
15 IT KIND OF SET OFF THIS LIKE I SAID AT THE BEGINNING OF
16 THE, OF MY OPENING A SERIES OF UNFORTUNATE EVENTS AND IF
17 YOU THINK OF PROXIMATE CAUSE AS SORT OF A CHAIN AND
18 SOMETIMES THE LAW REFERS TO THIS AS A CAUSAL CHAIN. IF
19 EVERY LITTLE INDEPENDENT ACT IS A LINK IN THE CHAIN YOU
20 START WITH ONE THING AND THAT CHAIN CAN LEAD TO SOMETHING
21 ELSE AND WHOEVER STARTED THE CHAIN IS RESPONSIBLE FOR ANY,
22 ANY FORESEEABLE CONSEQUENCE THAT HAPPENS IN THAT ENTIRE
23 CHAIN OF EVENTS, OKAY. THAT'S A VERY IMPORTANT THING ABOUT
24 ANY LINK IN THAT CHAIN CAN BE RESPONSIBLE SO YOU COULD SUE
25 THE FIRST LINK, YOU CAN SUE THE THIRD LINK, THE FOURTH

1 LINK, THE FIFTH LINK. YOU CAN SUE ANYBODY IN THAT
2 PROXIMATE CAUSE CHAIN, THE CAUSAL CHAIN. THE ONLY TIME THE
3 CHAIN IS BROKEN IS IF SOME UNFORESEEN INTERVENING JUST OUT
4 OF THE ORDINARY ACT OCCURS THAT COMPLETELY RELIEVES
5 EVERYBODY ELSE FROM LIABILITY.

6 LET ME GIVE YOU SOME EXAMPLES OF, OF, OF CASES IN
7 SOUTH CAROLINA IN THE HISTORY THAT HAVE, THAT HAVE HELD
8 THIS PROPOSITION. IF WE HAVE THIS ACCIDENT, LET'S FORGET A
9 SECOND, JUST SAY, LET'S JUST FOR SIMPLICITY THAT ONE PERSON
10 CAUSED THE ACCIDENT OUT THERE ON HIGHWAY 501. AN AMBULANCE
11 COMES, TAKES THE INJURED PEOPLE TO THE, TO THE DOCTOR,
12 OKAY. THE DOCTOR OPERATES ON ONE OF THE INJURED PEOPLE AND
13 THE DOCTOR IS, LET'S SAY THE DOCTOR IS JUST COMPLETELY
14 NEGLIGENCE. HE CUTS OFF THE WRONG LEG, HE DOES SOMETHING
15 THAT'S COMPLETELY AGAINST THE STANDARD OF CARE AND THE
16 PERSON IS PARALYZED FOR THE REST OF THEIR LIFE, OKAY. THE
17 PERSON WHO CAUSED THE WRECK IN THAT CASE IS RESPONSIBLE FOR
18 EVERYTHING. THE DOCTOR IS RESPONSIBLE FOR EVERYTHING. IF
19 THEY'RE IN THE PROXIMATE CHAIN AND NOTHING UNFORESEEING OR
20 SORT OF UNEXPECTED HAPPENS THAT PROXIMATE CHAIN KEEPS
21 GOING.

22 NOW I'M GOING TO GIVE YOU AN EXAMPLE OF SOMETHING
23 THAT WOULD BREAK THE PROXIMATE CHAIN. LET'S SAY THAT ON
24 THE NIGHT IN QUESTION HERE THE, THE SON HUNT STOPS HIS CAR.
25 LET'S FORGET ABOUT THE TROOPER FOR A SECOND. LET'S SAY MR.

1 GAUSE COMES UP BEHIND HIM AND SAYS, YOU KNOW, CAN I SEE
2 YOUR LICENSE AND REGISTRATION. LET'S SAY ANOTHER MOTORIST
3 COMES BY AND, AND BY THE WAY MR. HUNT STOPPED ILLEGALLY,
4 LET'S SAY HE DIDN'T PULL OVER TO THE RIGHT LIKE HE SHOULD
5 HAVE. LET'S SAY ANOTHER MOTORIST COMES FROM THE OTHER SIDE
6 AND RECOGNIZES MR. GAUSE AS A, YOU KNOW, POLICE OFFICER AND
7 GETS OUT OF HIS CAR AND HE SHOOTS MR. GAUSE DEAD, OKAY?
8 THAT WOULD BREAK THE PROXIMATE CAUSE CHAIN BECAUSE THE
9 CRIMINAL ACT OF THE PERSON, YOU KNOW, THAT'S AN UNEXPECTED
10 OR UNFORESEEN THING. THAT WOULD BE A SUPERSEDING CAUSE SO,
11 YOU KNOW, THE, YOU KNOW, THE FAULT OF THE FIRST PERSON IN
12 STOPPING WRONG WOULD NOT, HE, THEY WOULD NOT BE RESPONSIBLE
13 FOR, YOU KNOW, SOMETHING LIKE, LIKE THIS SHOOTING, THE
14 INJURIES THAT CAME FROM A SHOOTING, SO THAT'S, THAT'S
15 PROXIMATE CAUSE. IT'S AGAIN EVERY LINK IN THAT CHAIN IS
16 RESPONSIBLE SO THE FIRST LINK WE HAVE HERE IS EDWARD
17 RAYMOND HUNT, OKAY, HE STOPPED ILLEGALLY. THERE'S NO
18 DISPUTE ABOUT THAT. HIS CAR WASN'T DISABLED. HE HAD ROOM
19 TO PULL OVER SO HE'S NEGLIGENT IN STARTING THIS SERIES OF
20 UNFORTUNATE EVENTS.

21 WHAT'S THE NEXT LINK IN THE PROXIMATE CAUSE
22 CHAIN, NATHAN DALE SMITHERS COMING SIXTY PLUS MILES AN HOUR
23 SLAMS INTO THE BACK OF MR. GAUSE. HE'S THE SECOND LINK IN
24 THE CHAIN.

25 WHAT'S THE THIRD LINK IN THE CHAIN? I DON'T

1 THINK THERE'S A THIRD LINK IN THE CHAIN. I THINK WHAT
2 HAPPENED IN THE THIRD LINK, WHAT THEY'RE TRYING TO SAY IS
3 THE THIRD LINK WAS MR. GAUSE PUSHING THE CAR OUT OF THE
4 ROAD. MR. GAUSE DIDN'T DO ANYTHING WRONG IN PUSHING THE
5 CAR OUT OF THE ROAD BUT EVEN IF HE DID HE'D BE THE FOURTH
6 LINK OR THE THIRD LINK IN THE CHAIN AND THE FOURTH LINK OF
7 A CHAIN AT LEAST WHAT THEY'RE TRYING TO ARGUE WOULD BE THE
8 NEED FOR SURGERY, OKAY? SO I GUESS WE HAVE THREE LINKS OF
9 THE CHAIN AND THEN THE DAMAGE THE SURGERY, AND WHAT THEY'RE
10 TRYING TO SAY IS THOSE FIRST TWO LINKS THAT WAS IT. ONCE
11 MR. GAUSE, MR. GAUSE PUSHED THAT CAR OUT OF THE ROAD
12 ANYTHING THAT HAPPENED AFTER THAT WAS HIS FAULT, OKAY.
13 AGAIN THEY'RE TRYING TO PUSH FAULT ON SOMEBODY ELSE;
14 THEY'RE TRYING TO BLAME MR. GAUSE FOR HAVING TO HAVE BACK
15 SURGERY. NOW SO THAT'S PROXIMATE CAUSE.

16 LET ME TALK A LITTLE BIT ABOUT DAMAGES AND THE
17 FIRST THING I WANT TO TALK ABOUT DAMAGES IS WHAT'S CALLED
18 THE COLLATERAL SOURCE RULE AND AGAIN JUDGE SEALS IS THE
19 JUDGE OF THE LAW IN THIS CASE. YOU, LADIES AND GENTLEMEN
20 OF THE JURY, ARE THE JUDGES OF THE FACTS. THE LAW IN THE
21 CASE IN SOUTH CAROLINA DOES NOT ALLOW SOMEONE TO RECOVER
22 DOUBLE FOR THE SAME INJURY, OKAY. THAT'S A LEGAL DECISION
23 THAT JUDGE SEALS MAKES AT THE END OF THE CASE. IF THERE'S
24 SOMETHING THAT NEEDS TO BE SET OFF, YOU'VE HEARD WORKERS
25 COMP, IF THAT NEEDS TO BE SET OFF THAT'S SOMETHING JUDGE

1 SEALS IS RESPONSIBLE FOR AND HE'LL TELL YOU UNDER THE
2 COLLATERAL SOURCE RULE YOU DON'T TAKE THAT INTO
3 CONSIDERATION AT ALL. IF THERE'S ANY OTHER SOURCES OF, OF
4 RECOVERY OR ANY OTHER SOURCES OF PAYMENT, FOR EXAMPLE, IF
5 MR. GAUSE'S GRANDMOTHER PAID FOR A PRESCRIPTION THAT HE HAD
6 TO GET AFTER THIS WRECK THESE GENTLEMEN ARE RESPONSIBLE FOR
7 THE COST OF THAT PRESCRIPTION NO MATTER WHETHER IT WAS MR.
8 GAUSE'S GRANDMOTHER PAID IT, WHETHER HE PAID IT OUT OF HIS
9 OWN POCKET, OR WHETHER HIS CHURCH PAID FOR IT. THAT'S
10 CALLED THE COLLATERAL SOURCE RULE. AGAIN IF THERE'S
11 ANYTHING IMPROPER OR IF AN OFFSET OR DEDUCTION NEEDS TO BE
12 MADE FOR ANYTHING THAT'S SOMETHING THAT JUDGE SEALS WILL DO
13 AS THE JUDGE OF THE LAW, SO YOU'RE NOT ALLOWED TO SPECULATE
14 AS THE JURORS, AND THE JUDGE WILL TELL YOU THIS, THAT
15 YOU'RE NOT ALLOWED TO SPECULATE ABOUT WHAT, WHETHER SOMEONE
16 ELSE PAID SOME OR ALL OF THESE ELEMENTS THAT, OF, OF
17 DAMAGES. AND, AND IF YOU THINK ABOUT IT IT MAKES SENSE
18 BECAUSE IF YOU HAD TO GO IN AND SAY WELL, YOU KNOW, YOU HAD
19 THIS, THIS BILL, SAY, LET'S SAY DR. MILLS, FOR EXAMPLE.
20 OKAY, DR. MILLS DID A LOT OF STUFF HERE BUT LET'S SAY, YOU
21 KNOW, HE DID A, I THINK THEY CALL IT A FACET INJECTION IN
22 BACK OF JANUARY OF 2004 JUST TWO MONTHS AFTER THE ACCIDENT.
23 THERE'S NO QUESTION THAT THE NEED FOR THAT FACET INJECTION
24 WAS, WAS, WAS PROMPTED BY THE WRECK AND THE PROXIMATE CAUSE
25 THING DIDN'T COME, I MEAN AT LEAST THEIR ARGUMENT DIDN'T

1 COME UP UNTIL MR. GAUSE PUSHED THE CAR OUT OF THE ROAD, SO
2 LET'S JUST LOOK AT JUST THAT JANUARY FACET INJECTION.

3 IF MR. MILL, MR. OR DR. MILLS SENT A BILL TO MR.
4 GAUSE FOR \$50,000 FOR THAT FACET INJECTION AND THEN MR.,
5 MR. MILLS FOR SOME REASON AGREED TO DISCOUNT THAT FEE OR
6 WAIVE HIS FEE, YOU KNOW, SOMETHING ELSE MR. GAUSE WOULD BE
7 ENTITLED TO THE ACTUAL BILL NOT WHAT WAS, WAS EVENTUALLY
8 PAID.

9 ANOTHER EXAMPLE IF SOMEONE, IF MR. GAUSE BECAUSE
10 HE WAS OUT OF WORK WAS HAVING TROUBLE PAYING HIS RENT OR
11 SOMETHING SO HE GOES TO HIS CHURCH AND THE CHURCH SAYS,
12 LOOK, WE CAN PROVIDE YOU A LITTLE ASSISTANCE WITH THE RENT
13 OR A LITTLE LOAN OR SOMETHING AND THEY COME IN AND, AND,
14 AND HELP WITH HIS LIVING EXPENSES THAT'S NOT VIEWED IN THE
15 LAW AS A SUBSTITUTION FOR THE WAGES. THAT WOULD BE A
16 COLLATERAL SOURCE AND THIS IS ANOTHER EXAMPLE OF THE
17 DEFENDANTS TRYING TO PUSH THE BLAME OFF ON SOMEBODY ELSE,
18 OKAY, AND, AND JUST REMEMBER THAT RULE, COLLATERAL SOURCE
19 RULE; AND IF YOU WERE TO CONSIDER OTHER SOURCES OF PAYMENT,
20 YOU KNOW, THERE'S A BUNCH OF OTHER POSSIBLE SOURCES OF
21 PAYMENT BUT IF YOU WERE TO CONSIDER COLLATERAL SOURCES YOU
22 AS THE JURORS WOULD BE VIOLATING YOUR OATH BECAUSE YOU TOOK
23 AN OATH TO BE THE JUDGES OF THE FACT NOT THE JUDGES OF THE
24 LAW.

25 ALL RIGHT, DAMAGES. YOU KNOW EVERYBODY SAYS

1 LAWSUITS ARE ALL ABOUT MONEY, ALL THIS KIND OF STUFF, LET'S
2 THINK ABOUT DAMAGES FOR A MINUTE. DAMAGES YOU'LL SEE A
3 COUPLE DIFFERENT TYPES OF DAMAGES. THE FIRST THING THAT
4 YOU'RE GOING TO HEAR ABOUT IS CALLED COMPENSATORY DAMAGES,
5 OKAY. YOU'RE COMPENSATING THE VICTIM OF WRONGDOING FOR THE
6 INJURIES THAT HE'S SUFFERED, AND THE JUDGE WILL TELL YOU
7 THERE'S A BUNCH OF DIFFERENT KINDS OF COMPENSATORY DAMAGES.

8 ONE WOULD BE MEDICAL BILLS AND, AND MR. GAUSE
9 TESTIFIED, YOU'LL HAVE THIS SUMMARY, THIS IS EXHIBIT 1; THE
10 VERY FIRST THING WE PUT IN IS A SUMMARY OF THE MEDICAL
11 BILLS. NONE OF THESE WERE REALLY CHALLENGED AT ALL OTHER
12 THAN WELL MAYBE THEY'RE CAUSED BY PUSHING THE CAR OUT OF
13 THE ROAD BUT AGAIN THAT'S ALL PART OF THE SAME PROXIMATE
14 CAUSE CHAIN. MEDICAL BILLS YOU'LL SEE THEM, THEY'RE VERY
15 DETAILED. THE DATES OF SERVICE, THE HEALTH CARE PROVIDER,
16 THE DESCRIPTION OF THE SERVICE, THE BILL AMOUNT, AND THEN
17 THE REFERENCE FOR THE DOCUMENTS, YOU KNOW, WHERE WE
18 PROVIDED COPIES OF THE BILLS. \$155,000 IN MEDICAL BILLS,
19 155,432.64, THAT'S AN ELEMENT OF DAMAGES, LADIES AND
20 GENTLEMEN.

21 YOU HEARD MR. GAUSE TALK ABOUT HE IS OUT OF WORK
22 FOR A WHILE. I THINK HE HAD, HAD A LOT OF, A LOT OF
23 MEDICAL TREATMENT AND THERE'S A LOT OF DAYS HE DIDN'T FEEL
24 GOOD, SO WE, WE CALCULATED HIS, A VALUE OF HIS LOST WAGES.
25 HE WAS MAKING 10.50 AN HOUR WHEN HE STARTED. HE WAS OUT OF

1 WORK FOR EIGHT WEEKS. WE WENT THROUGH THAT CALCULATION.
2 HE GOT A RAISE, YOU KNOW, AFTER HE HAD BEEN THERE FOR A
3 WHILE. HE GOT ONE UP TO 10.76 AN HOUR, SO MR. GAUSE
4 CALCULATED HIS LOST WAGES WHEN HE HAD TO MISS WORK, YOU
5 KNOW, BECAUSE OF THIS WRECK AND WE CALCULATED THE VALUE OF
6 THAT TIME AND HE USED THE AVERAGE NUMBER OF HOURS THAT HE
7 WORKED IN A WEEK WHICH HE TESTIFIED WAS ABOUT FIFTY TWO.

8 NOW THE JUDGE WILL TELL YOU THAT A PLAINTIFF,
9 SOMEBODY WHO'S INJURED DOES NOT HAVE TO PROVE HIS OR HER
10 DAMAGES TO A MATHEMATICAL CERTAINTY. AS LONG AS THERE'S
11 EVIDENCE TO SUPPORT YOUR AWARD YOU CAN AWARD DAMAGES,
12 ACTUAL DAMAGES BASED ON THE TESTIMONY.

13 NOW THE OTHER TYPE OF DAMAGES I WANT TO TALK TO
14 YOU ABOUT HERE, WELL BEFORE WE GET TO THAT THERE'S ANOTHER
15 TYPE OF ACTUAL DAMAGE. WE DO HAVE SOME FINANCIAL DAMAGES,
16 MEDICAL BILLS AND THE LOST WAGES, AND I THINK MR. GAUSE
17 TESTIFIED, YA'LL REMEMBER THE TESTIMONY, IT WAS ABOUT
18 \$40,000 AND THEN HE DID EARN SOME MONEY AT THE PI FOR
19 WHATEVER, IT WASN'T \$100 AN HOUR LIKE MR. CONNELL TRIED TO
20 SUGGEST, IT WAS \$10 AN HOUR; AND HE MADE A TOTAL OF \$1300
21 FOR THAT JOB WHERE HE WAS THE PI, PRIVATE INVESTIGATOR, FOR
22 THAT MURDER CASE UP IN I THINK IT WAS MARLBORO COUNTY OR
23 DILLON OR SOMEWHERE LIKE THAT. SO WE, EVEN IF YOU DEDUCT
24 THAT OUT THE MONEY HE WAS ABLE TO EARN DURING THAT PERIOD
25 OF TIME WE'RE TALKING ABOUT 30, YOU KNOW, EIGHT TO \$40,000

1 IN LOST WAGES. THAT'S WHAT MR. GAUSE IS, IS ASKING YOU
2 FOR.

3 THE JUDGE WILL ALSO TELL YOU THAT YOU CAN GET
4 FUTURE DAMAGES FOR FUTURE LOST WAGES AND THINGS LIKE THAT.
5 YOU HEARD DR. MILLS SAY THAT RIGHT BEFORE THE SURGERY HE
6 WAS, HE GAVE MR. GAUSE A FIFTEEN PERCENT IMPAIRMENT RATING.
7 YOU KNOW FIFTEEN PERCENT THAT MAY NOT SOUND LIKE A WHOLE
8 LOT BUT WHEN YOU THINK ABOUT IT FIFTEEN PERCENT, IF YOU
9 LOST FIFTEEN PERCENT OF YOUR CAPACITY OR YOUR, YOUR
10 FUNCTIONING IN YOUR BODY THAT WOULD BE A VERY DIFFICULT
11 THING TO DO ESPECIALLY IF YOU WERE A POLICE OFFICER AND
12 PART OF YOUR JOB INVOLVED PICKING UP THINGS AND BENDING
13 OVER AND BEING IN THE CAR ALL DAY. BUT CAN YOU IMAGINE IF,
14 IF YOU CAN ONLY BEND EIGHTY FIVE PERCENT OF THE WAY DOWN TO
15 PICK UP THE GUN OFF THE GROUND, I MEAN YOU'D STILL BE OFF
16 THE GROUND A LITTLE BIT. YOU MIGHT NOT BE ABLE TO GET THAT
17 GUN, SO IF YOU HAD A FIFTEEN PERCENT IMPAIRMENT RATING YOU
18 MAY NOT BE ABLE TO BE A POLICE OFFICER. THERE IS EVIDENCE
19 IN THE RECORD TO SUPPORT THAT CLAIM FOR FUTURE DAMAGES AND
20 IF YOU BELIEVE THAT THAT'S APPROPRIATE YOU CAN AWARD FUTURE
21 DAMAGES TO MR. GAUSE.

22 NOW ANOTHER TYPE OF ACTUAL DAMAGES OR
23 COMPENSATORY DAMAGES IS NOT, YOU KNOW, SOMETHING THAT'S
24 EASILY TRANSLATABLE INTO MONEY, OKAY, AND IT'S CALLED PAIN
25 AND SUFFERING OR EMOTIONAL DISTRESS AND I WANT YOU TO GIVE

1 THIS A LOT OF THOUGHT BECAUSE IT IS PROBABLY THE TOUGHEST
2 PART OF YOUR JOB IN THIS CASE TODAY IS, IS PUTTING A VALUE
3 ON THE PAIN AND SUFFERING THAT MR. GAUSE WENT THROUGH.
4 IMAGINE THE PAIN AND THE, I MEAN INITIALLY THE SHOCK HE HAD
5 A LOT AND THE FIRST IMPACT. I MEAN I CAN'T IMAGINE, YOU
6 KNOW, WHAT THAT WOULD FEEL LIKE AND THEN, YOU KNOW, YOU
7 TALK ABOUT HAVING PAIN IN YOUR BACK AND NUMBNESS RATING
8 DOWN YOUR LEGS, WE'RE TALKING ABOUT MONTHS AND MONTHS AND
9 MONTHS OF PAIN, AND HE TRIES A FEW THINGS. THEY PUT A BIG
10 NEEDLE ABOUT THAT LONG IN HIS BACK TO TRY AND BLOCK SOME OF
11 THE PAIN AND IT WORKED FOR A LITTLE WHILE THEN IT WORE OFF.
12 YOU HEARD DR. MILLS TESTIFY THOSE THINGS ONLY LAST A COUPLE
13 OF WEEKS, MAYBE A COUPLE OF MONTHS AT BEST, AND THE MOST, I
14 HAD KIND OF FORGOTTEN ABOUT THIS UNTIL THE DEPOSITION WAS
15 READ, BUT I THINK ONE OF THE MOST EGREGIOUS, THE MOST
16 PAINFUL THINGS HE HAD TO DO WAS CALLED A DISCOGRAM, OKAY?
17 AND I DON'T KNOW IF YOU REMEMBER THIS TESTIMONY BUT THE
18 DISCOGRAM THEY'RE TRYING TO FIND OUT WHAT NERVE IN, IN MR.
19 GAUSE'S BACK IS ACTUALLY CAUSING THE PAIN AND THE FACET
20 INJECTIONS SOUND PRETTY PAINFUL TO ME, BUT THEY WERE UNDER
21 SOME SORT OF ANESTHESIA. YOU KNOW THEY PUT SOME NUMBING
22 MEDICINE SO YOU DON'T FEEL THE NEEDLE GOING INTO THE BACK
23 BUT THE DISCOGRAM IS DONE WHILE YOU'RE FULLY AWAKE AND
24 THEY, THEY, THEY CAN'T PUT ANY KIND OF NUMBING IN YOUR
25 BACK. THEY'VE GOT TELL WHERE IT HURTS WHEN SO WHAT THEY,

1 WHAT THEY DO IS YOU SIT SOMEWHERE AND THE DOCTOR IS BEHIND
2 YOU SO YOU CAN'T SEE HIM AND HE POKES YOU IN THE BACK WITH
3 A NEEDLE AND SO HE'S INTENTIONALLY TRYING TO SAY WELL WHERE
4 IS IT HURTING YOU THE MOST. I MEAN CAN YOU IMAGINE SITTING
5 THERE AND HAVING A DOCTOR POKE YOU IN THE BACK TO FIND OUT
6 WHERE IT HURTS THE MOST AND THE WAY HE FINDS OUT IF HE'S
7 GOT THE RIGHT SPOT IS HE WATCHES YOUR FACE TO SEE HOW MUCH
8 PAIN YOU'RE IN WHEN HE PUTS THAT NEEDLE IN AND ONCE HE GETS
9 TO THE RIGHT THING HE STRIKES THAT NERVE. GOD, THAT'S GOT
10 TO HURT. AND MR. GAUSE, I MEAN YOU SAW HIM COME UP AND
11 TAKE THE STAND, HE'S NOT ASKING YOU FOR ANYTHING MORE THAN
12 WHAT HE DESERVES. HE'S NOT ASKING YOU FOR A HAND OUT, YOU
13 KNOW, HE, BUT, YOU KNOW, AND, AND I DON'T THINK HE'S THE
14 KIND OF PERSON THAT'S GOING TO COMPLAIN BUT HE CAN'T BEND
15 OVER TO PICK SOMETHING UP LIKE HE USED TO. HE CAN'T REACH
16 DOWN AND DO SOMETHING LIKE THAT. HE'S GOT TO KEEP HIS BACK
17 STRAIGHT AND TRY AND FIGURE OUT HOW TO PICK SOMETHING UP
18 OFF THE GROUND. HE CAN'T THROW HIS DAUGHTER UP IN THE AIR
19 ANYMORE. HIS SON OBVIOUSLY IS TOO OLD FOR THAT OR TOO BIG
20 FOR THAT, BUT, BUT, YOU KNOW, HE CAN'T DO THAT WITH, WITH
21 HIS, WITH HIS BACK CONDITION ANYMORE. HE HAS TWO TITANIUM
22 RODS IN THE LOWER PART OF HIS BACK THAT ARE FUSING TWO
23 BONES TOGETHER AND THAT'S GOING TO BE THERE FOR THE REST OF
24 HIS LIFE.

25 YOU REMEMBER DR. MILLS TESTIFIED THAT THOSE DISCS

1 ARE KIND OF LIKE JELLY DOUGHNUTS AND ONCE YOU, HE SAID YOU
2 CAN'T PUT THE JELLY BACK IN ONCE IT SQUIRTS OUT OF THERE SO
3 MR., AT THIS POINT THERE'S NO CURE FOR THAT. I MEAN YOU
4 CAN SORT OF TRY AND ALLEVIATE SOME OF THE PAIN, BUT THAT
5 GELATINOUS MATERIAL FROM INSIDE THAT DISC THAT'S BEEN
6 HERNIATED AND TORN IS GOING TO BE WITH MR. GAUSE FOR THE
7 REST OF HIS LIFE.

8 NOW THEY MAY SOME DAY COME UP WITH AN ADVANCE
9 WHERE YOU CAN ACTUALLY REPLACE THAT DISC, BUT THAT HASN'T
10 HAPPENED YET AND THAT WOULD INVOLVE ANOTHER SURGERY,
11 ANOTHER REHABILITATION PERIOD, ANOTHER, YOU KNOW, STAY IN
12 THE HOSPITAL, MORE PAIN AND SUFFERING. THIS IS GOING TO BE
13 WITH MR. GAUSE FOR THE REST OF HIS LIFE, LADIES AND
14 GENTLEMEN, AND THE JUDGE WILL TELL YOU THAT THAT'S A THING
15 THAT YOU CONSIDER IN AWARDING OF DAMAGES, TRYING TO
16 COMPENSATE MR. GAUSE AND, AND TRULY, YOU KNOW, NO AMOUNT OF
17 MONEY IN THE WORLD IS GOING TO PUT HIM IN THE SAME POSITION
18 THAT HE WAS IN BEFORE THIS WRECK. BUT THE WAY THE LEGAL
19 SYSTEM WORKS THAT'S THE BEST WE GOT AND THAT'S CALLED
20 COMPENSATORY DAMAGES, AND THE JUDGE WILL TELL YOU THERE'S
21 SEVERAL DIFFERENT TYPES OF, OF NON ECONOMIC LOSSES. YOU'VE
22 GOT PAIN AND SUFFERING. YOU'VE GOT LOSS OF ENJOYMENT OF
23 LIFE. YOU'VE GOT EMOTIONAL DISTRESS. THOSE ARE ALL PART
24 OF ACTUAL DAMAGES. THOSE ARE THE THINGS THAT COMPENSATE
25 MR. GAUSE FOR ACTUAL HARM.

1 NOW THE LAST TYPE OF DAMAGES I WANT TO TALK TO
2 YOU ABOUT ARE CALLED PUNITIVE DAMAGES. PUNITIVE DAMAGES
3 ARE DESIGNED BY THE LAW TO SERVE SEVERAL DIFFERENT
4 PURPOSES. CERTAINLY YOU WANT TO PUNISH THE PERSON WHO DID
5 WRONG, OKAY. YOU WANT TO PUNISH NATHAN DALE SMITHERS FOR
6 DRIVING DRUNK. YOU WANT TO PUNISH HIM FOR SPEEDING AND
7 SLAMMING INTO THE BACK OF THE PATROL CAR WITHOUT EVEN
8 HITTING THE BRAKES. YOU WANT TO PUNISH HIM FOR GOING INTO
9 THE JAIL THAT DAY AND BRAGGING ABOUT PLOWING INTO THE
10 PATROL CAR. YOU WANT TO PUNISH HIM, BUT, BUT PUNITIVE
11 DAMAGES ALSO DO SOMETHING ELSE. THEY SERVE AS A DETERRENT
12 FOR FUTURE CONDUCT AND THERE'S TWO TYPES OF DETERRENTS.
13 ONE IS CALLED GENERAL DETERRENTS. THEY'RE GOING TO TRY AND
14 DETER THE REST OF THE WORLD FROM ACTING LIKE MR. SMITHERS
15 DID, OKAY. IF A PUNITIVE DAMAGES AWARD IS ANNOUNCED ON THE
16 NEWS OR IN THE PAPER THAT THIS PERSON DROVE DRUNK, WAS
17 DRUNK AND DROVE A CAR AND HURT SOMETHING AND HE WAS
18 ASSESSED PUNITIVE DAMAGES THAT MAY CONVINCE THE NEXT PERSON
19 NOT TO DRIVE DRUNK. THAT'S CALLED GENERAL DETERRENTS AND
20 THERE'S SOMETHING CALLED SPECIFIC DETERRENTS.

21 YOU'RE GOING TO TRY AND IF YOU, IF YOU GIVE A
22 VERDICT AGAINST MR. SMITHERS FOR PUNITIVE DAMAGES MAYBE
23 THAT WILL SERVE AS A LESSON TO HIM NOT TO DO THAT KIND OF
24 FUTURE, CONDUCT IN THE FUTURE. THAT'S CALLED SPECIFIC
25 DETERRENTS WHERE YOU TRY TO DETER ONE SPECIFIC PERSON, AND

1 THERE'S ALSO SOMETHING THAT THE JUDGE WILL TELL YOU ABOUT,
2 ANOTHER SOURCE, ANOTHER I GUESS THE PURPOSE OF PUNITIVE
3 DAMAGES AND THAT'S VINDICATE THE RIGHTS OF THE PLAINTIFF,
4 VINDICATE THE RIGHTS OF THE PLAINTIFF. SO AND, AND THE
5 AMOUNT OF PUNITIVE DAMAGES THAT IT'S GOING TO TAKE TO SERVE
6 THOSE DETERRENTS PURPOSES AND TO PUNISH PEOPLE IS ENTIRELY
7 UP TO YOU, LADIES AND GENTLEMEN OF THE JURY.

8 NOW, YOU KNOW, I KNOW THAT MR. CONNELL IS GOING
9 TO GET UP HERE AND SAY WELL, YOU KNOW, HE REPRESENTS THE
10 FATHER. THE FATHER DIDN'T DO ANYTHING WRONG, THEREFORE,
11 YOU SHOULDN'T ASSESS PUNITIVE DAMAGES AGAINST THE FATHER
12 BECAUSE THE FATHER DOESN'T NEED TO BE PUNISHED. HE WAS
13 HOME SLEEPING IN HIS BED, BUT THE PUNITIVE DAMAGES WOULDN'T
14 DETER THE FATHER THAT'S, OR PUNISH THE FATHER, THAT'S NOT
15 WHY PUNITIVE DAMAGES. PUNITIVE DAMAGES WILL BE DETER
16 EDWARD RAYMOND HUNT FROM FUTURE CONDUCT. IT WOULD DETER
17 OTHER PEOPLE FROM FUTURE CONDUCT AND THE JUDGE WILL TELL
18 YOU UNDER THAT FAMILY PURPOSE DOCTRINE LAW THAT IF YOU CAN
19 SHOW THAT THE HEAD OF THE HOUSEHOLD FURNISHED THE CAR,
20 OWNED THE CAR, OR MAINTAINED THE CAR, THOSE ARE OR'S NOT
21 AND'S, OR MAINTAINED THE CAR FOR THE GENERAL PURPOSES OF
22 HIS FAMILY FOR THE PLEASURE, CONVENIENCE, OR USE OF HIS
23 FAMILY MEMBERS AND THAT FAMILY MEMBER HURTS SOMEBODY THE
24 FATHER STANDS IN THE SHOES OF THE WRONGDOER, OKAY? SO IF
25 YOU'RE PUNISHING EDWARD RAYMOND HUNT THE WAY, JUST THE WAY

1 THE LAW IS SET UP, YOU HAVE TO PUNISH THE FATHER AND, YOU
2 KNOW, IT'S UNFORTUNATE BUT AGAIN IT'S NOT JUST PUNISHMENT
3 THAT PUNITIVE DAMAGES DO, THEY SERVE AS A DETERRENT AND A
4 VINDICATION OF THE PLAINTIFF'S RIGHTS.

5 NOW, LADIES AND GENTLEMEN, YOU'LL RECALL AT THE
6 BEGINNING OF THIS CASE I THINK I USED THE, THE, THE MOTTO
7 TO SERVE AND PROTECT. THAT'S HOW WE STARTED THIS TRIAL
8 WITH THE PHRASE TO SERVE AND PROTECT AND AGAIN THAT'S WHAT
9 LED DON GAUSE INTO BEING A POLICE OFFICER. I THINK ONE OF
10 THE GREATEST, I MEAN I THINK YOU AS CITIZENS OF HORRY
11 COUNTY SHOULD BE PROUD OF THE LAW ENFORCEMENT OFFICER THAT
12 TOOK THE STAND, J.C. GRAHAM, THE TROOPER, WHAT, ALMOST
13 TWENTY YEARS OF SERVICE TO THE COUNTY AND TO THE STATE OF
14 SOUTH CAROLINA. DETECTIVE WILLIAMSON CAME IN HERE, THEY

15 SEEMED LIKE FANTASTIC GUYS. I WOULD BE PROUD TO LIVE IN
16 THIS COMMUNITY AND HAVE THEM AS POLICE OFFICERS. I THINK
17 ONE OF THE GREATEST TRAGEDIES IN THIS CASE IS THAT THE
18 COMMUNITY OF CONWAY LOST AN OFFICER LIKE DON GAUSE. NOW
19 YOU SAW MR. GAUSE UP HERE AND I, AND AGAIN, YOU KNOW,
20 SOMETHING THAT YOU CAN TRY TO DO TO VINDICATE THAT LOSS.

21 NOW, LADIES AND GENTLEMEN OF THE JURY, THIS SERVE
22 AND PROTECT IDEA JURY SERVICE IS YOUR OPPORTUNITY HERE TO
23 SERVE AND PROTECT, OKAY. JURY SERVICE IS A WONDERFUL
24 EXPERIENCE. I KNOW WHEN YOU FIRST GOT OVER HERE THE OTHER
25 DAY AND THERE WAS KIND OF A CATTLE CALL, THERE'S A LOT OF

1 INCONVENIENCE ON IT, BUT I THINK IT WAS WINSTON CHURCHILL
2 THAT SAID THAT JURY SERVICE IS THE GREATEST PUBLIC SERVICE
3 YOU CAN DO IN A TIME OF PEACE. OTHER THAN SERVING IN THE
4 MILITARY JURY SERVICE IS THE GREATEST PUBLIC SERVICE YOU
5 CAN HAVE AND I, I THANK YOU FOR YOUR SERVICE AND AGAIN THIS
6 IS YOUR OPPORTUNITY TO SERVE. IT'S ALSO YOUR OPPORTUNITY
7 TO PROTECT. YOU'RE PROTECTING THE CITIZENS OF HORRY COUNTY
8 FROM OTHER NATHAN DALE SMITHERS, OTHER RAYMOND, EDWARD
9 RAYMOND HUNT'S WHO ARE DANGEROUS ON THE ROAD.

10 I THANK YOU FOR YOUR TIME AND I THANK YOU FOR
11 YOUR VERDICT. I'M GOING TO PUT THESE OVER HERE, THANK YOU,
12 JUDGE.

13 THE COURT: THANK YOU. MR. LAWSON?

14 MR. LAWSON: PLEASE THE COURT, THANK YOU, YOUR
15 HONOR.

16 **CLOSING ARGUMENT**

17 **BY MR. LAWSON:**

18 MADAM FORELADY AND LADIES AND GENTLEMEN, IT'S
19 BEEN AN INTERESTING TWO AND A HALF DAYS FOR US AND ON
20 BEHALF OF MR. SMITHERS I THANK YOU FOR YOUR SERVICE BECAUSE
21 NO MATTER WHAT YOUR VERDICT IS YOU'RE GOING TO DO YOUR JOB
22 AS YOUR HONOR CHARGES YOU AND WE'RE ALL THANKFUL FOR THAT.

23 YOU KNOW WHEN THIS CASE GETS STARTED YOU DO THE
24 THINGS YOU DO AS A LAWYER, YOU GO THROUGH THINGS, THE WORD
25 THAT COMES TO MY MIND A LITTLE BIT IS PERPLEXED, BECAUSE

1 THERE'S NO DOUBT THAT THE ONE THING THAT'S CRYSTAL CLEAR IN
2 THIS CASE IS THAT MY CLIENT SMASHED INTO THE BACK OF HIS
3 PATROL CAR, NO QUESTION ABOUT IT. I TOLD YOU THAT WHEN I
4 STOOD UP TO TALK TO YOU, I TELL IT TO YOU NOW. THERE'S NO
5 EXCUSE FOR WHAT HE DID, ABSOLUTELY NO EXCUSE, NOT GOING TO
6 TRY TO MAKE AN EXCUSE, BUT THEN THE PERPLEXION COMES FROM
7 WHERE WE ARE TODAY, ALMOST SEVEN AND A HALF YEARS LATER.

8 THE FIRST THING THAT PERPLEXES ME IS WHY THIS MAN
9 HAS BEEN SITTING AT THE TABLE ALL DAY, OR FOR TWO DAYS.
10 THAT DOES PERPLEX ME AND I DON'T REPRESENT HIM, I REPRESENT
11 MR. SMITHERS. BUT IT'S A PERPLEXING THING TO ME AS TO WHY
12 DID THEY SUE HIM. THEY SAY WELL IT'S THIS FAMILY PURPOSE
13 DOCTRINE, YOU KNOW, WE'RE GOING TO GET TO HIM THROUGH, GET
14 TO THE SON'S ACTIONS THROUGH HIM AND THAT'S WHY THEY, THEY,
15 THEY SET IT UP THAT WAY, BUT WHAT'S PERPLEXING ABOUT IT AND
16 HE DOESN'T EVEN REALLY GET TO THAT, IT'S GET TO WHAT'S
17 CALLED PROXIMATE CAUSE AND, YOU KNOW, MR. ROTHSTEIN TALKED
18 ABOUT THAT. BUT LIKE I SAID, WE CAUSED THIS ACCIDENT. BUT
19 MR. HUNT STOPS, HIS CAR IS TAKEN AWAY, HE'S NOT EVEN THERE.
20 TIME GOES BY, AND THAT'S IMPORTANT WHEN YOU'RE TALKING
21 ABOUT CAUSATION, TIME GOES BY, AND THEN MY CLIENT HITS THE
22 PATROL CAR AND I, SO THAT'S ONE THING THAT'S PERPLEXING TO
23 ME. AND SO, YOU SAY WELL WHY ARE YOU EVEN TALKING ABOUT
24 IT, MR. LAWSON? YOU REPRESENT MR. SMITHERS AND I THINK
25 I'LL TIE IT ALL IN AS WE MOVE FORWARD.

1 THE NEXT THING THAT IS PERPLEXING TO ME IS THE
2 CLAIM THAT THE SURGERY IS RELATED TO THE ACCIDENT. NOW WHY
3 ARE THEY DOING THAT? WELL I TOLD YOU WHEN I STOOD UP AND
4 TALKED TO YOU THE DIFFERENCE IN THAT IS PRETTY BIG. YOU'LL
5 HAVE PLAINTIFF'S EXHIBIT 1 WITH YOU IN, IN THE ROOM TO LOOK
6 AT AND PLAINTIFF'S EXHIBIT 1, AND YOU DON'T HAVE TO TAKE MY
7 WORD FOR IT, BUT I, I DID A LITTLE MATH ON PLAINTIFF'S
8 EXHIBIT 1 AND YOU'VE HEARD A LOT OF TESTIMONY ABOUT DATES,
9 A LOT OF TESTIMONY ABOUT DATES. THE DATE THAT STANDS OUT
10 IS NOVEMBER 15TH WHEN THIS TRAGIC THING HAPPENED. JANUARY
11 16TH HE HAS AN INJECTION, BUT BEFORE THAT ON JANUARY 13TH,
12 THIS IS IMPORTANT, LADIES AND GENTLEMEN, ON JANUARY 13TH HE
13 TALKED, WHEN I SAY HE, MR. GAUSE, HE, HE TALKED TO TODD
14 BEEBE OR DR. MILLS AND SAID I WANT TO GO BACK FULL TIME TO
15 WORK AND HE DID. THEY RELEASED HIM TO GO BACK TO WORK.
16 THIS PRETTY IMPORTANT THAT ON THE 13TH OF JANUARY HE'S
17 SAYING I WANT TO GO BACK FULL TIME TO WORK AND SO THEN HE
18 GOES BACK IN MARCH AND HE'S, HE'S BEEN RELEASED FULL TIME
19 AND HE SEES HIM AGAIN IN MARCH AND HE DOESN'T SEE HIM AGAIN
20 UNTIL OCTOBER AFTER PUSHING THAT CAR AND THEY WANT TO KIND
21 OF DOWN PLAY THAT AND SAY WE'RE TRYING TO BLAME OTHER
22 PEOPLE. I'M NOT TRYING TO BLAME ANYBODY ELSE AND I'LL TIE
23 THAT IN IN JUST A MINUTE. I'M JUST TALKING ABOUT THE
24 FACTS.

25 FACTS ARE WHAT DID HE SAY? "I WAS PUSHING THAT

1 CAR AND I HEARD AND FELT A POP," THAT'S BIG. I HEARD AND
2 FELT A POP, THINK ABOUT THAT, ALL RIGHT, AND WE'LL TIE THAT
3 IN. BUT LET'S TALK ABOUT ON NUMBER ONE IS THAT IF YOU TAKE
4 THE MEDICAL BILLS THAT WERE INCURRED THROUGH MARCH,
5 ACTUALLY THE LAST ONE ON HERE IS, IS JANUARY OF 2004. BUT
6 YOU TAKE THE THINGS INCURRED THROUGH MARCH OF 2004 AND ADD
7 THEM UP, AND YA'LL WELCOME TO DO THAT, BUT I CAME UP WITH
8 \$19,496.50, \$19.496.50, AND YOU'LL HAVE THAT TO TAKE A LOOK
9 AT.

10 AND THEN I ALSO PAID CLOSE ATTENTION TO WHAT HE
11 WAS CLAIMING ABOUT HIS TIME AWAY FROM WORK AND HE, HE
12 AGREED WITH THAT THAT HE MISSED ABOUT EIGHT WEEKS FROM
13 NOVEMBER 16TH TO JANUARY 13TH BEFORE HE WENT BACK TO FULL
14 TIME RELEASED BY THE DOCTOR. SO THAT PERPLEXES ME AND WHY
15 IS THAT? SO WELL, YOU KNOW, WE HAD THIS DEPOSITION OF DR.
16 MILLS, AND THAT WAS STRANGE THE WAY THAT WENT BUT THEY
17 CALLED HIM YESTERDAY BUT THE DEPOSITION WAS TAKEN BACK IN
18 JULY 2010 SIX MONTHS AGO AND YA'LL HEARD THE TESTIMONY. I
19 MEAN IT'S A BORING WAY TO PRODUCE IT BUT THE RULES ALLOW US
20 TO DO THAT SO THE DOCTOR DOESN'T HAVE TO TAKE TIME OUT OF
21 HIS BUSY SCHEDULE TO SIT THERE AND DO THAT; BUT YOU HEARD
22 THE TESTIMONY SIX MONTHS AGO. WELL YOU HEARD IT TODAY BUT
23 AND WHAT WAS THAT? I CANNOT RELATE THE SURGERY TO THE
24 ACCIDENT. I CANNOT SAY TO A REASONABLE DEGREE OF MEDICAL
25 CERTAINTY THAT THAT ACCIDENT CAUSED THE NECESSITY OF THE

1 SURGERY. I CAN TELL YOU THAT HE MAY HAVE HAD A HERNIATED
2 DISK. I CAN TELL YOU THAT HIS DISKS WERE DRIED OUT. I CAN
3 TELL YOU THAT'S PART OF THE AGING PROCESS BUT I CAN'T MAKE
4 THAT JUMP, SO I WAS PERPLEXED ABOUT THAT. AGAIN WHY AM I,
5 THE PERPLEXIONS OF THIS WHY THIS CASE HAS CAUSED ME, NOT
6 BECAUSE MY CLIENT DID SOMETHING ATROCIOUS, THAT'S ONE THING
7 THAT DOES NOT PERPLEX ME ABOUT THIS CASE.

8 ANOTHER THING HE SAID THAT, AND I, AND LIKE I
9 SAID I LIVE AND LOVE CONWAY. I LIVE IN CONWAY, I'VE BEEN
10 HERE SINCE 1983, I LOVE CONWAY, BUT HE SAID CONWAY LOST A
11 GOOD A OFFICER. THEY DID BUT CHIEF GOSNELL OFFERED HIM A
12 JOB SO THAT PERPLEXED ME. HE WANTS TO BE AN OFFICER BUT HE
13 LEAVES AND GOES TO GEORGIA AND HE SAYS -- NOW MR. GAUSE IS
14 A GOOD MAN -- BUT HE SAYS, THE THING ABOUT THESE THINGS THE
15 PERPLEXIONS THAT I'M FACING WHEN I SEE HE TALKS ABOUT NOT
16 BEING ABLE TO PICK UP HIS DAUGHTER BUT YET HE'S LIVING IN
17 GEORGIA AND SHE'S LIVING HERE. SHE WAS BORN IN 19, IN
18 2003, HE MOVED IN 2005, THAT PERPLEXES ME. IF HE'S
19 CLAIMED, ON THE STAND SAID HE CAN'T DO THINGS AND JUST THE
20 THINGS I CAN'T PUT TOGETHER, I REALLY CAN'T. THE ONLY
21 THING I CAN PUT TOGETHER IS MY CLIENT WAS WRONG AND I'LL
22 KEEP SAYING THAT CAUSE I'M NOT, I NEVER DENIED IT AND WON'T
23 DENY IT, BUT THAT PERPLEXES ME. WHY, WHY GO, YOU KNOW,
24 MOVE TO GEORGIA, WHY LEAVE THE OPPORTUNITY TO DO WHAT YOU
25 SAY YOU LOVE TO DO AND YET YOU'RE IN GEORGIA AND NOW YOU'RE

1 GOING TO THE SAME PLACES IN GEORGIA TRYING TO GET A JOB
2 THAT THE CHIEF OF POLICE IN CONWAY, SOUTH CAROLINA, OFFERED
3 YOU SIX YEARS AGO, THAT PERPLEXES ME.

4 YOU KNOW IT'S TOUGH CAUSE I KNOW YOU'RE SAYING
5 WELL MR. LAWSON YOU KNOW YOUR GUY AIN'T EVEN HERE, WHERE IS
6 HE? I TELL YOU I DON'T KNOW WHERE HE IS, BUT HE'S NOT
7 HERE. I DON'T KNOW BECAUSE IF I KNEW WHERE HE WAS MAYBE
8 HE'D BE HERE, I DON'T KNOW WHERE HE IS. THINGS LIKE THAT
9 HAPPEN BUT I'M JUST TELLING YOU WHAT ARE THE FACTS OF THIS
10 CASE, WHAT WE KNOW SO FAR, AND THAT'S WHAT'S, WHEN I STOOD
11 UP HERE THE OTHER DAY WHEN THIS STARTED THAT'S HOW THIS
12 WHOLE THING GOT STARTED. IT'S NOT THAT WE DON'T THINK MR.
13 GAUSE IS A GOOD MAN, WE JUST DEAL WITH THE FACTS. THIS
14 SIDE OF THE ROOM TRIES TO DEAL WITH THE FACTS AND, AND WE
15 LOOK AT IT AND SAY, OKAY, THERE'S A BAD ACCIDENT, YEAH.
16 YOU HEARD WHEN DR. MILLS TESTIFIED TAKE A LOOK AT THIS
17 EMERGENCY RECORD WHAT DID HE COMPLAIN ABOUT. HE COMPLAINED
18 ABOUT HIS NECK AND HIS LOWER EXTREMITIES, AND HIS CHEST, I
19 THINK, I MAY HAVE GOTTEN IT WRONG. BUT IT WAS CLEAR THAT
20 HE DIDN'T MAKE ANY SPECIFIC COMPLAINT ABOUT HIS BACK AND
21 YOU HEARD WHAT DR. MILLS ALSO SAID YOU WOULD EXPECT
22 SOMETHING WITH THE BACK BUT UNLESS YOU WERE EJECTED FROM
23 THE CAR, LANDED ON THE PAVEMENT PROBABLY, WOULDN'T EXPECT
24 THAT, YOU WOULD EXPECT MORE NECK ISSUES AND THEN WE FAST
25 FORWARD HE'S TO THE DOCTOR. HE'S TREATED FOR HIS BACK, HE

1 GETS BETTER, HE'S RELEASED, AND SEVEN MONTHS LATER HE HEARS
2 A POP AND HE HEARD OR FELT A POP AND THEN HERE WE GO AND
3 YOU HEARD WHAT DR. MILLS SAID, YOU CAN RUPTURE A DISK OR
4 CAUSE A PROBLEM OR SOMETHING TO SAY SYMPTOMATIC IN YOUR
5 BACK. PEOPLE DIE WITH RUPTURED DISKS AND DON'T EVEN KNOW
6 THEY HAVE IT BUT YOU CAN SNEEZE, COUGH, PICK SOMETHING UP,
7 PUSH A CAR, YOU CAN DO A LOT OF DIFFERENT THINGS AND THAT'S
8 WHY DR. MILLS SAYS HE COULDN'T RELATE THAT FIRST ACCIDENT
9 AND SAY THE SURGERY WAS NEEDED BECAUSE OF THAT ACCIDENT.
10 THAT'S EXACTLY WHAT HE SAID. SO THAT'S WHY WE'RE HERE.
11 THAT'S EXACTLY WHY WE'RE HERE THOSE, THOSE PERPLEXING
12 QUESTIONS THAT WE ASKED.

13 YOU KNOW ONE OF THE OTHER THINGS, TOO, IS THAT,
14 YOU KNOW, WE DON'T THINK THE SURGERY WAS NECESSITATED BY
15 THIS ACCIDENT BUT EVEN DR. MILLS SAID AFTER THE SURGERY YOU
16 OUGHT TO BE BETTER THAN YOU WERE BEFORE. THAT'S PERPLEXING
17 BECAUSE HE SAYS HE CAN'T PASS THE TEST AND HE CAN'T DO THIS
18 AND HE CAN'T DO THAT, AND AGAIN I'M NOT SAYING THAT BECAUSE
19 ANYTHING PERSONALLY TO MR. GAUSE. I THINK HE'S A NICE GUY.
20 I'M JUST PERPLEXED BY THOSE ISSUES AND THEN WHY THEY'RE
21 HERE TALKING ABOUT ALL THESE DAMAGES, TALKING ABOUT
22 \$155,000 IN MEDICAL BILLS, TALKING ABOUT PUNITIVE DAMAGES
23 AGAINST MY GUY AND HE WAS WRONG. I'VE TOLD YOU THAT, I'LL
24 GET OFF OF THAT. THEY'RE TALKING ABOUT PUNITIVE DAMAGES
25 AGAINST MR. HUNT, WHY, I THINK WE ALL KNOW THE ANSWER TO

1 THAT AND THAT'S KIND OF HARD FOR ME TO SAY CAUSE I
2 REPRESENT A GUY WHO WAS INTOXICATED AND RAN INTO THE BACK
3 OF HIM AND THAT'S KIND OF HARSH FOR ME TO SAY BUT I HAVE TO
4 SAY IT. I THINK WE ALL KNOW WHAT THIS IS ABOUT.

5 FAIR AND REASONABLE COMPENSATION THAT'S WHY WE'RE
6 HERE. YOUR VERDICT WILL SPEAK THE TRUTH. I WANT YOU TO GO
7 BACK IN YOUR JURY ROOM, USE YOUR GOOD COMMON SENSE, AND DO
8 WHAT'S RIGHT, DO WHAT'S RIGHT, FAIR AND REASONABLE
9 COMPENSATION AND EVERYBODY IN THIS COURTROOM WILL BE VERY
10 VERY HAPPY, THANK YA'LL VERY MUCH.

11 THE COURT: THANK YOU. MR. CONNELL?

12 MR. CONNELL: THANK YOU, YOUR HONOR.

13 CLOSING ARGUMENT

14 BY MR. CONNELL:

15 JUST CAUSE I'M PUTTING THE STUFF UP DOESN'T MEAN
16 I'M GOING TO BE THAT LONG SO I KNOW YA'LL HAVE BEEN SITTING
17 THERE A LONG TIME. WOW, I'M NOT GOING TO SIT UP HERE AND
18 TALK TO YOU ABOUT THE KING OF ENGLAND, SHAKESPEARE, BEN
19 FRANKLIN, AND WINSTON CHURCHILL. I WANT TO TALK TO YOU
20 ABOUT COMMON SENSE CAUSE THAT'S WHAT THIS CASE IS ALL
21 ABOUT. IT'S ABOUT USING YOUR COMMON SENSE AND WHEN YOU
22 THINK ABOUT THIS CASE AS EVERY ORDINARY PERSON DOES AND HE
23 SITS DOWN TO DECIDE WHAT THEY'RE GOING TO DO WHEN THEY
24 DISCIPLINE THEIR KID OR HOW THEY'RE GOING TO DO THINGS IN
25 THEIR REGULAR LIFE YOU REALIZE THAT THIS CASE BOILS DOWN TO

1 ONE THING. MR. HUNT WAS LIVING NEXT TO HIS SON AND HE SOLD
2 HIM A CAR AND HIS SON WAS AN ADULT AND HIS SON WAS TRYING
3 TO MAKE THE PAYMENTS AND HIS SON FREELY CAME AND WENT LIKE
4 EVERY ADULT DOES. DOES THAT MAKE HIM LIABLE FOR PUNITIVE
5 DAMAGES OR ACTUAL DAMAGES? YOUR COMMON SENSE TELLS YOU
6 RIGHT AWAY IT MAKES NO SENSE TO FIND MR. HUNT LIABLE FOR
7 ANYTHING DESPITE THE FACT FOR THE PAST SEVEN AND A HALF
8 YEARS HE'S BEEN WORRIED ABOUT WHAT'S GOING TO HAPPEN IN
9 THIS CASE.

10 REMEMBER IN THE BEGINNING I TOLD YOU THAT ANYBODY
11 CAN FILE A LAWSUIT, THERE ARE NO RESTRICTIONS ON LAWSUITS,
12 LADIES AND GENTLEMEN. YOU CAN FILE A LAWSUIT, IF YOU'VE
13 GOT A \$150 YOU CAN GO DOWNSTAIRS IN THIS COURTHOUSE AND YOU
14 CAN FILE A LAWSUIT AGAINST ANYBODY FOR ANY REASON AT ANY
15 TIME. NOBODY STANDS AT THE COURTHOUSE AND SAYS YOU CAN'T
16 SUE, NO ONE SAYS THAT. THAT'S WHAT YA'LL ARE HERE FOR.
17 YA'LL ARE HERE TO MAKE THOSE TOUGH DECISIONS. THAT'S WHY
18 YOU'RE GETTING PAID THE BIG \$25 A DAY TO SIT UP HERE AND
19 LISTEN TO US FOR THREE OR FOUR DAYS.

20 WHEN YOU LOOK AT THIS CASE, THOUGH, AND WHEN YOU
21 LOOK AT THE FACTS OF THE CASE YOU CLEARLY COME TO THE
22 CONCLUSION THAT THIS OLD GUY, HE'S, HE'S HAVING TO LEAVE
23 AND GO OUT BECAUSE HE'S A DIABETIC, THIS OLD FELLOW DIDN'T
24 DO A THING WRONG IN THIS CASE. SHAME ON THESE PEOPLE,
25 SHAME ON THEM FOR TRYING TO HOLD THIS MAN LIABLE FOR

1 SOMETHING LIKE THIS, AND NOT ONLY ACTUAL DAMAGES, PUNITIVE
2 DAMAGES, PUNISH HIM FOR WHAT, SELLING A CAR TO HIS SON AND
3 LETTING THE SON MAKE PAYMENTS ON IT, AND THIS CASE HAS
4 LARGER IMPLICATIONS THAN JUST WHAT WE'RE HERE ABOUT.

5 ALL OF US HAVE ADULTS IN OUR LIVES, UNCLES,
6 NEPHEWS, NIECES, ALL THESE PEOPLE, YOU'RE GOING TO SELL
7 THEM A CAR AND LET THEM GO DOWN THE HIGHWAY AND THEN
8 THEY'RE GOING TO SUE YOU FOR IT, ENOUGH IS ENOUGH. AS I
9 SAID IN THE BEGINNING YOU DON'T VISIT THE SINS OF THE
10 FATHER ON THE SON AND VICE VERSA. THEY MAKE A BIG DEAL
11 ABOUT THAT YOU JUST DON'T DO IT AND WHAT'S THE REASON FOR
12 IT BECAUSE IN AMERICA WE'RE ALL RESPONSIBLE FOR OUR OWN
13 ACTIONS. WE'RE ALL RESPONSIBLE FOR OUR OWN ACTIONS AND
14 THAT'S HOW THIS COUNTRY WAS FOUNDED IN THE BEGINNING AND
15 THAT'S WHERE IT SHOULD BE TODAY.

16 NOW THERE'S A COUPLE OF OTHER THINGS I THINK YOU
17 ALL NEED TO THINK ABOUT. THERE'S A WAY TO RESOLVE THIS
18 CASE EASILY AND I'M GOING TO MAKE A SUGGESTION AS TO HOW
19 YOU DO IT. YOU CAN FIND AGAINST MR. SMITHERS FOR AN AMOUNT
20 OF MONEY, HE WAS THE ONE THAT WAS DRIVING UNDER THE
21 INFLUENCE AND STRUCK MR. GAUSE IN THE REAR. YOU CAN FIND
22 AN AMOUNT OF MONEY AGAINST MR. SMITHERS AND YOU CAN ALSO
23 FIND THAT MR. HUNT DID NOTHING WRONG. THE TWO INNOCENT
24 PEOPLE WOULD GET WHAT THEY'RE ENTITLED TO. MR. GAUSE WOULD
25 GET HIS VERDICT; MR. HUNT WOULD GET HIS EXONERATION.

1 THERE'S ABSOLUTELY NOTHING WRONG WITH THAT AND THAT'S WHAT
2 YOU SHOULD DO.

3 NOW LET ME SHOW YOU HOW YOU DO THAT AND THE
4 REASON WHY I BROUGHT THIS LITTLE BOARD UP HERE WAS TO
5 EXPLAIN TO YOU SOMETHING CALLED THE VERDICT FORM. YOU'RE
6 GOING TO BE GIVEN AT THE END OF THE CASE, AFTER MR.
7 ROTHSTEIN GETS UP FOR FIFTEEN OR TWENTY MINUTES AND TALKS
8 ABOUT WHAT WE'VE TALKED ABOUT, YOU'RE GOING TO BE GIVEN A
9 CHARGE BY THE JUDGE, PROBABLY GOING TO TAKE THIRTY OR FORTY
10 MINUTES. HE'S GOING TO TALK ABOUT THE LAW AND THEN HE'S
11 GOING TO GIVE YOU A PIECE OF PAPER AT THE END AND ON THAT
12 PIECE OF PAPER HE'S GOING TO ASK YOU TO DO SOME THINGS AND
13 THE PERSON WHO'S THE FORELADY IS GOING TO HAVE TO SIGN AT
14 THE BOTTOM AND THERE'S TWO QUESTIONS TO BE ANSWERED. I'M
15 GOING TO WRITE THEM OUT FOR YOU BECAUSE THEN YOU'LL
16 UNDERSTAND EXACTLY WHERE WE ARE HERE.

17 THE FIRST QUESTION SAYS THAT SMITHERS HAS
18 ADMITTED NEGLIGENCE. AS MR. LAWSON HAS SAID NUMEROUS TIMES
19 IT'S HIS FAULT AND NO ONE ELSE'S. YOU'VE GOING TO SEE ON
20 THE FORM SMITHERS HAS ADMITTED NEGLIGENCE AND THEN YOU'RE
21 GOING TO HAVE A BLANK, WE THE JURY FIND THE BLANK DEFENDANT
22 HUNT OR THE BLANK PLAINTIFF, ALL RIGHT. SO THE FIRST THING
23 YOU HAVE IS A LITTLE BLOCK, WE THE JURY FIND FOR BLANK HUNT
24 FOR BLANK PLAINTIFF, OKAY. ALL YOU GOT TO DO IS CHECK THIS
25 BOX RIGHT HERE AND MR. HUNT IS LIABLE FOR NOTHING, THAT'S

1 ALL YOU HAVE TO DO. IF YOU WERE TO CHECK THIS BOX THEN YOU
2 WOULD FIND MR. HUNT AND MR. SMITHERS BOTH LIABLE. WE
3 SUGGEST THAT YOU CAN'T DO THAT AND SHOULDN'T DO IT AND IT'S
4 NOT FAIR TO DO THAT, SO WE WOULD SUGGEST THAT ALL YOU DO,
5 THE FIRST THING YOU GOT TO DO IS YOU ANSWER THIS QUESTION
6 THAT'S ON THE FORM, WE THE JURY FOR DEFENDANT HUNT, ALL
7 RIGHT.

8 THEN THE FORM GOES ON TO SAY IF YOU SELECTED
9 PLAINTIFF, IF YOU SELECTED DEFENDANT HUNT ABOVE THE
10 FOLLOWING TWO AMOUNTS ONLY APPLY TO DEFENDANT SMITHERS. SO
11 IF YOU PUT A (X) IN THIS BOX AND THE MONEY THAT YOU'RE
12 GOING TO AWARD IS ONLY GOING TO BE AGAINST MR. LAWSON'S
13 CLIENT AND YOU GOT TWO OTHER BLOCKS DOWN AT THE BOTTOM, "WE
14 THE JURY FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT
15 SMITHERS" AND A BLANK AMOUNT ACTUAL DAMAGES. "WE THE JURY
16 FIND FOR THE PLAINTIFF AGAINST DEFENDANT" IN BLANK AMOUNT
17 PUNITIVE DAMAGES, AND THEN THERE'S A LINE DOWN HERE FOR YOU
18 TO SIGN. SO WHEN YOU GET THE FORM IT, IT, IT LOOKS LIKE
19 IT'S A VERY DIFFICULT FORM TO READ AND UNDERSTAND BUT THE
20 FIRST QUESTION ASKS YOU IS MR. HUNT INVOLVED AT ALL AND IF
21 YOU PUT AN (X) RIGHT HERE MR. HUNT IS NOT INVOLVED THEN YOU
22 GO DOWN HERE AND YOU SIMPLY COME UP WITH A DOLLAR AMOUNT
23 FOR ACTUAL DAMAGES AND PUNITIVE DAMAGES AND THEN YOU SIGN
24 YOUR NAME ON THE BOTTOM, AND THAT IS NOT ONLY THE EASY WAY
25 BUT IT'S THE FAIR WAY. IT'S FAIR TO MR. HUNT; IT'S FAIR TO

1 MR. GAUSE, THE TWO PEOPLE WHO ARE INNOCENT IN WHAT HAPPENED
2 IN THIS CASE.

3 IT'S BEEN SAID BEFORE THAT REACHING A VERDICT IS
4 A DIFFICULT THING FOR 12 OF YA'LL; ALL OF YA'LL HAVE GOT TO
5 AGREE. EVERYBODY HAS GOT TO HAVE THEIR SAY WHEN YOU GET
6 BACK IN THERE, BUT THE TERM VERDICT MEANS TO SPEAK THE
7 TRUTH IN LATIN AND WHAT IT MEANS IS THAT WHEN YOU ALL COME
8 BACK OUT HERE YOU WILL HAVE SPOKEN THE TRUTH ABOUT WHAT
9 HAPPENED IN THIS CASE. AND AS I WAS COMING TO COURT TODAY
10 I WAS DRIVING UP 544 OVER THE OLD BRIDGE, I DON'T IF YOU
11 ALL GO OVER THE OLD BRIDGE, YOU KNOW, THE NEW BRIDGE AROUND
12 THE, 501 AROUND THE STEAM PLANT IS WHERE THE WRECK
13 OCCURRED. BUT IF YOU'VE LIVED IN HORRY COUNTY AS LONG AS I
14 HAVE WE ALWAYS WENT OVER THE OLD BRIDGE ON THE WAY HOME AND
15 ON THE WAY BACK TO THE COURTHOUSE, THERE'S A SERIES OF
16 LITTLE SIGNS PUT UP BY TO THE ROTARY CLUB. I DON'T KNOW IF
17 YA'LL HAVE EVER SEEN IT, BUT IF YOU COME BACK HERE TOMORROW
18 YOU OUGHT TO LOOK AT IT. IT'S FOUR SIGNS AS YOU GO OVER
19 THE BRIDGE PRESENTED BY THE ROTARY CLUB ABOUT THIS SIZE.
20 THE SIGNS HAVE FOUR ISSUES ON THEM. "IS IT TRUE," IS THE
21 FIRST ONE, YOU PASSED THAT. THE NEXT ONE SAYS, "IS IT FAIR
22 TO ALL CONCERNED." IF YOU USE THAT ROTARY TEST YOU WILL
23 KNOW THAT IT'S TRUE THAT MR. HUNT DIDN'T DO ANYTHING WRONG
24 AND THAT MR. GAUSE IS ENTITLED TO A VERDICT AND IF YOU GO
25 TO THE SECOND LITTLE ROTARY SIGN THAT YOU SEE ON THE

1 HIGHWAY YOU'LL KNOW THAT THAT'S FAIR, TOO, AND YOU KNOW
2 WHAT THAT'S ALL ANY OF US CAN ASK AFTER YA'LL HAVE BEEN
3 HERE COOPED UP FOR THREE AND A HALF DAYS. AGAIN I THANK
4 YOU FOR YOUR TIME AND LOOK FORWARD TO HEARING FROM YOU
5 SOON.

6 THE COURT: ALL RIGHT, MR. ROTHSTEIN?

7 **REPLY ARGUMENT**

8 **BY MR. ROTHSTEIN:**

9 LADIES AND GENTLEMEN, I'M NOT GOING TO TALK DOWN
10 TO YOU AND, AND SHOW YOU HOW TO FILL OUT THE FORM. THE
11 FORM IS RELATIVE SIMPLE. YA'LL CAN DO IT YOURSELVES AND
12 WHEN THE JUDGE INSTRUCTS YOU ON THE LAW HE'S NOT GOING TO
13 SAY ANYTHING ABOUT APPLYING THE ROTARY CLUB TEST, OKAY.
14 HE'S GOING TO TELL YOU TO APPLY THE LAW OF THE STATE OF
15 SOUTH CAROLINA.

16 NOW LET ME GO BACK. YOU KNOW I'M, I'M GLAD MR.
17 LAWSON BROUGHT UP SOME PERPLEXING QUESTIONS HE'S HAD AND
18 I'M GLAD TO GET GO LAST BECAUSE I GET TO ANSWER HIS
19 PERPLEXING QUESTIONS. NUMBER ONE, HE SAID IS SURGERY
20 RELATED TO THE ACCIDENT, REMEMBER HE ASKED THAT? WELL YOU
21 HEARD DR. MILLS, DIDN'T YOU, OKAY; THERE WAS AN MRI DONE IN
22 JANUARY OF 2004, A COUPLE OF WEEKS AFTER THE ACCIDENT.
23 THERE WAS AN MRI DONE IN, I THINK IT WAS IN MAY OF 2005,
24 ABOUT SIX MONTHS AFTER THIS PUSHING OF THE CAR ACCIDENT,
25 INCIDENT WITH MR. GAUSE, AND WHAT DID DR. MILLS TELL YOU,

1 THOSE MRI'S ARE IDENTICAL. THEY'RE IDENTICAL. WHEN, WHEN
2 MR. GAUSE WAS PUSHING THE CAR OUT OF THE ROAD AND HE HEARD
3 THE POP OR HE SAID IT COULD HAVE BEEN HIS VEST OR IT WOULD
4 HAVE BEEN SOMETHING ELSE, THAT WAS NOT A HERNIATED DISK,
5 LADIES AND GENTLEMEN. THAT HERNIATED DISK LASTED OR
6 EXISTED AT LEAST IN JANUARY OF 2004, NINE MONTHS BEFORE THE
7 CAR WAS PUSHED OUT OF THE ROAD. REMEMBER DR. MILLS SAID
8 YOU CAN'T PUT THE JELLY BACK IN THE DOUGHNUT. WHEN HE
9 RELEASED MR. GAUSE BACK TO WORK THAT DIDN'T, HE WASN'T
10 SAYING YOU'RE HEALED, YOU CAN GO BACK TO WORK. WHAT HE
11 SAID WAS THAT WHEN YOU'RE LOOKING AT WHAT'S CAUSING PAIN
12 THE MOST IMPORTANT THING, I MEAN THE, THE MRI'S WERE
13 IDENTICAL, THE ANATOMY IS THE SAME. YOU HAVE TO RELY ON
14 THE WITNESSES OR THE PATIENT'S COLLECTIVE ACCOUNT OF HOW
15 HE'S DOING, AND HE TOLD YOU HOW HE WAS DOING.

16 HE SAID THAT AFTER THE FACET INJECTIONS BEGAN TO
17 WEAR OFF AND THE SORT OF THE HONEYMOON PERIOD OF THE
18 STEROIDS WORE OFF HE STARTED HAVING PAIN EVERY TIME THAT
19 HAPPENED. HE WAS SCARED TO DEATH OF GOING UNDER THE KNIFE
20 THAT'S WHY HE DIDN'T DO THE SURGERY RIGHT AWAY CAUSE HE
21 WANTED TO APPLY A MORE CONSERVATIVE APPROACH, SO HE TRIED
22 THE FACET INJECTIONS. HE TRIED THE FACET INJECTIONS ONCE.
23 HE WENT BACK TO WORK AND THEY SAID HE WAS DOING OKAY
24 BECAUSE HE WAS, HE WEREN'T OKAY. BUT OVER THE SUMMER AS HE
25 STARTED GETTING MORE AND MORE PAIN, MORE AND MORE, AND ONE

1 THING THAT'S IMPORTANT TO REMEMBER, REMEMBER WHEN DR. MILLS
2 FIRST RELEASED HIM BACK TO WORK HE PUT A TEN OR FIFTEEN
3 POUND LIFTING RESTRICTION ON HIM BECAUSE HE HAD THAT
4 HERNIATED DISK. DR. MILLS WAS CONCERNED THAT HE MAY TRY
5 AND OVEREXERT HIMSELF AND AGGRAVATE THAT INJURY. I THINK
6 THAT CAR THAT WAS BEING PUSHED OUT OF THE ROAD WAS MORE
7 THAN FIFTEEN, TEN OR FIFTEEN POUNDS, SO THAT'S THE FIRST,
8 IS THE SURGERY RELATED TO THE ACCIDENT? ABSOLUTELY THE
9 SURGERY IS RELATED TO THE ACCIDENT.

10 THE NEXT PERPLEXING QUESTION, LET'S SEE I TRIED
11 TO WRITE THEM DOWN. OH, THE OTHER THING, OH, YOU DON'T
12 NEED DR. MILLS TO COME IN HERE AND TELL YOU WHAT CAUSED MR.
13 GAUSE'S PAIN. YOU AS THE JURY, THE LAW DOES NOT REQUIRE AN
14 EXPERT WITNESS TO COME IN AND TELL THE JURY IN HIS OPINION
15 WHAT CAUSED THE PAIN. THAT'S SOMETHING THAT YOU LATER
16 DECIDE ABOUT WHETHER IT WAS FORESEEABLE OR NOT THAT THE
17 PAIN WAS RELATED TO THE, TO THE WRECK.

18 IN A CASE LIKE THIS YOU DON'T HAVE TO, AGAIN YOU
19 DON'T HAVE TO HAVE AN EXPERT BUT I'M GLAD DR. MILLS WAS
20 ACTUALLY HERE. YOU'LL REMEMBER I WAS THE ONE THAT CALLED
21 DR. MILLS TO THE STAND. I'M NOT AFRAID OF DR. MILLS'
22 TESTIMONY. DR. MILLS' TESTIMONY HELPED ME, THAT'S WHY I
23 CALLED DR. MILLS, AND, AND WHEN I CALLED DR. MILLS WHAT DID
24 DR. MILLS SAY, AGAIN HE SAID THAT THE MRI'S WERE IDENTICAL.
25 HE SAID THAT THERE WAS NOTHING IN MR. GAUSE'S HISTORY THAT

1 WOULD EXPLAIN THE HERNIATED DISK OTHER THAN THE WRECK, AND
2 MR. GAUSE TESTIFIED HE DIDN'T HAVE ANY PAIN WHICH DR. MILLS
3 SAID WAS THE MOST IMPORTANT THING IN MAKING A DIAGNOSIS.
4 HE DIDN'T HAVE ANY PAIN RADIATING DOWN HIS LEGS AND
5 NUMBNESS UNTIL AFTER THE ACCIDENT, SO THAT, I'LL PUT THAT
6 PERPLEXING QUESTION TO REST.

7 NOW THE OTHER PERPLEXING QUESTION MR., MR. LAWSON
8 HAD WAS THIS THING ABOUT CHIEF GOSNELL. WELL, YOU KNOW,
9 IF, IF MR. GAUSE LOVED BEING A POLICE OFFICER SO MUCH WHY
10 DIDN'T HE ACCEPT THE JOB THAT MR., CHIEF GOSNELL OFFERED
11 HIM. YOU HEARD HIS EXPLANATION. I DON'T KNOW IF MR.
12 LAWSON JUST DIDN'T, WASN'T PAYING ATTENTION OR JUST DIDN'T
13 HEAR WHAT MR. GAUSE SAID BUT MR. GAUSE SAID THAT HE LOVED
14 BEING A POLICE OFFICER SO MUCH HE KNEW THAT IF HE TRIED TO
15 GO BACK TO WORK WITH THESE, WITH THE INABILITY TO BEND DOWN
16 COMPLETELY TO PICK UP A GUN IF HE DROPPED IT HE WOULD BE
17 PUTTING NOT ONLY HIMSELF BUT THE OTHER OFFICERS IN THE CITY
18 OF CONWAY AT RISK. SO HE FELT LIKE IF HE HAD TO PUT THE
19 BADGE ON AND THE GUN BELT ON AND THE KEVLAR VEST ON EVERY
20 DAY THEN HE HAD TO PERFORM AT FULL DUTY, THAT'S WHAT HE
21 SAID, AND THAT'S WHY HE TURNED THE JOB DOWN THAT, THAT
22 CHIEF GOSNELL OFFERED HIM. SO I HOPE THAT CLEARS UP THAT
23 PERPLEXING QUESTION.

24 NOW ONE THING THAT ACTUALLY FRANKLY PERPLEXED ME
25 IS MR. LAWSON SAID HE DOESN'T EVEN KNOW WHERE SMITHERS IS.

1 I BET NATHAN DALE SMITHERS DOES NOT EVEN KNOW THIS CASE IS
2 GOING ON TODAY. THE ONLY PEOPLE THAT HAVE ANY
3 RESPONSIBILITY TO THE CASE THAT KNOW THE CASE IS GOING ON
4 ARE SITTING HERE. YOU SEE MR. EDWARD RAYMOND HUNT THERE
5 AND EDWARD W. HUNT. THE ONLY THAT WAY THAT NATHAN DALE
6 SMITHERS IS GOING TO BE, IS GOING TO KNOW THAT THIS CASE IS
7 GOING ON IS IF HE READS ABOUT IT, HEARS ABOUT IT, OR
8 OTHERWISE SOMEBODY SAYS, HEY, MAN, DID YOU HEAR YOU GOT A
9 BIG VERDICT AGAINST YOU IN HORRY COUNTY AND IF MR. SMITHERS
10 WINS THE LOTTERY SOME DAY THAT JUDGMENT THAT YOU, LADIES
11 AND GENTLEMEN, WILL RENDER WILL BE HIS NOTICE THAT THE CASE
12 WENT ON TODAY.

13 NOW THE OTHER THING THAT WAS PERPLEXING BY MR.
14 LAWSON IS HE SAID HE WONDERS WHY THERE WAS NO COMPLAINT
15 ABOUT LOW BACK PAIN AT THE E.R. IS HE REALLY SUGGESTING
16 THAT MR. GAUSE IS MAKING THIS UP, MAKING UP THE COMPLAINT
17 ABOUT THE LOW BACK PAIN CAUSE HE DIDN'T MENTION IT TO THE
18 E.R. THE FIRST NIGHT HE WENT IN THERE WHEN HE WAS STILL
19 KIND OF HOPPED UP ON THE ADRENALINE? WELL LET ME SHOW YOU
20 A DOCUMENT THAT WILL PUT THAT PERPLEXING QUESTION TO REST.
21 IT'S EXHIBIT NUMBER 5 AND YOU'LL RECALL I DIDN'T PUT THIS
22 INTO MY CASE IN CHIEF. THIS WAS ACTUALLY ON, ON REDIRECT
23 OF MR. GAUSE. THEY, THEY TRIED TO MAKE THE POINT, I DON'T
24 KNOW WHY HE'S PERPLEXED, BUT THEY TRIED TO MAKE THIS POINT
25 ON DIRECT YOU'RE SORT OF MAKING UP THIS LOW BACK PAIN AFTER

1 THE FACT. THIS PLAINTIFF'S EXHIBIT 5 IS A CITY OF CONWAY
2 INCIDENT REPORT. THIS IS EVIDENCE, YOU'LL HAVE IT. IT
3 SAYS TO BE COMPLETED BY EMPLOYEE INVOLVED, EMPLOYEE
4 INVOLVED DON GAUSE; DATE OF INCIDENT 11-15-2003. WHEN DID
5 HE SIGN THIS THING? 11-15-2003. THIS IS THE DAY OF THE
6 ACCIDENT AND WHAT IT SAYS HERE, IT SAYS INJURIES IF
7 DESCRIBED, NECK, LOW BACK, RIGHT KNEE. IT'S RIGHT THERE,
8 LADIES AND GENTLEMEN. HE'S NOT MAKING UP THE LOW BACK
9 PAIN. YOU DON'T MAKE UP SOMETHING THAT SHOWS UP ON AN MRI,
10 SO I HOPE THAT PUTS THAT PERPLEXING QUESTION TO REST.

11 NOW THE LAST PERPLEXING THING I HAVE WRITTEN DOWN
12 WAS THIS THING ABOUT, YOU KNOW DR. MILLS SAID YOU COULD GET
13 A HERNIATED DISK JUST BY SNEEZING FUNNY OR REACHING DOWN TO
14 PICK SOMETHING UP. DON'T FALL FOR THIS ONE, LADIES AND
15 GENTLEMEN. MR. GAUSE HAS SOME SORT OF DEGENERATIVE BACK
16 CONDITION. A LOT OF PEOPLE THAT IS VERY COMMON OR YOU
17 REMEMBER MR. LAWSON SAID SOME PEOPLE HAVE DIED AND HAVE
18 THEIR AUTOPSY DONE AND THEY DISCOVER THEY HAD A HERNIATED
19 DISK THEY NEVER KNEW ABOUT THEIR ENTIRE LIFE, RIGHT. WELL
20 THERE'S A DOCTRINE IN THE LAW THE JUDGE IS GOING TO
21 INSTRUCT YOU ABOUT CALLED A PRE-EXISTING CONDITION, OKAY.
22 IF, AND, AND THE LAW SAYS THAT A DEFENDANT TAKES THE
23 PLAINTIFF AS HE OR SHE FINDS THE PLAINTIFF. OKAY, SO IF
24 MR. GAUSE HAD THIS DEGENERATIVE DISEASE AND THIS LITTLE
25 SACK AROUND THE DISK WAS WEAKENED AND HE WAS MORE

1 SUSCEPTIBLE TO THE CAR WRECK CAUSING A HERNIATED DISK
2 THAT'S NOT HIS FAULT, THAT'S THEIR FAULT. NOW YOU TAKE THE
3 PLAINTIFF AS YOU FIND HIM AND, AND THERE'S AGAIN GOING BACK
4 TO TORTS AND LAW SCHOOL, THE FIRST YEAR OF LAW SCHOOL
5 CLASS, THERE'S A DOCTRINE IN THE LAW CALLED THIN SKULL
6 PLAINTIFF RULE AND THIS IS A GREAT EXAMPLE OF THIS YOU FIND
7 THE PLAINTIFF, OR YOU TAKE THE PLAINTIFF AS YOU FIND THEM.
8 AND IN THAT CASE SOMEBODY, YOU KNOW, GOT, THERE WAS A
9 NEGLIGENT ACT AND THE PERSON GOT KIND OF KNOCKED ON THE
10 HEAD, JUST A SMALL LITTLE KNOCK ON THE HEAD, AND THIS
11 PERSON THAT GOT KNOCKED IN THE HEAD IN A NORMAL PERSON THAT
12 LITTLE KNOCK ON THE HEAD WOULDN'T HAVE DONE A BIT OF
13 DAMAGE, WOULDN'T EVEN PUT A KNOT ON MOST PEOPLE'S HEAD.
14 BUT ON THIS PARTICULAR PERSON THEY HAD A DISEASE WHERE
15 THEIR BONES WERE SO BRITTLE AND SO THIN, THAT'S WHY THEY
16 CALL IT THE THIN SKULL PLAINTIFF, THAT THAT KNOCK ON THE
17 HEAD CAUSED SEVERE, SEVERE INJURIES, OKAY? AND THE, AND
18 THE DEFENDANT SAID WELL I JUST BARELY KNOCKED THAT GUY ON
19 THE HEAD AND THE COURT SAID THAT THAT'S TOUGH. YOU CAUSED
20 THIS PERSON INJURY DAMAGE BECAUSE OF HIS THIN SKULL AND THE
21 JUDGE WILL TELL YOU YOU TAKE THE PLAINTIFF AS YOU FIND
22 THEM. SO IF THERE IS A PRE-EXISTING CONDITION THAT MR.
23 GAUSE WAS MORE LIKELY TO SUFFER A HERNIATED DISK BECAUSE
24 HE'S HAVING AGE RELATED DEGENERATIVE CHANGES YOU DON'T HOLD
25 IT AGAINST MR. GAUSE, YOU HOLD IT AGAINST THE DEFENDANT AND

1 THAT, THAT INCREASES THE AMOUNT OF DAMAGES.

2 THAT WAS THE ONLY PERPLEXING QUESTION I HAD. I'M
3 NOT STANDING UP HERE FOR FIFTEEN OR TWENTY MINUTES. I HOPE
4 I'VE ANSWERED MR., MR. LAWSON'S PERPLEXING QUESTIONS AND I
5 TRUST THAT YOU WILL MAKE, USE YOUR COMMON SENSE. I HOPE
6 YOU WILL USE YOUR COMMON SENSE TO RENDER A FAIR VERDICT IN
7 THIS CASE, THANK YOU.

8 THE COURT: THANK YOU.

9 JURY CHARGE

10 BY THE COURT:

11 MEMBERS OF THE JURY, IT IS NOW MY DUTY AS THE
12 TRIAL JUDGE TO INSTRUCT ON THE LAW APPLICABLE TO THIS CASE
13 AND IN THAT REGARD IT IS YOUR DUTY AS JURORS TO ACCEPT AND
14 APPLY THE LAW AS I NOW STATE IT TO YOU.

15 FURTHERMORE, IT IS YOUR EXCLUSIVE DUTY TO DECIDE
16 ALL THE ISSUES OF FACT IN THIS CASE AND TO DETERMINE THE
17 EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE.

18 ALL THE PARTIES HAVE THE RIGHT TO EXPECT THAT YOU
19 WILL CAREFULLY CONSIDER AND EVALUATE THE EVIDENCE AND APPLY
20 THE LAW OF THIS CASE TO IT SO THAT IN THE END BOTH THE
21 PLAINTIFF AND BOTH THE DEFENDANTS WILL HAVE RECEIVED A FAIR
22 AND IMPARTIAL TRIAL.

23 DURING THIS TRIAL YOU AND I HAVE SEPARATE DUTIES
24 TO PERFORM. AS THE TRIAL JUDGE IT IS MY RESPONSIBILITY TO
25 PRESIDE OVER THIS TRIAL. I ALSO HAVE THE DUTY TO RULE UPON

1 THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE TRIAL.
2 IN THAT REGARD YOU ARE TO CONSIDER ONLY THE EVIDENCE BEFORE
3 YOU THUS YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS
4 BEEN PRESENTED FROM THE WITNESS STAND TOGETHER WITH ANY
5 EXHIBITS ADMITTED INTO THE RECORD OF THIS CASE.

6 FURTHERMORE, I HAVE THE ADDITIONAL DUTY TO CHARGE
7 YOU ON THE APPLICABLE LAW TO THIS CASE AND IN THAT REGARD I
8 AM THE SOLE JUDGE OF THE LAW IN THIS CASE. IT IS YOUR DUTY
9 TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF
10 YOU HAVE ANY PRECONCEIVED IDEAS AS TO WHAT YOU THINK THE
11 LAW IS OR WHAT YOU THINK THE LAW OUGHT TO BE AND IT DOES
12 NOT AGREE WITH WHAT I TELL YOU THE LAW IS YOU ARE OBLIGATED
13 UNDER YOUR OATH TO ABANDON THESE PRECONCEPTIONS BECAUSE YOU
14 ARE SWORN TO ACCEPT THE LAW AS I NOW STATE IT TO YOU.

15 IN THIS TRIAL YOU ARE THE SOLE AND EXCLUSIVE
16 JUDGE OF THE FACTS AND I AM THE JUDGE OF THE LAW. DO NOT
17 INFER THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE
18 FROM ANYTHING I HAVE SAID DURING THE COURSE OF THIS TRIAL.
19 IN THIS REGARD THE LAW SIMPLY DOES NOT PERMIT ME TO HAVE AN
20 OPINION ABOUT THE FACTS.

21 AS JURORS IT IS YOUR EXCLUSIVE DUTY ALONE TO
22 DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE
23 EVIDENCE PRESENTED DURING THIS TRIAL.

24 IN DETERMINING WHAT THE FACTS IN THIS CASE ARE
25 YOU MUST JUDGE THE CREDIBILITY WHICH SIMPLY MEANS THE

1 BELIEVABILITY OF THE WITNESS AND THE VALUE OF WEIGHT TO BE
2 GIVEN TO THEIR TESTIMONY. YOU ALONE MUST DECIDE THE FORCE,
3 EFFECT, AND TRUTH OF THE TESTIMONY.

4 IN MAKING THIS DECISION THERE ARE MANY THINGS YOU
5 MAY AND SHOULD TAKE INTO CONSIDERATION SUCH AS THE
6 APPEARANCE AND MANNER OF THE WITNESS ON THE STAND, A
7 CHARACTERISTIC OFTEN REFERRED TO AS THE Demeanor OF A
8 WITNESS. WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS THE
9 WITNESS' TESTIMONY CONSISTENT OR DID IT CONTAIN
10 DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO KNOW
11 THE FACTS ABOUT WHICH HE OR SHE TESTIFIED? DID THE WITNESS
12 HAVE A CAUSE OR REASON TO BE BIASED AND PREJUDICED IN FAVOR
13 OF THE TESTIMONY HE OR SHE GAVE? WAS THE TESTIMONY OF THE
14 WITNESS CORROBORATED OR MADE STRONGER BY OTHER TESTIMONY
15 AND EVIDENCE OR WAS IT MADE WEAKER OR IMPEACHED BY SUCH
16 OTHER TESTIMONY AND EVIDENCE?

17 FURTHERMORE, EVIDENCE MAY BE DIRECT OR
18 CIRCUMSTANTIAL. DIRECT EVIDENCE IS TESTIMONY BY A WITNESS
19 ABOUT WHAT THE WITNESS PERSONALLY SAW OR HEARD OR DID.

20 CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE,
21 THAT IS IT IS PROOF OF ONE OR MORE FACTS FROM WHICH ONE CAN
22 FIND ANOTHER FACT.

23 YOU ARE TO CONSIDER BOTH DIRECT AND
24 CIRCUMSTANTIAL EVIDENCE. THE LAW PERMITS YOU TO GIVE EQUAL
25 WEIGHT TO BOTH BUT IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT

1 TO GIVE ANY EVIDENCE.

2 THE BURDEN OF PROOF IN THIS CASE IS BY A
3 PREPONDERANCE OF THE EVIDENCE. A PREPONDERANCE OF THE
4 EVIDENCE SIMPLY MEANS THE GREATER WEIGHT OF THE EVIDENCE.
5 IT IS EVIDENCE THAT AS A WHOLE SHOWS THAT THE FACT SOUGHT
6 TO BE PROVED IS MORE LIKELY TRUE THAN NOT TRUE. THIS CAN
7 BE ILLUSTRATED BY IMAGINING A SET OF SCALES. WHEN THE CASE
8 BEGINS THE SCALES ARE EVEN. AFTER ALL OF THE EVIDENCE HAS
9 BEEN PRESENTED IF THE SCALES REMAIN EVEN OR IF THEY TIP
10 EVEN SLIGHTLY IN FAVOR OF THE DEFENDANT THEN THE PLAINTIFF
11 HAS FAILED TO MEET THE BURDEN OF PROOF AND WOULD NOT BE
12 ENTITLED TO RECOVER IN THIS CASE.

13 IF ON THE OTHER HAND THE SCALES TIP EVEN SLIGHTLY
14 IN FAVOR OF THE PLAINTIFF THE PLAINTIFF WILL HAVE MET THE
15 BURDEN OF PROOF AND YOU SHOULD RETURN A VERDICT FOR THE
16 PLAINTIFF.

17 THE PREPONDERANCE OF THE EVIDENCE IS NOT
18 DETERMINED BY THE NUMBER OF WITNESSES. INSTEAD IT MUST BE
19 DETERMINED BY THE GREATER WEIGHT OF ALL THE EVIDENCE.

20 FURTHERMORE, THE RULES OF EVIDENCE ORDINARILY DO
21 NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS.
22 AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL
23 EXPERT WITNESSES. A WITNESS WHO BY EDUCATION AND
24 EXPERIENCE HAS BECOME AN EXPERT IN SOME ART, SCIENCE, OR
25 PROFESSION MAY GIVE AN OPINION AS TO THE SUBJECT THE

1 WITNESS CLAIMS TO BE AN EXPERT IN AND MAY ALSO GIVE THE
2 REASONS FOR THE OPINION.

3 YOU SHOULD CONSIDER ANY EXPERT OPINION GIVEN BY A
4 WITNESS AND LIKE ANY OTHER EVIDENCE GIVE IT THE WEIGHT
5 YOU THINK IT DESERVES. IF YOU DECIDE THAT AN EXPERT
6 WITNESSES OPINION IS NOT BASED ON SUFFICIENT EDUCATION AND
7 EXPERIENCE OR IF YOU DECIDE THAT THE REASONS GIVEN IN
8 SUPPORT OF THE OPINION ARE NOT SOUND OR THAT THE OPINION IS
9 OUTWEIGHED BY OTHER EVIDENCE YOU MAY DISREGARD THE OPINION
10 ENTIRELY.

11 AN EXPERT WITNESSES TESTIMONY IS TO BE GIVEN NO
12 GREATER WEIGHT THAN THAT OF ANY OTHER WITNESS SIMPLY
13 BECAUSE THE WITNESS IS AN EXPERT AND YOU DO NOT HAVE TO
14 ACCEPT AN EXPERTS OPINION EVEN THOUGH IT IS UNCONTRADICTED.

15 IN THIS CASE CERTAIN TESTIMONY HAS BEEN PRESENTED
16 INTO EVIDENCE BY DEPOSITION. A DEPOSITION IS TESTIMONY
17 TAKEN UNDER OATH BEFORE TRIAL AND PRESERVED IN WRITING.
18 YOU ARE TO CONSIDER THAT TESTIMONY AS IF THE WITNESS HAD
19 GIVEN IT IN COURT.

20 THE PLAINTIFF CLAIMS THAT THE DEFENDANT SMITHERS
21 WAS NEGLIGENT AND SHOULD COMPENSATE THE PLAINTIFF FOR THE
22 INJURIES THE PLAINTIFF SUFFERED AS A RESULT OF THE
23 DEFENDANT'S NEGLIGENCE. DEFENDANT SMITHERS' ATTORNEY
24 ADMITS SMITHERS WAS NEGLIGENT IN HIS ACTIONS. HE DOES NOT,
25 HOWEVER, ADMIT THAT HE ACTED WITH GROSS NEGLIGENCE OR IN A

1 RECKLESS, WILLFUL, OR WANTON MANNER.

2 GROSS NEGLIGENCE IS A FAILURE TO EXERCISE A
3 SLIGHT DEGREE OF CARE. A PERSON WHO IS SO INDIFFERENT TO
4 THE CONSEQUENCES OF HIS CONDUCT AS TO NOT GIVE A SLIGHT
5 CARE AS TO WHAT HE IS DOING ACTS WITH GROSS NEGLIGENCE.

6 SOUTH CAROLINA CODE SECTION 56-5-2920 STATES,
7 "ANY PERSON WHO DRIVES ANY VEHICLE IN SUCH A MANNER AS TO
8 INDICATE EITHER A WILLFUL OR A WANTON DISREGARD FOR THE
9 SAFETY OF PERSONS OR PROPERTY IS GUILTY OF RECKLESS
10 DRIVING."

11 A VIOLATION OF A STATUTE DOES NOT IN AND OF
12 ITSELF CONSTITUTE RECKLESSNESS, WILLFULNESS, AND
13 WANTONNESS, HOWEVER IT MAY BE CONSIDERED AS EVIDENCE IN
14 DECIDING WHETHER THE DEFENDANT WAS RECKLESS, WILLFUL, OR
15 WANTON.

16 THE PLAINTIFF CLAIMS DEFENDANT HUNT IS LIABLE
17 UNDER A DOCTRINE OF LAW KNOWN AS THE FAMILY PURPOSE
18 DOCTRINE. WHERE A PARENT OWNS, FURNISHES, AND MAINTAINS A
19 MOTOR VEHICLE FOR THE FAMILY'S GENERAL USE AND CONVENIENCE
20 THE PARENT IS RESPONSIBLE FOR THE NEGLIGENCE OF A FAMILY
21 MEMBER HAVING GENERAL AUTHORITY TO DRIVE THE VEHICLE FOR
22 SUCH A PURPOSE.

23 FOR THE DRIVER OF A CAR TO BE FOUND NEGLIGENT THE
24 PLAINTIFF MUST PROVE BY A PREPONDERANCE OR A GREATER WEIGHT
25 OF THE EVIDENCE THE FOLLOWING THINGS.

1 FIRST THE PLAINTIFF MUST PROVE BY A PREPONDERANCE
2 OR A GREATER WEIGHT OF THE EVIDENCE THAT THE DRIVER OWED
3 THE PLAINTIFF A DUTY OF CARE. THIS IS A QUESTION OF LAW
4 WHICH I HAVE DECIDED. IF I FIND, AND I HAVE FOUND, THAT
5 THERE IS A DUTY OF CARE YOU MUST THEN DECIDE THE REMAINING
6 QUESTIONS.

7 THE FIRST OF THESE IS WHETHER THE PLAINTIFF HAS
8 PROVEN BY A PREPONDERANCE OR A GREATER WEIGHT OF THE
9 EVIDENCE THAT THE DRIVER BREACHED THE DUTY OF CARE BY A
10 NEGLIGENT ACT OR ADMISSION.

11 NEGLIGENCE MEANS THAT A PERSON HAS DONE SOMETHING
12 THAT A REASONABLE PERSON WOULD NOT HAVE DONE OR HAS FAILED
13 TO DO SOMETHING THAT A REASONABLE PERSON WOULD HAVE DONE IN
14 THE SAME SITUATION.

15 THE PLAINTIFF MUST ALSO PROVE BY A PREPONDERANCE
16 OR A GREATER WEIGHT OF THE EVIDENCE THAT HE SUFFERED
17 DAMAGES AS A RESULT OF THE DRIVERS BREACH OF DUTY.

18 FINALLY, THE PLAINTIFF MUST PROVE BY A
19 PREPONDERANCE OR A GREATER WEIGHT OF THE EVIDENCE THAT THE
20 DAMAGES WERE PROXIMATELY CAUSED BY THE DRIVERS BREACH OF
21 DUTY.

22 PROXIMATE CAUSE IS SOMETHING THAT PRODUCES A
23 NATURAL CHAIN OF EVENTS WHICH IN THE END BRINGS ABOUT THE
24 INJURY. IT IS THE DIRECT CAUSE OF THE INJURY. TO PROVE
25 THAT A DRIVERS NEGLIGENCE PROXIMATELY CAUSED THE

1 PLAINTIFF'S INJURIES THE PLAINTIFF MUST PROVE CAUSATION AND
2 FACTS. THIS IS PROVEN BY SHOWING THAT THE INJURY WOULD NOT
3 HAVE OCCURRED BUT FOR THE DRIVERS NEGLIGENCE.

4 THE PLAINTIFF MUST ALSO PROVE LEGAL CAUSE. LEGAL
5 CAUSE IS PROVEN BY SHOWING THAT THE INJURY WAS FORESEEABLE.
6 THIS MEANS THAT THE INJURY OCCURRED AS A NATURAL AND
7 PROBABLE CONSEQUENCE OF THE DRIVERS NEGLIGENCE.

8 THE DRIVER MUST PROVE THAT SOME INJURY FROM THE
9 DRIVERS NEGLIGENCE WAS FORESEEABLE BUT DOES NOT HAVE TO
10 PROVE THAT THE PARTICULAR INJURY THAT OCCURRED WAS
11 FORESEEABLE, HOWEVER THE DRIVER CANNOT BE HELD RESPONSIBLE
12 FOR THINGS WHICH COULD NOT BE EXPECTED TO HAPPEN.

13 PROXIMATE CAUSE DOES NOT MEAN THE ONLY CAUSE.
14 THE DRIVERS ACT CAN BE A PROXIMATE CAUSE OF THE PLAINTIFF'S
15 INJURY IF IT WAS AT LEAST ONE OF THE DIRECT CONCURRING
16 CAUSES OF THE INJURY.

17 ALTHOUGH A PERSON IS NOT REQUIRED BY LAW TO ACT
18 IF THE PERSON VOLUNTARILY UNDERTAKES AN ACT THE PERSON HAS
19 THE DUTY TO USE DUE CARE.

20 THERE MAY BE MORE THAN ONE CAUSE OF AN INJURY AND
21 MORE THAN ONE PERSON MAY BE RESPONSIBLE FOR THE INJURY. IF
22 THE, IF THE NEGLIGENCE OF TWO OR MORE PERSONS COMBINES TO
23 CAUSE AN INJURY EACH PERSON INVOLVED MAY BE HELD
24 RESPONSIBLE AS IF THAT PERSON ALONE CAUSED THE INJURY.

25 CAUSES ARE CONCURRENT IF THE INDIVIDUAL ACTS OF

1 NEGLIGENCE COMBINED TO CAUSE THE INJURY.

2 IF AN INJURY OCCURS THROUGH THE CONCURRENT
3 NEGLIGENCE OF TWO OR MORE PERSON AND WOULD NOT HAVE
4 HAPPENED WITHOUT THE NEGLIGENCE OF EITHER PERSON THE
5 NEGLIGENCE IS THE PROXIMATE CAUSE OF THE INJURY AND BOTH
6 PEOPLE ARE RESPONSIBLE.

7 IF THE ACTS HAPPENED ONE AFTER THE OTHER BUT WERE
8 NOT RELATED TO EACH OTHER THEY WOULD NOT BE CONCURRING
9 CAUSES. IN THAT CASE ONLY THE PERSON WHOSE NEGLIGENCE
10 ACTUALLY CAUSED THE INJURY WOULD BE RESPONSIBLE.

11 WHERE AN INJURY FOLLOWS A SERIES OF TWO OR MORE
12 INDEPENDENT ACTS OF NEGLIGENCE OR EVENTS THE ORIGINAL
13 WRONGDOING MAY STILL BE THE PROXIMATE CAUSE OF THE ENTIRE
14 INJURY IF THE INJURY WAS REASONABLY FORESEEABLE IN THE
15 LIGHT OF ALL THE SURROUNDING CIRCUMSTANCES.

16 LIABILITY EXISTS FOR THE NATURAL AND PROBABLE
17 CONSEQUENCES OF NEGLIGENT ACTS OR OMISSIONS PROXIMATELY
18 FLOWING THEREFROM. THE INTERVENING NEGLIGENCE OF A THIRD
19 PERSON WILL NOT EXCUSE THE FIRST WRONGDOER IF SUCH
20 INTERVENTION OUGHT TO HAVE BEEN FORESEEN IN THE EXERCISE OF
21 DUE CARE.

22 AN INTERVENING CAUSE WILL ONLY CUT OFF THE
23 ORIGINAL WRONGDOERS LIABILITY IF THE INTERVENING CAUSE IS
24 ALSO A SUPERSEDING CAUSE. THE INTERVENING NEGLIGENCE OF
25 ANOTHER WILL NOT EXCUSE THE FIRST TORT FEASOR.

1 IF THE, IF THE INTERMEDIATE WRONG OR A SIMILAR
2 ONE SHOULD HAVE BEEN FORESEEN IN THE EXERCISE OF DUE CARE
3 THE ORIGINAL NEGLIGENCE REMAINS ACTIVE AND CONSTITUTES A
4 CONCURRING PROXIMATE CAUSE OF THE ULTIMATE INJURY.

5 AN INTERVENING AND SUPERSEDING CAUSE IS AN
6 INDEPENDENT CAUSE WHICH INTERVENES BETWEEN THE ORIGINAL
7 WRONGFUL ACT OR OMISSION AND THE INJURY, TERMS ASSIGNED TO
8 NATURAL SEQUENCE OF EVENTS AND PRODUCES A RESULT WHICH NOT,
9 WHICH WOULD NOT OTHERWISE HAVE FOLLOWED AND COULD NOT HAVE
10 BEEN REASONABLY ANTICIPATED. IT IS AN ACT OF AN
11 INDEPENDENT AGENCY WHICH DESTROYS THE CAUSAL CONNECTION
12 BETWEEN THE NEGLIGENT ACT OF THE DEFENDANT AND THE WRONGFUL
13 INJURY.

14 THE GENERAL RULE IS THAT WHOEVER DOES A WRONGFUL
15 ACT IS ANSWERABLE FOR ALL THE CONSEQUENCES THAT MAY ENSUE
16 IN THE ORIGINAL COURSE OF EVENTS. EVEN THOUGH SUCH
17 CONSEQUENCES ARE IMMEDIATELY AND DIRECTLY BROUGHT ABOUT BY
18 AN INTERVENING CAUSE IF SUCH INTERVENING CAUSE WAS SET IN
19 MOTION BY THE ORIGINAL WRONGDOER OR WAS IN REALITY ONLY A
20 CONDITION ON OR THROUGH WHICH THE NEGLIGENT ACT OPERATED TO
21 PRODUCE THE INJURIOUS RESULT THE WRONGDOER IS STILL LIABLE.

22 ANY NUMBER OF CAUSES AND EFFECTS MAY INTERVENE
23 BETWEEN THE FIRST WRONGFUL CAUSE AND THE FINAL INJURIES.

24 IF THEY ARE SUCH AS MIGHT WITH REASONABLE
25 DILIGENCE HAVE BEEN FORESEEN THE LAST RESULT AS WELL AS THE

1 FIRST AND EVERY INTERMEDIATE RESULT IS TO BE CONSIDERED A
2 PROXIMATE RESULT OF THE FIRST WRONGFUL CAUSE.

3 THE QUESTION ALWAYS IS WAS THERE ANY UNBROKEN
4 CONNECTION BETWEEN THE WRONGFUL ACT AND THE INJURY, A
5 CONTINUOUS OPERATION? DID THE FACTS CONSTITUTE A
6 SUCCESSION OF EVENTS SO LINKED TOGETHER AS TO MAKE A
7 NATURAL WHOLE OR WAS THERE SOME NEW INDEPENDENT CAUSE
8 INTERVENING BETWEEN THE WRONG AND THE INJURY?

9 A THIRD PARTY'S ACTS OF NEGLIGENCE DO NOT BREAK
10 THE CAUSAL CHAIN IF THE ACTS ARE FORESEEABLE.

11 FOR AN INTERVENING FORCE TO BE A SUPERSEDING
12 CAUSE THAT RELIEVES A DEFENDANT FROM LIABILITY THE
13 INTERVENING CAUSE MUST BE A CAUSE THAT COULD NOT HAVE BEEN
14 REASONABLY FORESEEN OR ANTICIPATED.

15 AN INTERVENING ACT DOES NOT BREAK THE CHAIN OF
16 CAUSATION IF IT IS A NORMAL RESPONSE TO THE SITUATION
17 CREATED BY THE ORIGINAL WRONGFUL ACT.

18 I FURTHER CHARGE YOU THAT NEGLIGENCE PER SE IS
19 ESTABLISHED BY PROOF THAT A PARTY VIOLATED A STATUTE WHICH
20 HAS THE ESSENTIAL PURPOSE OF PROTECTING PERSONS SUCH AS THE
21 INJURED PARTY FROM THE KIND OF HARM SUFFERED.

22 THE INJURY MUST BE THE NATURAL AND PROBABLE
23 CONSEQUENCE OF THE VIOLATION OF A STATUTE BEFORE THE
24 VIOLATION CAN BE SAID TO BE THE PROXIMATE CAUSE OF THE
25 ALLEGED INJURY.

1 SECTION 56-5-1520 OF THE SOUTH CAROLINA CODE
2 READS IN RELEVANT PART, "A PERSON SHALL NOT DRIVE A VEHICLE
3 ON A HIGHWAY AT A SPEED GREATER THAN IS REASONABLE AND
4 PRUDENT UNDER THE CONDITIONS AND HAVING REGARD TO THE
5 ACTUAL AND POTENTIAL HAZARDS THAN EXISTING. SPEED MUST BE
6 SO CONTROLLED TO AVOID COLLIDING WITH A PERSON, VEHICLE, OR
7 OTHER CONVEYANCE ON OR ENTERING THE HIGHWAY IN COMPLIANCE
8 WITH LEGAL REQUIREMENTS AND THE DUTY OF A PERSON TO USE
9 CARE.

10 THE DRIVER OF A VEHICLE SHALL DRIVE CONSISTENT
11 WITH THE REQUIREMENTS OF SUBSECTION (A) AT AN APPROPRIATE
12 REDUCED SPEED WHEN APPROACHING AND CROSSING AN INTERSECTION
13 OR RAILWAY GRADE CROSSING, WHEN APPROACHING AND GOING
14 AROUND A CURVE, APPROACHING A HILL CREST, WHEN TRAVELING
15 UPON ANY NARROW BRIDGE, NARROW OR WINDING ROADWAY, AND WHEN
16 A SPECIAL HAZARD EXISTS WITH RESPECT TO PEDESTRIANS OR
17 OTHER TRAFFIC, OR BY A REASON OF WEATHER OR HIGHWAY
18 CONDITIONS.

19 A DRIVER HAS A DUTY TO ADJUST HIS SPEED TO
20 CONDITIONS AND HAZARDS. THE DRIVER OF EVERY VEHICLE IS
21 REQUIRED TO DRIVE AT AN APPROPRIATELY REDUCED SPEED WHEN
22 HAZARDS EXIST WITH RESPECT TO WEATHER OR HIGHWAY
23 CONDITIONS."

24 A MOTORIST WHOSE VISION IS OBSCURED BY
25 UNFAVORABLE WEATHER CONDITIONS MUST EXERCISE CARE

1 COMMISERATE WITH THE CONDITIONS OF TRAVEL.

2 SECTION 56-5-2510 OF THE SOUTH CAROLINA CODE
3 READS IN RELEVANT PART, "NO PERSON SHALL STOP, PARK, OR
4 LEAVE STANDING A VEHICLE WHETHER ATTENDED OR UNATTENDED
5 UPON THE ROADWAY OUTSIDE A BUSINESS OR A RESIDENTIAL
6 DISTRICT WHEN IT IS PRACTICAL TO STOP, PARK, OR LEAVE THE
7 VEHICLE OFF THE ROADWAY.

8 AN UNOBSTRUCTED WIDTH OF THE HIGHWAY OPPOSITE A
9 STANDING VEHICLE MUST BE LEFT FOR THE FREE PASSAGE OF OTHER
10 VEHICLES AND A CLEAR VIEW OF THE STOPPED VEHICLE MUST BE
11 AVAILABLE FROM A DISTANCE OF TWO HUNDRED FEET IN EACH
12 DIRECTION UPON THE HIGHWAY."

13 THIS SECTION AND SECTION 56-5-2530 AND 56-5-2560
14 DO NOT APPLY TO THE DRIVER OF A VEHICLE WHICH IS DISABLED
15 MAKING IT IMPOSSIBLE TO AVOID STOPPING AND TEMPORARILY
16 LEAVING THE VEHICLE IN THE ROADWAY.

17 THE BURDEN OF PROVING THE NECESSITY FOR STOPPING
18 A VEHICLE ON THE MAIN TRAVELED PORTION OF A HIGHWAY IS ON
19 THE PERSON WHO MAKES SUCH A STOP.

20 SECTION 56-5-1538 OF THE SOUTH CAROLINA CODE
21 PROVIDES IN RELEVANT PART AS FOLLOWS: "THE DRIVER OF A
22 VEHICLE SHALL ENSURE THAT THE VEHICLE WAS KEPT UNDER
23 CONTROL WHEN APPROACHING OR PASSING AN EMERGENCY SCENE OR
24 AUTHORIZED EMERGENCY VEHICLE STOPPED ON OR NEAR THE RIGHT
25 OF WAY OF A STREET OR HIGHWAY WITH EMERGENCY LIGHTS

1 FLASHING.

2 THE EXERCISE OF CONTROL REQUIRED FOR A DRIVER TO
3 COMPLY WITH THIS SECTION IS THAT CONTROL POSSIBLE AND
4 NECESSARY FOR THE DRIVER TO PREVENT A COLLISION, TO PREVENT
5 INJURY TO PERSONS OR PROPERTY, AND TO AVOID INTERFERENCE
6 WITH THE PERFORMANCE OF EMERGENCY DUTIES BY EMERGENCY
7 PERSONNEL.

8 A PERSON DRIVING A VEHICLE APPROACHING A
9 STATIONARY AUTHORIZED EMERGENCY VEHICLE THAT IS GIVING A
10 SIGNAL BY DISPLAYING ALTERNATIVELY FLASHING RED, RED AND
11 WHITE. BLUE, OR RED AND BLUE LIGHTS, OR AMBER OR YELLOW
12 WARNING LIGHTS SHALL PROCEED WITH DUE CAUTION,
13 SIGNIFICANTLY REDUCE THE SPEED OF THE VEHICLE, AND YIELD
14 THE RIGHT OF WAY BY MAKING A LANE CHANGE INTO A LANE NOT
15 ADJACENT TO THAT OF THE AUTHORIZED EMERGENCY VEHICLE IF
16 POSSIBLE WITH DUE REGARD TO SAFETY AND TRAFFIC CONDITIONS,
17 IF ON A HIGHWAY HAVING AT LEAST FOUR LANES WITH NOT LESS
18 THAN TWO LANES PROCEEDING IN THE SAME DIRECTION AS THE
19 APPROACHING VEHICLE, OR MAINTAIN A SAFE SPEED FOR ROAD
20 CONDITIONS IF CHANGING LANES IS IMPOSSIBLE OR UNSAFE.

21 FOR PURPOSES OF THIS SECTION AUTHORIZED EMERGENCY
22 VEHICLE MEANS ANY AMBULANCE, POLICE, FIRE, RESCUE,
23 RECOVERY, OR TOWING VEHICLE AUTHORIZED BY THIS STATE,
24 COUNTY, OR MUNICIPALITY TO RESPOND TO A TRAFFIC INCIDENT.

25 EMERGENCY SERVICES PERSONNEL MEANS FIRE, POLICE,

1 OR EMERGENCY MEDICAL SERVICES PERSONNEL, EMS RESPONDING TO
2 AN EMERGENCY INCIDENT."

3 SECTION 56-5-2360 OF THE SOUTH CAROLINA CODE
4 PROVIDES AS FOLLOWS: "UPON THE IMMEDIATE APPROACH OF AN
5 AUTHORIZED EMERGENCY VEHICLE MAKING USE OF AN AUDIBLE
6 SIGNAL MEETING THE REQUIREMENT OF SECTION 56-5-4970 AND
7 VISUAL SIGNALS MEETING THE REQUIREMENT OF 56-5-4700 OR A
8 POLICE VEHICLE PROPERLY AND LAWFULLY MAKING USE OF AN
9 AUDIBLE SIGNAL OR VISUAL SIGNAL THE DRIVER OF EVERY OTHER
10 VEHICLE TRAVELING ALONG A TWO LANE ROADWAY SHALL YIELD THE
11 RIGHT OF WAY AND SHALL IMMEDIATELY DRIVE TO A POSITION
12 PARALLEL TO AND AS CLOSE AS POSSIBLE TO THE RIGHT HAND EDGE
13 OR CURB OF THE ROADWAY CLEAR OF ANY INTERSECTION AND SHALL
14 STOP AND REMAIN IN THAT POSITION UNTIL THE AUTHORIZED
15 EMERGENCY VEHICLE HAS PASSED EXCEPT WHEN OTHERWISE DIRECTED
16 BY A POLICE OFFICER.

17 A DRIVER OF A VEHICLE TRAVELING ALONG A MULTI
18 LANE ROADWAY SHALL YIELD THE RIGHT OF WAY AND SHALL REMAIN
19 IN OR MOVE TO A LOCATION THAT ALLOWS THE EMERGENCY VEHICLE
20 OR POLICE VEHICLE TO PASS SAFELY EXCEPT AS OTHERWISE
21 DIRECTED BY A POLICE OFFICER.

22 THIS SECTION SHALL NOT OPERATE TO RELIEVE THE
23 DRIVER OF AN AUTHORIZED EMERGENCY VEHICLE FROM THE DUTY TO
24 DRIVE WITH DUE REGARD FOR THE SAFETY OF ALL PERSONS USING
25 THE HIGHWAY."

1 SECTION 56-5-2930 STATES AS FOLLOWS: "IT IS
2 UNLAWFUL IN THIS STATE, IT IS UNLAWFUL FOR A PERSON TO
3 DRIVE A MOTOR VEHICLE WITHIN THIS STATE WHILE (ONE) UNDER
4 THE INFLUENCE OF ALCOHOL TO THE EXTENT THAT THE PERSONS
5 FACULTIES TO DRIVE ARE MATERIALLY AND APPRECIABLY IMPAIRED.
6 (TWO) UNDER THE INFLUENCE OF ANY OTHER DRUG OR COMBINATION
7 OF OTHER DRUGS OR SUBSTANCES WHICH CAUSE IMPAIRMENT TO THE
8 EXTENT THAT THE PERSONS FACULTIES TO DRIVE, FACULTIES TO
9 DRIVE ARE MATERIALLY AND APPRECIABLY IMPAIRED OR UNDER THE
10 COMBINED INFLUENCE OF ALCOHOL AND ANY OTHER DRUG OR DRUGS
11 OR SUBSTANCES WHICH CAUSE IMPAIRMENT TO THE EXTENT THAT THE
12 PERSONS FACULTIES TO DRIVE ARE MATERIALLY AND APPRECIABLY
13 IMPAIRED."

14 THE OPERATOR OF A MOTOR VEHICLE IS REQUIRED TO
15 USE THE SAME CARE THAT WOULD BE USED BY A PERSON OF
16 ORDINARY REASON AND PRUDENCE IF THAT PERSON WERE DRIVING
17 THE SAME VEHICLE AT THE SAME TIME AND PLACE AND UNDER THE
18 SAME CIRCUMSTANCES.

19 THE DRIVER OF AN AUTOMOBILE HAS A DUTY TO KEEP A
20 PROPER LOOK OUT FOR OTHER VEHICLES ON THE ROAD. THIS DUTY
21 REQUIRES THE DRIVER TO WATCH ATTENTIVELY SO THAT THE DRIVER
22 IS ABLE TO SEE A PERSON OR OBJECT ON THE HIGHWAY.

23 THE DRIVER OF AN AUTOMOBILE ALSO HAS A DUTY TO
24 KEEP THE AUTOMOBILE UNDER PROPER CONTROL SO THAT THE DRIVER
25 IS ABLE TO SLOW DOWN, STOP, OR TURN THE AUTOMOBILE TO AVOID

1 COLLIDING WITH OTHER VEHICLES, PEDESTRIANS, AND OBJECTS
2 LAWFULLY ON THE ROAD."

3 SHOULD YOU DECIDE THAT THE PLAINTIFF IS ENTITLED
4 TO A VERDICT YOUR NEXT STEP WOULD BE TO DECIDE HOW MUCH
5 MONEY THE PLAINTIFF IS ENTITLED TO RECEIVE. WE CALL SUCH
6 AN AWARD DAMAGES.

7 ACTUAL DAMAGES ARE INTENDED TO COMPENSATE THE
8 INJURED PARTY, THAT IS TO PUT HIM AS NEAR AS POSSIBLE IN
9 THE SAME POSITION THAT HE WAS IN BEFORE THE INCIDENT
10 OCCURRED. IN OTHER WORDS ACTUAL DAMAGES WOULD BE THE
11 ACTUAL LOSSES AND EXPENSES WHICH THE PLAINTIFF HAS SUFFERED
12 BECAUSE OF THE DEFENDANT'S CARELESSNESS.

13 ACTUAL DAMAGES FOR A PLAINTIFF WHO HAS BEEN
14 PHYSICALLY INJURED INCLUDE MEDICAL CHARGES RELATED TO THE
15 INJURY, PHARMACY CHARGES, RELATED EXPENSES, PAIN AND
16 SUFFERING, LOSS OF ENJOYMENT OF LIFE, LOST WAGES, AS WELL
17 AS MENTAL ANGUISH, AND IMPAIRMENT OF HEALTH OR PHYSICAL
18 CONDITION. AS WITH ALL OTHER FACTS IN THIS CASE THE
19 PLAINTIFF MUST PROVE THEIR ACTUAL DAMAGES BY THE GREATER
20 WEIGHT OF THE EVIDENCE.

21 I CHARGE YOU THAT UNDER THE LAW OF SOUTH CAROLINA
22 A DEFENDANT'S HOME IS EXEMPT FROM ATTACHMENT, LEVY, AND
23 SALE AS A RESULT OF ANY VERDICT YOU MAY RENDER FOR THE
24 PLAINTIFF.

25 PAIN AND SUFFERING IS RECOGNIZED BY THE COURTS OF

1 THIS STATE AS A VERY MATERIAL ELEMENT OF DAMAGES ON WHICH A
2 RECOVERY MAY BE GROUNDED. PAIN AND SUFFERING IS RECOGNIZED
3 AS A SEPARATE KIND OF DAMAGE AND IS SEPARATE AND DISTINCT
4 FROM LOSS OF ENJOYMENT OF LIFE AND SUCH OTHER APPLICABLE
5 DAMAGES.

6 DAMAGES FOR PAIN AND SUFFERING ARE UNLIQUIDATED
7 AND INDETERMINATE IN CHARACTER AND THE ASSESSMENT OF
8 UNLIQUIDATED DAMAGES MUST REST IN THE SOLE DISCRETION OF
9 THE YOU THE JURY.

10 PAIN AND SUFFERING HAVE NO MARKET PRICE. THEY
11 ARE NOT CAPABLE OF BEING EXACTLY AND ACCURATELY DETERMINED
12 AND THERE IS NO FIXED RULE OR STANDARD WHEREBY DAMAGES FOR
13 THEM CAN BE MEASURED.

14 YOU MAY, THOUGH, YOU ARE NOT REQUIRED COMPUTE
15 DAMAGES FOR PAIN AND SUFFERING ON A DAILY PER DIEM BASIS.
16 THE AMOUNT OF DAMAGES TO BE AWARDED FOR PAIN AND SUFFERING
17 MUST BE LEFT TO THE JUDGMENT OF YOU THE JURY.

18 THE UNIVERSAL PRINCIPAL OF ACTUAL DAMAGES IS THAT
19 AN INJURED PARTY SHOULD RECEIVE COMPENSATION EQUAL TO HIS
20 OR HER LOSS AND NO MORE.

21 LOSS OF ENJOYMENT OF LIFE COMPENSATES THE
22 PLAINTIFF FOR LIMITATIONS ON THE PLAINTIFF'S ABILITY TO
23 PARTICIPATE IN AND DERIVE PLEASURE FROM THE NORMAL
24 ACTIVITIES OF DAILY LIFE.

25 THE INJURED PARTY MAY RECOVER FOR MENTAL ANGUISH

1 BROUGHT ABOUT BY BODILY INJURY AND SUFFERING. IF YOU FIND
2 THAT THE INJURED PARTY IS ENTITLED TO RECOVER DAMAGES YOU
3 MAY TAKE INTO ACCOUNT ANXIETY OR WORRY ABOUT THE
4 PLAINTIFF'S CONDITION THAT HE HAS SUFFERED SINCE THE TIME
5 OF THE ACCIDENT.

6 YOU MAY ALSO CONSIDER ANXIETY OR WORRY ABOUT THE
7 POSSIBLE FUTURE DIFFICULTIES OR CONDITION RESULTING FROM
8 INJURIES THAT THE PLAINTIFF PERCEIVED IF YOU ARE SATISFIED
9 TO A REASONABLE DEGREE OF CERTAINTY THAT THE PLAINTIFF WILL
10 SUFFER SUCH ANXIETY AND WORRY, HOWEVER THE PLAINTIFF MAY
11 ONLY RECOVER FROM THAT MENTAL ANGUISH BROUGHT ABOUT BY
12 BODILY INJURY AND SUFFERING AND IN THE ABSENCE OF SUCH A
13 CONNECTION THERE CAN BE NO RECOVERY FOR MENTAL PAIN AND
14 SUFFERING.

15 ALSO MENTAL ANGUISH MUST BE DISTINGUISHABLE FROM
16 MERE ANNOYANCE, REGRET, OR VEXATION. IT IS INTENSE MENTAL
17 SUFFERING.

18 THE LOSS OR IMPAIRMENT OF EARNING CAPACITY
19 RESULTING FROM INJURIES TO THE PLAINTIFF IS A PROPER
20 ELEMENT OF DAMAGES. IN DETERMINING THE AMOUNT OF DAMAGES
21 DUE TO THE PLAINTIFF FOR LOSS OR IMPAIRMENT OF EARNING
22 CAPACITY YOU SHOULD CONSIDER THE FOLLOWING.

23 THE LOSS OF FUTURE EARNING POWER, THIS REQUIRES
24 YOU TO CONSIDER ALL MATTERS THAT RELATE TO THE ISSUE OF ANY
25 IMPAIRMENT.

1 THE EFFECT WHICH THE IMPAIRMENT WILL HAVE ON THE
2 PLAINTIFF'S CAPACITY TO WORK.

3 THE EXTENT TO WHICH THE IMPAIRMENT WILL IMPAIR
4 THE PLAINTIFF'S EARNING CAPACITY.

5 THE PRESENT VALUE OF ALL LOSSES DUE TO THE
6 PLAINTIFF'S IMPAIRMENT EARNING POWER AND THE PHYSICAL PAIN
7 AND SUFFERING AS REASONABLY CERTAIN WILL RESULT IN THE
8 FUTURE FROM THE INJURIES TO THE PLAINTIFF.

9 AND THE EVIDENCE OF WHAT THE PLAINTIFF HAD
10 PREVIOUSLY EARNED WHEN EMPLOYED IN THE PAST IS A FACTOR ON
11 WHICH ANY, IN WHICH TO BASE ANY LOSS OR IMPAIRMENT OF
12 EARNING CAPACITY.

13 IN AWARDING DAMAGES FOR LOSS OR IMPAIRMENT TO
14 EARNING CAPACITY THE PLAINTIFF MAY RECOVER FOR THE LOSS OR
15 DECREASE OF EARNING CAPACITY DURING HIS ENTIRE EXPECTANCY
16 OF LIFE. IN DETERMINING THE LOSS OF EARNING CAPACITY WHICH
17 MAY RESULT IN THE FUTURE THE FACT THAT THE PLAINTIFF IS
18 MAKING THE SAME OR MORE EARNINGS SINCE THE INJURY IS ONLY
19 ONE FACTOR TO CONSIDER.

20 IF YOU DECIDE THAT THE PLAINTIFF IS ENTITLED TO
21 DAMAGES FOR IMPAIRMENT OF EARNING CAPACITY THEN YOU MUST
22 DECIDE THE AMOUNT OF DAMAGES USING THE LIFE EXPECTANCY
23 TABLE AS A GUIDE.

24 THE DEFENDANT CLAIMS THAT THE PLAINTIFF HAD A
25 PRE-EXISTING INJURY OR CONDITION PRIOR TO THE DATE THAT THE

1 PLAINTIFF CLAIMS THAT THE DEFENDANT INJURED HIM. IF YOU
2 FIND THAT THE PLAINTIFF RECEIVED AN INJURY AS A RESULT OF
3 THE NEGLIGENCE OF THE DEFENDANT AND IS ENTITLED TO RECOVER
4 FOR THAT INJURY THE FACT THAT THE PLAINTIFF HAD A PRE-
5 EXISTING INJURY OR CONDITION WOULD NOT PREVENT THE
6 PLAINTIFF FROM RECOVERING.

7 THE DEFENDANT IS RESPONSIBLE FOR ALL ILL EFFECTS
8 WHICH CONSIDERING THE PLAINTIFF'S CONDITION OF HEALTH WHEN
9 THE PLAINTIFF WAS INJURED, NATURALLY AND NECESSARILY
10 FOLLOWED THE INJURY.

11 A DEFENDANT TAKES THE PLAINTIFF AS THE PLAINTIFF
12 IS FOUND WHETHER THE PLAINTIFF IS IN PERFECT HEALTH, IN
13 POOR HEALTH OR SOMEWHERE IN BETWEEN.

14 A DEFENDANT'S LIABILITY IS NO WAY LESSENED OR
15 AFFECTED BECAUSE OF THE FACT THAT THE INJURY WOULD NOT HAVE
16 RESULTED OR WOULD NOT HAVE BEEN AS SERIOUS OR SEVERE HAD
17 THE PLAINTIFF BEEN IN GOOD HEALTH OR THAT THE INJURIES WERE
18 AGGRAVATED AND RENDERED MORE DIFFICULT TO CURE BY REASON OF
19 THE FACT THAT THE PLAINTIFF WAS NOT IN GOOD HEALTH.

20 IN OTHER WORDS IF THE PRESENCE OF A PRE-EXISTING
21 INJURY OR CONDITION AGGRAVATES AND PROLONGS THE INJURY AND
22 DECREASES THE DAMAGES THE PLAINTIFF SHOULD BE COMPENSATED
23 FOR THE INCREASED OR ADDED DAMAGES.

24 A PERSON WITH A PRE-EXISTING INJURY OR CONDITION
25 IS NOT, HOWEVER, ENTITLED TO ANY COMPENSATION FOR THE PRE-

1 EXISTING INJURY OR CONDITION. IN ADDITION IF THE PROBLEMS
2 ARE THE RESULT OF THE NATURAL PROGRESSION OF THE WORSENING
3 OF A PRE-EXISTING INJURY OR CONDITION THEN THE PLAINTIFF
4 WOULD NOT BE ENTITLED TO BE COMPENSATED FOR THOSE PROBLEMS.

5 A PERSONS LIFE EXPECTANCY IS DETERMINED BY A LIFE
6 EXPECTANCY TABLE WHICH IS A PART OF THE LAWS OF THIS STATE.
7 THE LIFE EXPECTANCY TABLE IS ONLY AN ESTIMATE OF THE
8 PROBABLE AVERAGE REMAINING LENGTH OF THE LIFE OF ALL
9 PERSONS IN OUR STATE OF A GIVEN AGE.

10 THE PLAINTIFF AT THE TIME OF THE ACCIDENT WAS A
11 33 YEAR OLD MALE WITH A LIFE EXPECTANCY ACCORDING TO THE
12 LIFE EXPECTANCY TABLE OF 44.95 YEARS. THIS FACT IS TO BE
13 CONSIDERED BY YOU ALONG WITH ANY OTHER FACTS AND
14 CIRCUMSTANCES AND EVIDENCE BEARING ON THE PLAINTIFF'S LIFE
15 EXPECTANCY INCLUDING OCCUPATION, HABITS, AND HEALTH AT THE
16 TIME OF INJURY IN DECIDING THE AMOUNT OF DAMAGES TO BE
17 AWARDED TO THE PLAINTIFF.

18 THE PLAINTIFF HAS THE BURDEN OF PROVING HIS
19 ACTUAL DAMAGES BY THE GREATER WEIGHT OF THE EVIDENCE BUT
20 THIS DOES NOT MEAN THAT HE MUST PROVE THEM TO A
21 MATHEMATICAL CERTAINTY OR PRODUCE EVIDENCE OF THE PRECISE
22 AMOUNT OF ACTUAL DAMAGES HE HAS SUFFERED. RATHER THE
23 EVIDENCE PUT FORTH BY THE PLAINTIFF SHOULD BE SUCH AS TO
24 ENABLE YOU THE JURY TO DETERMINE WHAT AMOUNT OF DAMAGES IS
25 FAIR, JUST AND REASONABLE.

1 THE UNIVERSAL PRINCIPAL OF ACTUAL DAMAGES IS THAT
2 AN INJURED PARTY IS ENTITLED TO COMPENSATION IN AN AMOUNT
3 TO PUT THEM IN AS NEAR AS POSSIBLE THE SAME POSITION THEY
4 WERE IN PRIOR TO THE INJURY AS FAR AS MONETARY DAMAGES CAN
5 DO THIS. SAID ANOTHER WAY THE INJURED PARTY SHOULD RECEIVE
6 COMPENSATION COMMISERATE WITH HIS LOSS OR INJURY AND NO
7 MORE.

8 I FURTHER CHARGE YOU THAT YOU MAY NOT UNDER THE
9 LAWS OF THIS STATE BASE YOUR VERDICT UPON SYMPATHY,
10 PREJUDICE, CONJECTURE, OR SPECULATION, BUT IT MUST BE BASED
11 UPON THE EVIDENCE GIVEN IN THE CASE WHICH CONVINCES YOU BY
12 ITS GREATER WEIGHT OR PREPONDERANCE OF THE TRUTH OF SOME
13 ISSUE WHICH IS BEFORE YOU.

14 THE COLLATERAL SOURCE RULE PROVIDES THAT
15 COMPENSATION RECEIVED BY AN INJURED PARTY FROM A SOURCE
16 WHOLLY INDEPENDENT OF THE WRONGDOER WILL NOT REDUCE THE
17 AMOUNT OF THE DAMAGES OWED BY THE WRONGDOER.

18 IN OTHER WORDS UNDER THE COLLATERAL SOURCE RULE
19 IF AN INJURED PLAINTIFF RECEIVES COMPENSATION FOR HIS
20 INJURIES FROM A SOURCE WHOLLY INDEPENDENT OF THE DEFENDANT
21 THE PAYMENT SHOULD NOT BE DEDUCTED FROM THE DAMAGES WHICH
22 HE WOULD OTHERWISE COLLECT FROM THE DEFENDANT.

23 THE DEFENDANT IS NOT ENTITLED TO HAVE THE DAMAGES
24 FOR WHICH THE DEFENDANT IS LIABLE REDUCED BY PROVING THE
25 DEFENDANT HAS RECEIVED OR WILL RECEIVE COMPENSATION OR

1 INDEMNITY FOR THE LOSS FROM A COLLATERAL SOURCE WHOLLY
2 INDEPENDENT OF THE DEFENDANT.

3 A DEFENDANT MAY NOT BENEFIT FROM THE FACT THAT
4 THE PLAINTIFF HAS RECEIVED MONEY FROM OTHER SOURCES AS A
5 RESULT OF THE DEFENDANT'S WRONGFUL CONDUCT.

6 THE ONLY REQUIREMENT FOR QUALIFICATION AS A
7 COLLATERAL SOURCE IS THAT THE SOURCE BE WHOLLY INDEPENDENT
8 OF THE WRONGDOER.

9 A SOURCE IS WHOLLY INDEPENDENT OF THE WRONGDOER
10 WHEN THE WRONGDOER HAS NOT CONTRIBUTED TO IT AND WHEN
11 PAYMENTS TO THE INJURED PARTY WERE NOT MADE ON BEHALF OF
12 THE WRONGDOER.

13 IN APPLYING THE COLLATERAL SOURCE RULE SOUTH
14 CAROLINA ALLOWS THE PLAINTIFF THE BENEFIT OF BOTH
15 GRATUITOUS BENEFITS AND NON GRATUITOUS BENEFITS ARISING
16 FROM EMPLOYMENT, INSURANCE, OR OTHER CONTRACTUAL
17 AGREEMENTS.

18 A BENEFIT DIRECTED TO AN INJURED PARTY SHOULD NOT
19 BE SHIFTED SO AS TO RESULT IN A WINDFALL FOR THE WRONGDOER.

20 THE WRONGDOER MAY NOT BE BENEFITTED BY COLLATERAL
21 PAYMENTS MADE TO THE PERSON HE HAS WRONGED.

22 IT IS THE WRONGDOERS RESPONSIBILITY TO COMPENSATE
23 AN INJURED PARTY FOR ALL THE HARM THAT HE CAUSES, NOT THE
24 NET LOSS THE INJURED PARTY RECEIVES.

25 A DEFENDANT CANNOT TAKE ADVANTAGE OF PAYMENTS OR

1 SERVICES RENDERED BY A COLLATERAL SOURCE FOR THE
2 PLAINTIFF'S BENEFIT IRRESPECTIVE OF WHETHER THE SOURCE IS
3 AN INSURANCE COMPANY, AN EMPLOYER, A FAMILY MEMBER, OR
4 OTHER SOURCE.

5 A NEGLIGENT DEFENDANT IS NOT ENTITLED TO ENJOY
6 THE FRUITS OF FORTUITOUS CIRCUMSTANCES, EMPLOYER
7 GENEROSITY, OR DILIGENT EFFORTS ON THE PART OF THE INJURED
8 PLAINTIFF.

9 THE FACT THAT THE PLAINTIFF RECEIVED GRATUITOUS
10 MEDICAL CARE, CONTINUED SALARY, OR WAGE PAYMENTS, PROCEEDS
11 FROM INSURANCE POLICIES, OR WELFARE, AND PENSION BENEFITS
12 WILL NOT BE TAKEN INTO ACCOUNT IN COMPUTING DAMAGES.

13 IF YOU DECIDE FROM THE EVIDENCE AND UNDER THE LAW
14 AS IT IS GIVEN TO YOU THAT THE PLAINTIFF IS ENTITLED TO
15 RECOVER DAMAGES INCLUDING MEDICAL, HOSPITAL, OR OTHER
16 HEALTH CARE COSTS I CHARGE YOU THAT THE PLAINTIFF CAN ONLY
17 RECOVER SUCH SUMS AS YOU DETERMINE FROM THE EVIDENCE
18 INTRODUCED THAT ARE BOTH REASONABLE AND NECESSARY FOR THE
19 TREATMENT OF THE CONDITION.

20 I CHARGE YOU THAT WHILE THE AMOUNT ACTUALLY
21 CHARGED AND PAID MAY BE CONSIDERED BY YOU YOU ARE NOT BOUND
22 BY THAT AMOUNT. YOU MUST FIND ONLY SUCH SUM AS IT IS BOTH
23 REASONABLE AND NECESSARY.

24 IN THIS CASE THE PLAINTIFF SEEKS PUNITIVE DAMAGES
25 IN ADDITION TO ACTUAL DAMAGES. PUNITIVE DAMAGES ALSO KNOWN

1 AS EXEMPLARY DAMAGES ARE IMPOSED AS PUNISHMENT. THEY ARE
2 NOT INTENDED TO COMPENSATE. PUNITIVE DAMAGES ARE ALLOWED
3 IN THE INTEREST OF SOCIETY IN THE NATURE OF PUNISHMENT.
4 MOREOVER THEY SERVE TO VINDICATE A PRIVATE RIGHT BY
5 REQUIRING THE WRONGDOER TO PAY MONEY TO THE INJURED PARTY.

6 PUNITIVE DAMAGES CAN ONLY BE AWARDED WHERE THE
7 PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE
8 DEFENDANT'S ACTIONS WERE WILLFUL, WANTON, MALICIOUS OR IN
9 RECKLESS DISREGARD OF THE PLAINTIFF'S RIGHTS.

10 A CONSCIOUS FAILURE TO EXERCISE DUE CARE
11 CONSTITUTES WILLFULNESS.

12 PUNITIVE DAMAGES WILL BE ALLOWED EVEN WHEN THE
13 DEFENDANT DOES NOT REALIZE HE IS INVADING THE PLAINTIFF'S
14 RIGHT SO LONG AS THE ACT IS COMMITTED IN SUCH A MANNER THAT
15 A PERSON OF ORDINARY PRUDENCE WOULD CONCLUDE IT WAS DONE IN
16 RECKLESS DISREGARD OF THE RIGHTS OF ANOTHER.

17 RECKLESSNESS IS DISTINGUISHED FROM NEGLIGENCE.
18 NEGLIGENCE IS A FAILURE TO USE DUE CARE. NEGLIGENCE IS
19 CARELESSNESS. NEGLIGENCE IS FAILURE BY OMISSION OR
20 COMMISSION TO EXERCISE DUE CARE AS A PERSON OF ORDINARY
21 REASON AND PRUDENCE WOULD EXERCISE UNDER THE SAME
22 CIRCUMSTANCES.

23 RECKLESSNESS IS A HIGHER DEGREE OF
24 RESPONSIBILITY. RECKLESSNESS IS A CONSCIOUS INDIFFERENCE
25 TO THE RIGHTS OF THE PLAINTIFF OR A RECKLESS DISREGARD OF

1 THE RIGHTS OF THE PLAINTIFF.

2 RECKLESSNESS IS AN AWARENESS OF WRONGFUL CONDUCT
3 IN A CONTINUATION TO ACT REGARDLESS OF CONSEQUENCES.

4 THE TEST FOR DETERMINING WHETHER A TORT MAY BE
5 DEEMED RECKLESS, WILLFUL, OR WANTON IS WHETHER IT HAS BEEN
6 COMMITTED IN SUCH A MANNER AND UNDER SUCH CIRCUMSTANCES
7 THAT A PERSON OF ORDINARY REASON OR PRUDENCE WOULD HAVE
8 BEEN CONSCIOUS OF IT AS AN INVASION OF THE RIGHTS OF THE
9 INJURED PARTY.

10 BEFORE YOU CAN AWARD PUNITIVE DAMAGES YOU MUST
11 FIRST FIND THAT THE PLAINTIFF IS ENTITLED TO ACTUAL OR
12 NOMINAL DAMAGES. THERE MUST BE AN AWARD OF ACTUAL OR
13 NOMINAL DAMAGES FOR A VERDICT OF PUNITIVE DAMAGES TO BE
14 SUPPORTED. THIS RULE IS PREMISED ON THE FACT THAT
15 LIABILITY MUST BE ESTABLISHED BEFORE A PLAINTIFF CAN SEEK
16 PUNITIVE DAMAGES, THEREFORE, IF YOU DO NOT AWARD ACTUAL OR
17 NOMINAL DAMAGES YOU CANNOT AWARD PUNITIVE DAMAGES.

18 THERE IS NO FORMULA OR STANDARD THAT CAN BE USED
19 AS A MEASURE OF ASSESSING PUNITIVE DAMAGES, HOWEVER,
20 FACTORS RELEVANT TO YOUR CONSIDERATION OF DAMAGES ARE:

21 (ONE) THE CHARACTER OF THE DEFENDANT'S ACTS;

22 (TWO) THE NATURE AND EXTENT OF THE HARM TO THE
23 PLAINTIFF WHICH THE DEFENDANT CAUSED OR INTENDED TO CAUSE;

24 (THREE) THE DEFENDANT'S DEGREE OF CULPABILITY;

25 (FOUR) THE PUNISHMENT THAT SHOULD BE IMPOSED;

1 (FIVE) THE DURATION OF THE CONDUCT;
2 (SIX) THE DEFENDANT'S AWARENESS OR CONCEALMENT;
3 (SEVEN) THE EXISTENCE OF SIMILAR PAST CONDUCT;
4 (EIGHT) LIKELIHOOD THE AWARD WILL DETER THE
5 DEFENDANT OR OTHERS FROM THE CONDUCT; AND
6 (NINE) WHETHER THE AWARD IS REASONABLY RELATED TO
7 HARM LIKELY TO RESULT FROM SUCH CONDUCT; AND
8 (TEN) THE DEFENDANT'S WEALTH OR ABILITY TO PAY.
9 WHEN UNDER PROPER ALLEGATIONS A PLAINTIFF PROVES
10 BY CLEAR AND CONVINCING EVIDENCE A WILLFUL, WANTON,
11 RECKLESS, OR MALICIOUS VIOLATION OF HIS RIGHTS IT IS NOT
12 ONLY THE RIGHT BUT THE DUTY OF THE JURY TO AWARD PUNITIVE
13 DAMAGES.
14 ACCORDINGLY, IF YOU SHOULD FIND THAT THE
15 PLAINTIFF IS ENTITLED TO RECOVER PUNITIVE DAMAGES IN
16 ADDITION TO ACTUAL DAMAGES IT WOULD BE YOUR DUTY TO INCLUDE
17 SUCH DAMAGES IN YOUR VERDICT AND AWARD SUCH AN AMOUNT AS
18 YOU MAY DEEM REASONABLE AND PROPER IN LIGHT OF THE FACTS
19 AND CIRCUMSTANCES.
20 LADIES AND GENTLEMEN, I'M NOW DRAWING TO THE END
21 OF MY CHARGE AND I WANT YOU TO CLEARLY UNDERSTAND THAT YOU
22 ARE NOT PARTISANS OR ADVOCATES FOR THE PLAINTIFF OR THE
23 DEFENDANTS. YOU DO NOT SERVE AS JURORS TO AWARD YOUR
24 FRIENDS OR PUNISH YOUR ENEMIES. IN THIS REGARD YOU HAVE
25 BEEN SELECTED BY ALL THE PARTIES TO BE FAIR AND IMPARTIAL

1 JURORS.

2 IT IS YOUR DUTY BY YOUR JOINT DELIBERATIONS TO
3 DETERMINE THE TRUTH IN THE CASE, THEN TO THE FACTS WHICH
4 YOU DETERMINE TO BE TRUE YOU SHOULD TAKE AND APPLY THE LAW
5 WHICH HAS BEEN GIVEN TO YOU BY THIS COURT AND THUS ARRIVE
6 AT A VERDICT WHICH SPEAKS THE TRUTH IN THIS CASE.

7 IN FACT THE WORD VERDICT WHICH HAS A LATIN
8 DERIVATIVE MEANS A TRUE SAY, THUS WHEN YOU HAVE
9 ACCOMPLISHED THESE RESPONSIBILITIES YOU WILL HAVE SATISFIED
10 YOUR OATH AS JURORS AND YOU WILL HAVE DISCHARGED YOUR DUTY
11 TO THIS COURT.

12 AND, MS. CLERK, IF YOU WOULD HAND THE FORELADY
13 THE VERDICT FORM?

14 MADAM CLERK: YES, SIR.

15 THE COURT: NOW, MS. FORELADY, I HAVE HANDED YOU
16 THE VERDICT FORM. IN THIS REGARD WHEN YOU ARRIVE AT A
17 VERDICT IN THIS CASE YOU WILL WRITE YOUR VERDICT ON THE
18 FORM AND SIGN IT. THE VERDICT THAT YOU RENDER IN THIS CASE
19 MUST BE THE VERDICT OF EACH AND EVERY JUROR. IT MUST BE A
20 UNANIMOUS VERDICT. ALL TWELVE JURORS MUST AGREE ON THE
21 VERDICT WHICH YOU AUTHORIZE THE FORELADY TO WRITE FOR THE
22 JURY.

23 MS. FORELADY AND MEMBERS OF THE JURY, I WANT YOU
24 TO FURTHER UNDERSTAND THAT THE ORDER IN WHICH THE CHOICES
25 OF THE VERDICT APPEAR ON THE VERDICT FORM ARE NOT

1 SUGGESTIVE OF ANY VERDICT ON THE PART OF THIS COURT. THE
2 VERDICT IN THIS CASE IS TO BE DETERMINED BY YOU THE JURY
3 NOT THE COURT.

4 FURTHERMORE, LADIES AND GENTLEMEN, PLEASE
5 UNDERSTAND THAT EVEN THOUGH I HAVE GIVEN THE VERDICT FORM
6 TO THE FORELADY IT IS NOT HER VERDICT ALONE. IT IS THE
7 VERDICT OF ALL TWELVE OF YOU AND AGAIN I EMPHASIZE IT MUST
8 BE UNANIMOUS.

9 IN A MOMENT YOU WILL RETIRE TO THE JURY ROOM,
10 HOWEVER, I WOULD ASK THAT YOU DO NOT BEGIN YOUR
11 DELIBERATIONS UNTIL YOU ARE TOLD TO DO SO. THE LAW
12 REQUIRES THAT I NOW CONSULT WITH THE ATTORNEYS TO MAKE SURE
13 THAT I HAVE NOT LEFT ANYTHING OUT OF THESE INSTRUCTIONS.
14 AFTER I HAVE CHECKED WITH THE ATTORNEYS THE BAILIFF WILL
15 BRING IN THE ITEMS OF EVIDENCE AND INSTRUCT YOU TO BEGIN
16 YOUR DELIBERATIONS.

17 ALSO, SHOULD YOU HAVE ANY QUESTIONS DURING YOUR
18 DELIBERATIONS YOU MUST PUT THEM IN THE FORM OF WRITING AND
19 SEND THEM TO ME BY WAY OF THE BAILIFF. THE COURT BAILIFF
20 WILL BE PLACED IMMEDIATELY OUTSIDE OF THE JURY ROOM DOOR TO
21 PROVIDE YOU SECURITY AND ASSISTANCE DURING YOUR
22 DELIBERATIONS. ONCE YOU HAVE REACHED YOUR VERDICT PLEASE
23 KNOCK ON THE JURY ROOM DOOR AND ASK THE BAILIFF TO ADVISE
24 THE COURT THAT YOU HAVE REACHED A VERDICT AND WE WILL
25 RETURN YOU TO THE COURTROOM AS PROMPTLY AS POSSIBLE.

1 THANK YOU, AND YOU MAY RETIRE TO THE JURY ROOM
2 BUT AGAIN DO NOT BEGIN YOUR DELIBERATIONS UNTIL YOU HAVE
3 BEEN SPECIFICALLY TOLD TO DO SO, THANK YOU.

4 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
5 3:57 P.M.)

6 THE COURT: ANY OBJECTIONS TO THE CHARGE AS
7 GIVEN?

8 MR. NICHOLS: JUST A COUPLE OF THINGS, JUDGE.

9 THE COURT: SURE.

10 MR. NICHOLS: WHEN YOU GAVE THE FAMILY PURPOSE
11 DOCTRINE YOU TALKED ABOUT EACH OF THE ELEMENTS, OWNS,
12 FURNISH, MAINTAIN, YOU PUT AN AND, AND ACTUALLY THE CASE
13 LAW SAYS OR. IN FACT THAT WAS THE ISSUE IN THE CAMPBELL V.
14 PASCAL CASE AND AN EARLIER CASE THAT THE SUPREME COURT REID
15 V. SWINDLE WHICH IS A 1967 CASE. SO IT'S AN OR NOT AN AND,
16 AND WITH THE CONJUNCTIVE THEY MAY THINK THAT THEY HAVE TO
17 PROVIDE THEM ALL AND THE EVIDENCE WE THINK DOES SHOW THEM
18 ALL BUT IF ONE OF THEM GETS HUNG UP ON ONE OF THOSE THINGS
19 OWNED, FURNISHED, MAINTAINED, THEN THAT MIGHT, IT SHOULD BE
20 OR INSTEAD OF AND, AND, I'M PRETTY SURE THAT THE CHARGE
21 THAT WE PROFFERED HAD THE OR INSTEAD OF THE AND. WOULD YOU
22 LIKE FOR ME TO CONTINUE?

23 THE COURT: HOLD ON ONE SECOND, LET'S GO AHEAD
24 AND RESOLVE THAT AND THEN WE'LL GO FROM THERE. HOW DO
25 YA'LL FEEL ABOUT THAT?

1 MR. LAWSON: THEY'D STOP, YOU KNOW, I HAVE NO
2 OBJECTION.

3 THE COURT: I GOT IT DIRECTLY OUT OF THE BENCH
4 BOOK.

5 MR. LAWSON: YEAH, I MEAN I HAVE NO PROBLEM WITH
6 THAT, WHATEVER.

7 THE COURT: ALL RIGHT, HOW ABOUT YOU, MR.
8 CONNELL?

9 MR. CONNELL: YOUR HONOR, WERE YOU READING A
10 SPECIFIC CHARGE FROM THEIRS, IS THAT --

11 THE COURT: I WAS READING IT STRAIGHT OUT OF THE
12 BENCH BOOK.

13 MR. CONNELL: OKAY, WELL I MEAN YOU READ WHAT
14 YOU READ, I DON'T SEE ANY ISSUE WITH IT.

15 MR. NICHOLS: AND I THINK THE BENCH, THE BENCH
16 BOOK MUST BE ---

17 THE COURT: COULD BE WRONG.

18 MR. NICHOLS: WHAT, WHAT CAMPBELL V. PASCAL SAYS
19 THAT THERE AT ONE TIME THE ORDER WAS THERE AND FOR SOME
20 REASON THE COURT STARTED USING THE AND BUT THEN LATER THE
21 COURT KIND OF WENT BACK AND CAMPBELL SAID THE SUPREME COURT
22 WAS NOT INTENDING TO OVERRULE PORCHER AND THOSE OTHER CASES
23 AND, AND THIS VERY ARGUMENT WAS MADE IN THE, IN THE
24 CAMPBELL CASE THAT, HEY, JUDGE, IT SHOULD HAVE BEEN AND AND
25 NOT OR AND THE, I THINK JUDGE GOOLSBY MIGHT HAVE WRITTEN

1 THAT CASE BUT HE WAS VERY CLEAR AND HE CITES BACK TO THE,
2 MAYBE CITES BACK TO THE REID, BUT ANYWAY IT'S 347 S.E. 2ND
3 892, AND ---

4 LAW CLERK: BUT THE CASE LAW SINCE THEN LIKE
5 CORBETT V. WEAVER WHICH IS THE 2008 CASE THEY USE, AND THEY
6 CITE A 2006 COURT OF APPEALS CASE THAT USES AND.

7 MR. NICHOLS: AND, AND WHAT I WOULD, WHAT I
8 WOULD SUGGEST TO THE JUDGE, WHAT I WOULD SUGGEST TO YOU,
9 JUDGE, IS THAT THAT'S, THAT'S, I JUST HAVE TO SAY IS
10 CARELESSNESS ON BEHALF OF WHAT'S GOING ON THERE BECAUSE THE
11 REID CASE, WHICH WAS ONE OF THE CASES DECIDED IN 1967 CITES
12 TO, I THINK IT CITES TO A ALR OR A CJS OR SOMETHING BUT IT
13 USES THE WORD OR AND CAMPBELL WAS VERY CLEAR THAT OR WAS
14 THE CORRECT STANDARD. I DON'T KNOW THAT THAT WAS THE ISSUE
15 IN THOSE SUBSEQUENT CASES SO THAT THOSE CASES WERE
16 INTENDING TO OVERRULE CAMPBELL V. PASCAL AND THE REID CASE

17 ---

18 THE COURT: CORRECT.

19 MR. NICHOLS: --- BUT, BUT THE WORD, AND, OF
20 COURSE, IT WAS READ TO FAST THAT IT MAY NOT MAKE A
21 DIFFERENCE BUT I'M JUST WORRIED THAT SOMEBODY MIGHT GET
22 HUNG UP ON AND WHEN IT SHOULD HAVE BEEN OR SO WE WOULD ASK
23 THAT THE, THAT THE JUDGE INSTRUCT THE JURY THAT IT'S OR NOT
24 AND.

25 THE COURT: WHERE A PARENT OWNS, FURNISHES, OR

1 MAINTAINS?

2 MR. NICHOLS: YES, SIR, I HATE THE PROSPECT THAT
3 SOMEBODY IN COLUMBIA MIGHT BE READING THIS TRANSCRIPT TO
4 SEE THAT I SAID IT WAS CARELESS WRITING BUT I WORKED UP
5 THERE FOR A FEW YEARS AND I WROTE CARELESSLY AT TIMES AS
6 WELL.

7 MR. ROTHSTEIN: THAT WAS MR. NICHOLS THAT MADE
8 THAT ARGUMENT FOR THE RECORD.

9 MR. NICHOLS: THEY WILL PROPERLY ADMONISH ME AT
10 THE APPROPRIATE TIME.

11 MR. CONNELL: YOUR HONOR, HERE'S MY, HERE'S MY
12 ISSUE WITH THAT. YOU'VE OBVIOUSLY, YOU TALKED TO THEM FOR
13 OVER FORTY-FIVE MINUTES GIVING THE COMPREHENSIVE CHARGE ON
14 A THROUGH Z. I DON'T WANT YOU TO CALL THEM BACK OUT AND
15 CALL ATTENTION TO ONE SECTION OF THE CHARGE, I THINK THAT
16 WOULD BE, FOR THE WORD AND OR OR.

17 THE COURT: THE ONLY PROBLEM I HAVE IS THE MORE
18 RECENT CASE LAW SAYS AND, THEY MAY HAVE SAID IT WRONG, I
19 DON'T KNOW, BUT IT IS MORE RECENT THAN YOU HAVE.

20 MR. CONNELL: THAT'S THE CORBETT CASE YOU'RE
21 TALKING ABOUT.

22 THE COURT: WHICH ONE YOU GOT, YEAH.

23 MR. NICHOLS: BUT, BUT THE ISSUE OF WHETHER IT
24 WAS AND OR WAS NOT AN ISSUE IN THAT CASE OR THE OTHER MORE
25 RECENT CASE BUT IT WAS PRECISELY THE ISSUE IN THE CAMPBELL

1 CASE, AND I THINK, I THINK IF YOU LOOK AT, AT WHAT HAPPENED
2 AT ---

3 THE COURT: HAVE YOU GOT A COPY OF IT?

4 MR. NICHOLS: YES, WE CAN GET YOU A COPY, JUDGE,
5 IN JUST A FEW MINUTES.

6 MR. ROTHSTEIN: YOUR HONOR, THERE ARE A COUPLE
7 OF OTHER ISSUES, TOO, LIKE I THINK SIGNIFICANT BUT THEY, I
8 THINK THEY'RE PROBABLY GOING TO NEED TO BE CHARGED ON TWO
9 OTHER ISSUES, I'LL LET MR. NICHOLS ADDRESS THAT. I DON'T
10 KNOW IF YOU WANT US TO GET THAT RESOLVED FIRST OR --

11 MR. NICHOLS: I'LL TRY TO GET A COPY OF
12 CAMPBELL, JUDGE, BUT IT, IT MAY BE DIFFICULT FOR ME TO GET
13 A HARD COPY. I CAN PULL IT UP ON WEST LAW

14 MR. CONNELL: I'VE GOT IT.

15 THE COURT: YOU GOT IT?

16 MR. CONNELL: YES, SIR.

17 THE COURT: WHAT'S YOUR TAKE ON IT?

18 MR. CONNELL: I DON'T KNOW ANY DIFFERENCE, I
19 MEAN --

20 THE COURT: YOU WANT TO LET'S GO AHEAD AND
21 CHARGE ON IT?

22 MR. CONNELL: WE DON'T LIKE HIS OUTLINE.

23 LAW CLERK: THE EXACT ISSUE IN PASCAL IS WHETHER
24 OR NOT OWNERSHIP IS REQUIRED; IT'S NOT WHETHER IT'S AN AND
25 OR OR, I MEAN THAT IS THE, THAT'S THE DETERMINATE WORD BUT

1 THE ISSUE IS FOR THE OWNERSHIP OF THE CAR IS REQUIRED OR --

2 MR. NICHOLS: THERE IS ANOTHER CASE, AND I DON'T
3 RECALL THE NAME, BUT IT WAS ONE THE SON WENT OFF OVERSEAS I
4 THINK TO APPLY FOR WAR, PORTER CASE, AND THE ARGUMENT THERE
5 WAS THAT SINCE THE SON OWNED THE CAR EVEN THOUGH HE LEFT IT
6 IN THE CARE OF THE FATHER IN THAT CASE WHO THEN LOANED IT
7 TO THE DAUGHTER THAT CAUSED THE WRECK THE ARGUMENT WAS THE
8 DOCTRINE DIDN'T APPLY AND THEY SAID, NO, OWNERSHIP IN THAT
9 CASE; AND, SO UNDER THE CHARGE THAT YA'LL GAVE HERE IT
10 WOULDN'T HAVE APPLIED IN THAT CASE BECAUSE IT WOULD HAVE
11 HAD TO BE AND, AND REID, THE REID CASE IN 1967 AND THE
12 CAMPBELL I MEAN THAT'S THE ISSUE IN CAMPBELL IS CAUSE THE
13 ARGUMENT WAS MADE IN CAMPBELL THAT IT HAD TO BE AND AND THE
14 COURT SAID NO.

15 MR. ROTHSTEIN: AND, YOUR HONOR, I MADE THAT
16 EXACT DISTINCTION IN MY, IN MY CLOSING ARGUMENT. I SAID
17 THEY ONLY HAD TO FIND ONE OF THOSE, OWNERSHIP, MAINTENANCE,
18 OR, I MEAN I ---

19 THE COURT: YEAH, I HEARD IT AND NOTICED IT.

20 MR. ROTHSTEIN: IN RALPH K. ANDERSON'S CHARGE,
21 YOUR HONOR, THE ONE THAT I HANDED UP ACTUALLY USES THE OR
22 PROPERLY FOR WHAT'S THAT WORTH.

23 MR. NICHOLS: AND I WILL TELL YOU I LOVE MS.
24 FRIERSON TO DEATH BUT I HAVE FOUND OTHER PROBLEMS IN THE
25 DESK BOOK BEFORE AND I GENERALLY CONTACT ROSELYN FRIERSON

1 TO LET HER KNOW.

2 THE COURT: WHAT ARE YOUR OTHER ISSUES?

3 MR. ROTHSTEIN: JUDGE, WHEN YOU, WHEN YOU WERE
4 CHARGING THAT THEY, THAT THE JUDGE NEEDED TO AWARD HIM THE
5 DAMAGES YOU SAID SOMETHING LIKE EQUAL AND NO MORE AND, AND,
6 AND THIS IS MINOR AND IT MAKE NOT MAKE A DIFFERENCE BUT ---

7 THE COURT: WHERE WAS THAT EXACTLY?

8 MR. NICHOLS: IT WAS WHEN YOU SAID THAT THEY
9 SHOULD, AND I WAS WRITING AS FAST AS I COULD. I JUST HEARD
10 THE WORDS EQUAL AND NO MORE AND I THINK THE CORRECT THING
11 WOULD BE TO SAY EQUAL AND NO MORE OR NO LESS SO HE'S
12 ENTITLED TO FAIR COMPENSATION AND NO MORE OR NO LESS. BUT
13 I, I DON'T KNOW, FRANKLY I DON'T KNOW THAT THAT MAKES A BIG
14 DIFFERENCE THAN EQUAL, AND I DON'T KNOW IF DEFENSE COUNSEL
15 NEEDS TO BE HEARD ON THAT.

16 MR. LAWSON: DO WE?

17 THE COURT: IT DOESN'T MATTER, THE QUESTION IS
18 CAN I FIND IT AMONG SIX THOUSAND EIGHT HUNDRED AND EIGHTY
19 THREE WORDS. ALL RIGHT, WHAT'S THE OTHER ONE?

20 MR. NICHOLS: ALL RIGHT, THE THIRD THING IS YOU
21 WERE CHARGING THE MORTALITY TABLE AND YOU SAID THAT HE THEN
22 HAD A LIFE EXPECTANCY OF FORTY FOUR POINT NINE FIVE YEARS.
23 I THINK WHAT YOU MEANT TO SAY FORTY FOUR POINT NINE FIVE
24 YEARS MORE OR MORE YEARS BECAUSE THE WAY YOU CHARGED THEM
25 HE'S NOT GOT MUCH LONGER LEFT ON THE EARTH.

1 THE COURT: LET ME FIND THAT ONE AND CORRECT
2 THAT, GIVE ME THE CORRECTION YOU WANT ON THAT?

3 MR. NICHOLS: WELL, JUDGE, IF YOU COULD JUST
4 CHARGE THEM THAT BY THE ACTUARIAL TABLES HIS LIFE
5 EXPECTANCY WOULD BE FORTY FOUR POINT FIVE MORE YEARS.

6 THE COURT: GOT IT.

7 MR. LAWSON: YOUR HONOR, IF YOU'RE GOING TO
8 RECHARGE THAT I THINK THE APPROPRIATE METHOD OF DOING THAT
9 IS LIFE EXPECTANCY FROM TODAY PLUS THEY'VE ALREADY
10 TESTIFIED ABOUT HIS DAMAGES THROUGH TODAY AND ANYTHING IN
11 THE FUTURE WOULD BE FROM TODAY NOT FROM 2003.

12 MR. NICHOLS: THAT'S FINE, AS LONG AS IT'S NOT
13 FORTY FOUR YEARS.

14 MR. LAWSON: I WAS NOT GOING TO OBJECT TO IT OR
15 CALL ATTENTION TO IT BUT IF YOU'RE GOING TO RECHARGE IT
16 THEN I WOULD --

17 MR. NICHOLS: JUDGE ---

18 THE COURT: HOW DO YOU WANT ME TO EXACTLY CHARGE
19 IT, TELL ME?

20 MR. NICHOLS: JUDGE, I THINK ACTUALLY MR. LAWSON
21 IS CORRECT THAT IT OUGHT TO BE FROM WHEN THEY RENDER THEIR
22 VERDICT TODAY AND THAT HAD, THAT HAD OCCURRED TO ME. I
23 THOUGHT YOU WERE GOING TO RAISE IT BUT --

24 MR. ROTHSTEIN: HE'S FORTY ONE TODAY, YOUR
25 HONOR, I GUESS YOU HAVE TO RELOOK AT THE ---

1 MR. LAWSON: SO IF YOU'RE GOING TO RECHARGE IT I
2 WOULD SUGGEST YOU DO FROM AGE FORTY ONE.

3 THE COURT: LET'S MAKE THAT CORRECTION RIGHT
4 NOW. ALL RIGHT, LET ME ASK YOU IF I HAVE THIS RIGHT, TODAY
5 THE PLAINTIFF IS FORTY ONE, IS A FORTY-ONE-YEAR-OLD-MALE
6 WITH A LIFE EXPECTANCY ACCORDING TO LIFE EXPECTANCY TABLES
7 OF THIRTY SEVEN POINT THREE NINE MORE YEARS.

8 MR. NICHOLS: YES, SIR.

9 THE COURT: ALL RIGHT, WE'RE GOOD ON THAT ONE.
10 ALL RIGHT, WHAT ELSE YOU GOT?

11 MR. NICHOLS: ONE LAST. WHEN YOU WERE GIVING
12 THE PUNITIVE DAMAGE CHARGE YOU DID CHARGE THE PUNISHMENT
13 ASPECT AND YOU CHARGED THE VINDICATION ASPECT FROM O'NEIL
14 V. SMITH BUT YOU DIDN'T MENTION ANYTHING ABOUT SPECIFIC OR
15 GENERAL DETERRENT.

16 THE COURT: WHAT EXACTLY DO YOU WANT IN THERE?

17 MR. NICHOLS: THAT THE LANGUAGE FROM O'NEIL V.
18 SMITH SAYS THAT IT ALSO NOT ONLY WOULD SERVE TO DETER THE
19 SPECIFIC DEFENDANT AND OTHERS.

20 MR. LAWSON: YOUR HONOR, ON THE ISSUE OF, IF I
21 MAY BE HEARD?

22 THE COURT: SURE.

23 MR. LAWSON: ON THE ISSUE OF PUNITIVE DAMAGES I
24 THINK THE CHARGE IS COMPLETE, AND I THINK THIS IS JUST AN
25 ATTEMPT TO HAVE THE JURY HEAR ONE MORE TIME ABOUT PUNITIVE

1 DAMAGES. YOUR CHARGE COVERED THE NINE FACTORS FROM GAMBLE.
2 IT COVERED JUST ABOUT EVERY WHICH WAY YOU COULD COVER IT
3 AND I JUST, I WOULD OBJECT TO THAT TO BRING THEM BACK OUT
4 HERE AND TALK TO THEM ONE MORE TIME ABOUT PUNITIVE DAMAGES.
5 I THINK THAT IF THERE'S A WORD OR TWO MISSING I THINK THE
6 PREJUDICIAL NATURE OF HAVING THEM HEAR THAT ALL OVER AGAIN
7 IS WAY BEYOND WHAT THEY NEED TO KNOW ON YOUR INSTRUCTIONS
8 ON THE LAW.

9 THE COURT: ALL RIGHT, WHAT ELSE DO YOU HAVE?

10 MR. NICHOLS: WELL, JUDGE, LET ME, MAY I RESPOND
11 TO MR. LAWSON, IT'S MORE THAN JUST A WORD OR TWO. MR.
12 ROTHSTEIN STOOD THERE AND SAID YOU NEED TO SEND A MESSAGE
13 TO THE PEOPLE OF HORRY COUNTY. YOU NEED TO SEND A MESSAGE
14 TO MR. SMITHERS AND HE'LL FIND OUT ABOUT THIS, THAT'S THE
15 DETERRENT EFFECT. THAT'S EXACTLY WHAT WAS BEING, WAS ONE
16 OF THE THINGS THAT THE COURT FOCUSED IN ON O'NEIL V. SMITH
17 AND REJECTING STATE FARMS ARGUMENT IN THAT CASE THAT YOU
18 COULDN'T GET PUNITIVE DAMAGES IN A UIN SCENARIO AND I, I
19 LISTENED VERY CAREFULLY, JUDGE, AND YOU DID NOT MENTION ANY
20 DETERRENTS. YOU DIDN'T MENTION SPECIFIC OR GENERAL
21 DETERRENT AND IT'S MORE THAN JUST A FEW WORDS OF THE
22 CHARGE. THAT'S TWO OF THE FOUR UNDERLYING POLICIES OF
23 PUNITIVE DAMAGES AND MR. ROTHSTEIN EMPHASIZED THAT THOSE
24 PARTICULAR ASPECTS OF PUNITIVE DAMAGES IN HIS CLOSING.

25 THE COURT: HOW ABOUT IF WE JUST ADD THAT LITTLE

1 TINY BIT OF LANGUAGE AND JUST SAY IN ADDITION TO THE
2 PUNITIVE DAMAGES CHARGE.

3 MR. LAWSON: OF COURSE WE CAN'T AGREE TO IT,
4 YOUR HONOR, I'LL OBJECT ON MY PREVIOUS GROUNDS.

5 THE COURT: RIGHT.

6 MR. CONNELL: AND, OF COURSE, YOUR HONOR, WE
7 OBJECT TO PUNITIVE DAMAGES ON ---

8 THE COURT: RIGHT, I UNDERSTAND THAT.

9 MR. CONNELL: --- THAT PART OF THEIR ARGUMENT
10 ABOUT THAT AND, YOUR HONOR, WE WOULD ALSO EXCEPT FOR THE
11 CHARGE ON COLLATERAL SOURCE ---

12 THE COURT: HOLD ON, WE'RE NOT DONE WITH
13 PUNITIVE DAMAGES YET.

14 MR. NICHOLS: I THINK THAT WOULD CURE THEM,
15 JUDGE, IF YOU BROUGHT THEM OUT AND SAID IN ADDITION
16 PUNITIVE DAMAGES SERVE, THE LANGUAGE OUT OF O'NEIL THAT
17 TALKS ABOUT IT DETERS THE DEFENDANT AND ---

18 THE COURT: GIVE IT TO ME IN A SENTENCE, CAN YOU
19 GIVE IT TO ME IN ONE SENTENCE OR TWO AT THE MOST?

20 MR. NICHOLS: THAT PUNITIVE DAMAGES ALSO SERVE
21 TO AS DETERRENTS FOR THE DEFENDANT AND OTHERS, I BELIEVE
22 THAT'S THE EXACT LANGUAGE OUT OF O'NEIL V. SMITH.

23 THE COURT: ALL RIGHT, IN ADDITION TO THE
24 PUNITIVE DAMAGES CHARGE PLEASE UNDERSTAND THAT PUNITIVE
25 DAMAGES ALSO SERVE AS DETERRENTS TO THE DEFENDANT AND

1 OTHERS.

2 MR. NICHOLS: YES, SIR.

3 MR. LAWSON: AND, YOUR HONOR, I DIDN'T MAKE THE
4 NOTES LIKE THAT BUT YOU, YOU DIDN'T ALREADY SAY THAT? IS
5 JUST THAT NOT IN THERE, I MEAN I ---

6 MR. NICHOLS: IT WAS NOT, I'VE GOT IT AND HE'S
7 GOT IT.

8 MR. CONNELL: YOU SAID SOMETHING SIMILAR TO
9 THAT, I MEAN WE HEARD THAT.

10 THE COURT: I'M SURE I SAID SOMETHING.

11 MR. NICHOLS: IT WAS ONE OF THE TEN FACTORS. I
12 THINK YOU MENTIONED IT IN THE LIST OF YOUR TEN FACTORS BUT
13 WHEN YOU WERE TALKING SPECIFICALLY ABOUT PUNITIVE DAMAGES
14 YOU MENTIONED PUNISHMENT AND YOU MENTIONED VINDICATION AND,
15 AND, YOUR HONOR, AGAIN I STOOD UP THERE AND TOLD THE JURY
16 THERE'S FOUR PURPOSES OF PUNITIVE DAMAGES AND YOUR HONOR
17 MENTIONED THE TWO OF THEM.

18 THE COURT: AND THAT LIKELIHOOD THE AWARD WILL
19 DETER THE DEFENDANT AND OTHERS FROM THE CONDUCT.

20 MR. NICHOLS: THAT WAS IN YOUR LIST OF TEN
21 FACTORS BUT ---

22 THE COURT: CORRECT.

23 MR. NICHOLS: --- IF YOU GO BACK AND YOU LOOK IN
24 WHEN YOU FIRST STARTED TALKING ABOUT PUNITIVE DAMAGES YOU
25 SAID PUNISHMENT AND VINDICATION, YOU DIDN'T TALK ABOUT

1 DETERRENTS.

2 MR. LAWSON: WELL, YOUR HONOR, YOU'VE SAID IT.
3 I MEAN AGAIN I JUST THINK IT'S AN ATTEMPT TO HAVE IT SAID
4 AGAIN.

5 THE COURT: I SAID THEY'RE TO CONSIDER THAT AS A
6 RELEVANT FACTOR IN DETERMINING, I'M JUST GOING TO LEAVE IT
7 LIKE IT IS. I MEAN HOW MUCH DO YOU THINK THEY CAN REALLY
8 DIGEST ANYWAY?

9 MR. NICHOLS: THANK YOU, JUDGE.

10 THE COURT: WE'LL LEAVE THAT ONE.

11 MR. LAWSON: YOUR HONOR, WE HAD ONE THING, I DID
12 AT LEAST.

13 THE COURT: ALL RIGHT.

14 MR. LAWSON: WE WOULD EXCEPT FROM HIS HONOR TO
15 CHARGE ON THE COLLATERAL SOURCE RULE CAUSE IT'S AN
16 INTERESTING CONCEPT. THEY'RE THE ONES THAT BROUGHT IT UP.
17 THEY OPENED THE DOOR BY TALKING ABOUT WORKERS COMPENSATION
18 CLAIMS AND THEM TO BE ABLE TO BRING IT UP AND TALK ABOUT IT
19 AND THEN TO GO BACK AND GET A CHARGE AND SAY ---

20 MR. CONNELL: CAN'T CONSIDER IT.

21 MR. LAWSON: --- CAN'T CONSIDER IT JUST SEEMS --
22 THEY'RE ONES THAT OPENED THE DOOR ON IT. THIS IS THE FIRST
23 CASE I'VE TRIED IN TWENTY EIGHT YEARS WHERE THEY ACTUALLY
24 TALKED ABOUT THEIR WORKERS COMP CLAIM SO THEY OPENED THE
25 DOOR, JUST AN EXCEPTION, JUST WANTED TO PUT IT ON THE

1 RECORD.

2 MR. CONNELL: WE WOULD EXCEPT THAT ALSO. IT
3 DOESN'T MAKE SENSE TO US FOR THEM TO GET THE BENEFIT OF
4 THAT BUT THEN AS YOUR HONOR REMEMBERS YOU WOULDN'T LET US
5 CROSS EXAMINE ABOUT WORKERS COMPENSATION DURING THE TRIAL
6 SO --

7 MR. ROTHSTEIN: AND, YOUR HONOR, AGAIN JUST TO
8 REMIND YOU WE DIDN'T INTENTIONALLY, THE ISSUE CAME UP AS
9 WHY ---

10 THE COURT: I'M GOING TO GO AHEAD AND LEAVE IT
11 IN, I'M NOT GOING TO TAKE IT OUT.

12 MR. CONNELL: YOUR HONOR, WHILE HE'S DOING THAT
13 CAN WE, COULD I ASK ABOUT SOMETHING ELSE?

14 THE COURT: SURE.

15 MR. CONNELL: YOUR HONOR, THE LAST TIME YOU AND
16 I WERE HERE YOU KNOW IT WAS ABOUT THIS TIME OF NIGHT AND
17 ONE OF THE JURORS LEFT AND WE HAD THIRTEEN AND THEN WE HAD
18 ELEVEN AND THEN WE COULDN'T GO FORWARD. SO WHAT IS YOUR
19 HONOR THINKING ABOUT IN REGARD TO WHETHER OR NOT YOU'RE
20 GOING TO KEEP THE ALTERNATE FOR A WHILE OR ARE YOU GOING TO
21 BRING THEM OUT AND ASK THEM, EVERYBODY FEEL OKAY, DOES
22 ANYBODY HAVE A PROBLEM TODAY, YOU KNOW, ARE YOU FIGHTING
23 WITH SOMEONE IN THE JURY ROOM? I THINK WE NEED TO KNOW
24 THAT BECAUSE THEN WE'LL HAVE A SITUATION WITH THE
25 ALTERNATES LEAVE AND, YOUR HONOR, WE'VE SPENT A LOT OF TIME

1 ON THIS AND CERTAINLY DON'T WANT TO HAVE THE SITUATION
2 WHERE WE HAVE ANOTHER FOUR DAY TRIAL WHERE WE HAVE A
3 MISTRIAL CAUSE WE DON'T HAVE TWELVE.

4 THE COURT: HOW DO YA'LL FEEL?

5 MR. ROTHSTEIN: I'M NOT SURE WHAT HE'S ASKING?
6 DOES HE WANT TO KEEP THE ALTERNATE IN A ROOM BY HIMSELF?

7 MR. CONNELL: NO, I WANT YOU TO ASK FIRST ARE
8 YA'LL, IS THERE ANY DISPUTE AMONG YA'LL, AS YOUR HONOR
9 REMEMBERS LAST TIME. ARE YOU HAVING SOME DISPUTE, ARE YOU
10 READY TO STAY? WE MAY HAVE TO STAY A WHILE. WE'RE NOT,
11 WE'RE NOT GOING TO LET YOU GO IN FIFTEEN MINUTES, YOU KNOW,
12 IT'S WHENEVER THEY MAKE A DECISION, YOU KNOW. IF YOU DON'T
13 WANT TO STAY, CAN'T STAY, YOU GOT SOME PROBLEM WE'LL HELP
14 YOU WITH BUT AS YOUR HONOR REMEMBERS WE TRIED A CASE HERE
15 FOR A WEEK AND FIFTEEN MINUTES AFTERWARDS SOMEBODY WAS
16 LEAVING THE JURY ROOM SAYING THEY HAD TO LEAVE, THEY
17 COULDN'T STAY IN THERE. SO I JUST WANT TO MAKE SURE THAT
18 EITHER YOU KEEP THE ALTERNATE OR, OR AT LEAST FOR A WHILE
19 IN A SEPARATE ROOM IF YOU WANT TO OR IN THE ALTERNATIVE
20 THAT YOU ASK THEM ---

21 THE COURT: LET'S KEEP THE ALTERNATE FOR THIRTY
22 MINUTES.

23 MR. ROTHSTEIN: AND, YOUR HONOR, I THINK THE
24 LAW, I THOUGHT THE LAW WAS THAT ONCE THEY START
25 DELIBERATIONS YOU CAN'T SUB -- THE ALTERNATE IS DONE SO I

1 DON'T THINK IT WOULD BE PROPER. I MEAN IF SOMEBODY HAD A
2 HEART ATTACK I MEAN IT WOULD BE A MISTRIAL. I MEAN YOU
3 CAN'T SORT OF PUT ---

4 MR. CONNELL: IN THAT CASE WOULD YOU ASK THEM
5 ABOUT ARE YA'LL WILLING TO STAY? THANK YOU, YOUR HONOR.

6 MR. LAWSON: YOUR HONOR, I WOULD THEN ALONG THAT
7 SAME LINE I'M SCHEDULED TO BE A MEDIATOR TOMORROW. HOW
8 LONG ARE YOU WILLING TO STAY TONIGHT?

9 THE COURT: I'M WILLING TO STAY UNTIL THEY GET
10 IT DONE.

11 MR. LAWSON: OKAY, ALL RIGHT, GOOD.

12 MR. CONNELL: AND YOU'RE GOING TO TELL THEM WE
13 WILL STAY TILL WHENEVER YOU'RE READY I TAKE IT, IS THAT
14 RIGHT? THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT, TELL HIM TO GO AHEAD AND
16 BRING THEM BACK OUT.

17 (WHEREUPON, THE JURY RETURNED TO THE JURY ROOM AT
18 4:26 P.M.)

19 THE COURT: ALL RIGHT, MEMBERS OF THE JURY, WE
20 HAD JUST A FEW CORRECTIONS TO THE CHARGE AND I'M JUST GOING
21 TO READ THOSE CORRECTIONS TO YOU, WON'T TAKE BUT ABOUT TWO
22 OR THREE MINUTES AT THE MOST AND THEN WE'LL PUT YOU TO
23 WORK.

24 **RECHARGE**

25 THE FIRST THING I WANT TO SAY THE PLAINTIFF

1 CLAIMS DEFENDANT HUNT IS LIABLE UNDER A DOCTRINE OF LAW
2 KNOWN AS THE FAMILY PURPOSE DOCTRINE. WHERE A PARENT OWNS,
3 FURNISHES, OR MAINTAINS A MOTOR VEHICLE FOR THE FAMILY'S
4 GENERAL USE AND CONVENIENCE THE PARENT IS RESPONSIBLE FOR
5 THE NEGLIGENCE OF A FAMILY MEMBER HAVING GENERAL AUTHORITY
6 TO DRIVE THE VEHICLE FOR SUCH A PURPOSE.

7 ALSO ANOTHER CHANGE WAS MADE IN CONNECTION TO
8 DAMAGES, THE UNIVERSAL PRINCIPAL OF ACTUAL DAMAGES IS THAT
9 AN INJURED PARTY SHOULD RECEIVE COMPENSATION EQUAL TO HIS
10 OR HER LOSS AND NO MORE OR LESS.

11 FURTHERMORE, IN REGARD TO THE MORTALITY TABLES
12 THE CORRECTED VERSION OF ONE SENTENCE SHOULD BE AS FOLLOWS.
13 TODAY THE PLAINTIFF IS A FORTY ONE YEAR OLD MALE WITH A
14 LIFE EXPECTANCY ACCORDING TO THE LIFE EXPECTANCY TABLE OF
15 THIRTY SEVEN POINT THREE NINE MORE YEARS.

16 ANY OBJECTIONS TO ANY OF THAT FROM THE PLAINTIFF?

17 MR. ROTHSTEIN: NO OBJECTION, YOUR HONOR.

18 THE COURT: HOW ABOUT THE DEFENSE?

19 MR. LAWSON: NO, SIR, ON BEHALF OF SMITHERS.

20 THE COURT: MR. CONNELL?

21 MR. CONNELL: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT, MEMBERS OF THE JURY, I
23 WANT YOU TO UNDERSTAND THAT I'M GOING TO SEND YOU BACK INTO
24 THE JURY ROOM. WE ARE GOING TO SEND IN THE ITEMS OF
25 EVIDENCE FOR YOU TO LOOK AT AND WE'RE GOING TO TELL YOU TO

1 BEGIN YOUR DELIBERATIONS AT THAT TIME, BUT I WANT YOU TO
2 UNDERSTAND THAT WE ARE GOING TO DECIDE THIS CASE TODAY AND
3 SO IF IT TAKES YOU THIRTY MINUTES YOU'RE DONE; IF IT TAKES
4 YOU THREE HOURS YOU'RE DONE; IF IT TAKES SIX HOURS YOU'RE
5 DONE, BUT WE'RE GOING TO GO AHEAD AND FINISH IT UP TODAY.
6 WE DO NOT HAVE TO COME BACK TOMORROW AND SO YOU MAY BE HERE
7 A WHILE DEPENDING ON HOW YOUR DELIBERATIONS GO. I JUST
8 WANT TO MAKE SURE RIGHT NOW THAT ALL OF YOU ARE FEELING
9 GOOD; IS ANYBODY HAVING ANY TROUBLE? DO YOU NEED TO MAKE
10 ANY CALLS; DO YOU NEED TO MAKE ANY ARRANGEMENTS BEFORE YOU
11 ACTUALLY BEGIN OR IS EVERYBODY READY TO GO? ANYBODY GOT
12 ANY PROBLEMS OF ANY KIND?

13 (NO RESPONSE)

14 THE COURT: ALL RIGHT, I LIKE THE WAY YOU SOUND,
15 IF YOU'LL GO AHEAD AND SEND THEM ON IN.

16 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
17 4:29 P.M.)

18 THE COURT: I'M GOING TO PULL HIM OUT WHENEVER
19 WE SEND IN THE EVIDENCE. ALL RIGHT, HAVE YA'LL LOOKED AT
20 THE EVIDENCE?

21 ANYTHING FROM THE PLAINTIFF?

22 MR. ROTHSTEIN: YES, SIR, WE -- I'M SORRY?

23 THE COURT: PLAINTIFF, EVERYTHING IN ORDER, THE
24 EVIDENCE IN ORDER?

25 MR. ROTHSTEIN: YES, SIR, EVERYTHING IS FINE.

1 THE COURT: ALL RIGHT, HOW ABOUT YOU, MR.
2 LAWSON?

3 MR. LAWSON: YES, SIR, FOR DEFENDANT SMITHERS.

4 THE COURT: MR. CONNELL?

5 MR. CONNELL: YES.

6 THE COURT: ALL RIGHT, IF YOU'LL GO AHEAD AND
7 SEND IT IN, SEND IN THE EVIDENCE, TELL THEM TO BEGIN AND
8 PULL OUT THE ALTERNATE.

9 (WHEREUPON, THE VERDICT FORMS AND EXHIBITS WERE
10 DELIVERED TO THE JURY ROOM AND DELIBERATIONS BEGAN AT 4:30
11 P.M.)

12 (WHEREUPON, THE JURY KNOCKED WITH A QUESTION AT
13 5:01 P.M.)

14 THE COURT: THE FIRST QUESTION WE HAVE IS
15 CLARIFY LAWS AS TO FAMILY LAW; THE SECOND ONE IS CLARIFY
16 DEFENDANTS. THE ONLY THING WE CAN FIGURE THERE IS THAT THE
17 DRIVER AND THE DADDY. THE DADDY IS THE DEFENDANT NOT THE
18 DRIVER, IS ALL I CAN FIGURE; ANY SUGGESTIONS FROM ANYBODY?

19 MR. ROTHSTEIN: I SUGGEST JUST REREAD THEM THE
20 FAMILY PURPOSE DOCTRINE LAW AGAIN AND --

21 THE COURT: YEAH, LET ME SEE IF I CAN FIND
22 SOMETHING A LITTLE BETTER.

23 MR. ROTHSTEIN: YOUR HONOR, DON'T YOU DO IT IN
24 YOUR GENERAL CHARGE AT THE VERY BEGINNING EXPLAIN WHAT A,
25 WHO A DEFENDANT IS THE PERSON WHO IS BEING SUED IN THE

1 CASE, SOMETHING TO THAT EFFECT?

2 THE COURT: I USUALLY ASSUME THEY CAN FIGURE
3 THAT OUT BY THE TIME WE GET --

4 MR. CONNELL: THREE DAYS LATER.

5 THE COURT: YEAH.

6 MR. ROTHSTEIN: WELL IF YOU WANTED TO SAY, YOU
7 KNOW, THE DEFENDANTS IN THIS CASE ARE NATHAN DALE SMITHERS
8 AND EDWARD W. HUNT.

9 MR. LAWSON: JUST ---

10 THE COURT: ANY SUGGESTIONS ON CLARIFYING THE
11 FAMILY PURPOSE DOCTRINE?

12 MR. CONNELL: YOUR HONOR, YOU CHARGED THEM TWICE
13 ON THAT, I DON'T THINK YOU OUGHT TO CHARGE THEM AGAIN ON
14 THAT. I MEAN YOU OUGHT TO SAY WE'VE GIVEN YOU ALL THE LAW
15 ON FAMILY PURPOSE DOCTRINE.

16 THE COURT: MY INSTINCTS TELL ME THEY'RE
17 CONFUSED ABOUT WHO THE DEFENDANT IS IN CONNECTION WITH THE
18 FAMILY PURPOSE DOCTRINE; IS THAT WHAT YA'LL THINK?

19 MR. CONNELL: YES, SIR.

20 THE COURT: WHY DON'T WE GET THEM OUT HERE AND
21 JUST TELL THEM THAT THE DEFENDANT IN THIS CASE IS THE
22 FATHER OF THE CAR, WHO OWNS THE CAR MAYBE, WHAT DO YA'LL
23 WANT ME TO SAY EXACTLY?

24 MR. CONNELL: THE DEFENDANT IN THIS CASE IS THE
25 FATHER NOT THE DRIVER BUT THE FATHER; THE OTHER DEFENDANT

1 IS MR. SMITHERS.

2 MR. ROTHSTEIN: YOUR HONOR, I THINK IF YOU DO
3 THAT YOU NEED TO RE-EMPHASIZE THE FAMILY PURPOSE DOCTRINE
4 AND JUST REMIND THE JURY IT'S THAT THE FATHER, YOU KNOW, IS
5 LIABLE UNDER AN AGENTS THEORY FOR ANY ACTS OF THE, YOU
6 KNOW, IF THEY FIND THE OTHER ELEMENTS OF THE FAMILY PURPOSE
7 DOCTRINE THE FATHER STANDS IN THE SHOES OF THE, OF THE
8 WRONGDOER, OF THE CHILD, SO UNDER THE LAW ANY ACT THAT THE
9 CHILD COMMITS WHILE USING THAT CAR THERE'S A LIABILITY
10 ATTACHED TO THAT OR WRONGFUL CONDUCT WOULD BE --

11 MR. CONNELL: YOUR HONOR, I DON'T THINK YOU
12 OUGHT TO CHARGE THEM AGAIN. I THINK YOU OUGHT TO JUST
13 BRING THEM OUT AND SAY HERE'S THE DEFENDANTS IF THAT'S WHAT
14 YOUR QUESTION IS. I'VE GIVEN YOU ALL THE LAW IN REGARD TO
15 THE FAMILY PURPOSE DOCTRINE AND EVERYTHING ELSE, WE SPENT
16 FORTY FIVE MINUTES DOING THAT, SOMETHING ALONG THOSE LINES
17 I THINK WOULD BE THE APPROPRIATE WAY TO DO IT. IT'S UP TO
18 YOU TO MAKE THE DECISION WHETHER OR NOT ANYBODY IS LIABLE.

19 MR. ROTHSTEIN: I MEAN THERE'S NOTHING
20 PREJUDICIAL ABOUT TELLING THEM WHAT THE LAW IS AND JUST
21 BECAUSE, YOU KNOW, THEY'VE GOT A QUESTION ABOUT THE FAMILY
22 PURPOSE DOCTRINE.

23 MR. CONNELL: YOU'VE GIVEN THAT TWICE, YOUR
24 HONOR; YOU'VE DONE THAT TWICE NOW.

25 THE COURT: I'M WONDERING IF WE CLARIFIED IT BY

1 SAYING THAT FOR THE FAMILY PURPOSE DOCTRINE TO APPLY,
2 CLARIFY WHO THE DEFENDANT IS, THE FOLLOWING ELEMENTS MUST
3 BE PROVEN:

4 (ONE) THE DEFENDANT IS THE HEAD OF THE FAMILY;

5 (TWO) THE DEFENDANT OWNS, FURNISHES, OR MAINTAINS
6 A VEHICLE;

7 THE VEHICLE IS FOR THE GENERAL USE AND
8 CONVENIENCE OF A FAMILY;

9 THE FAMILY MEMBER HAS A GENERAL AUTHORITY TO
10 OPERATE THE VEHICLE FOR THOSE PURPOSE: AND

11 THE FAMILY MEMBERS WAS NEGLIGENT IN THE USE OF
12 THE VEHICLE; DO YOU YA'LL HAVE ANY OBJECTION TO THAT?
13 THAT'S A LITTLE BIT MORE THAN THE ONE THAT I GAVE BEFORE?

14 MR. ROTHSTEIN: I THINK THAT WOULD BE
15 APPROPRIATE.

16 THE COURT: IT GIVES THEM ALL THE ELEMENTS TO IT
17 AND WE'VE CLARIFIED WHO THE DEFENDANT IS AND SEE IF THAT
18 DOESN'T SATISFY THEM. IT'S VERY SHORT.

19 MR. CONNELL: YOUR HONOR, I DON'T THINK YOU
20 OUGHT TO CHARGE THEM AGAIN THE SAME THING AGAIN OR
21 SOMETHING SIMILAR. I THINK YOU OUGHT TO TELL THEM --
22 APPARENTLY THE CONFUSION IS WHO'S THE DEFENDANT. IS IT, IS
23 IT MR. HUNT THE DADDY OR IS IT MR. HUNT THE SON WHO WAS THE
24 DRIVER. IN THIS CASE MR. HUNT THE DADDY IS THE, IS THE
25 DEFENDANT.

1 MR. ROTHSTEIN: BUT, YOUR HONOR, THIS IS ALL
2 GETTING TO THE JURY NULLIFICATION ISSUE THAT I RAISED
3 BEFORE. IT DOESN'T MATTER WHETHER THEY THINK IT'S FAIR OR
4 NOT, THIS IS THE LAW AS IT EXISTS IN SOUTH CAROLINA AT THIS
5 TIME AND, AND I DON'T SEE HOW ANYTHING COULD POSSIBLY BE
6 PREJUDICIAL ABOUT TELLING THEM WHAT THE LAW IS ESPECIALLY
7 WHEN THEY ASK A QUESTION ABOUT THAT SPECIFIC CLAIM.

8 THE COURT: I THINK WHAT I'M GOING TO DO IS I'M
9 GOING CLARIFY WHO THE DEFENDANTS ARE THEN JUST GIVE THEM
10 THESE ELEMENTS IN SHORT; IT WON'T TAKE SIXTY SECONDS TO DO
11 IT AND TELL THEM TO GO BACK AND GET TO WORK, GO AHEAD AND
12 BRING THEM OUT.

13 MR. ROTHSTEIN: THEY NEED TO FOLLOW THE LAW AS
14 YOU'VE GIVEN IT TO THEM.

15 THE COURT: I'M JUST GOING TO GIVE THEM THE LAW
16 ON THE FAMILY PURPOSE DOCTRINE AND CLARIFY THE DEFENDANTS
17 AND SEND THEM BACK.

18 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
19 5:13 P.M. AND THE FOLLOWING PROCEEDINGS WERE HAD.)

20 THE COURT: ALL RIGHT, I RECEIVED YOUR QUESTION
21 AND I'M GOING TO TELL YOU THAT THE DEFENDANT IN THIS CASE
22 IN REGARDS TO THE FAMILY PURPOSE DOCTRINE IS THE FATHER,
23 NOT HIS SON WHO WAS THE DRIVER OF THE CAR. I HOPE THAT
24 CLARIFIES YOUR QUESTION ABOUT THE DEFENDANTS.

25 AND IN REGARDS TO THE FAMILY PURPOSE DOCTRINE I'M

1 GOING TO EXPLAIN IT AGAIN AND MAYBE A LITTLE DIFFERENT AND
2 HOPES THAT HELPS YOU OUT. FOR THE FAMILY PURPOSE DOCTRINE
3 TO APPLY THE FOLLOWING ELEMENTS MUST BE PROVEN:

4 (ONE) THE DEFENDANT IS THE HEAD OF THE FAMILY;

5 (TWO) THE DEFENDANT OWNS, FURNISHES, OR MAINTAINS
6 A VEHICLE;

7 THE VEHICLE (THREE) THE VEHICLE IS FOR THE
8 GENERAL USE AND CONVENIENCE OF THE FAMILY;

9 (FOUR) THE FAMILY MEMBER HAS GENERAL AUTHORITY TO
10 OPERATE THE VEHICLE FOR THOSE PURPOSES; AND

11 (FIVE) THE FAMILY MEMBER WAS NEGLIGENT IN THE USE
12 OF THE VEHICLE.

13 I HOPE THAT CLARIFIES IT SOME FOR YOU AND IF YOU
14 WOULD TAKE THAT AND GO BACK TO THE JURY ROOM AND CONTINUE
15 YOUR DELIBERATIONS.

16 (WHEREUPON, AT 5:14 P.M. THE JURY AGAIN RETIRED
17 TO THE JURY ROOM AND RESUMED THEIR DELIBERATIONS.)

18 (WHEREUPON, COURT'S EXHIBIT NUMBER 3 MARKED FOR
19 IDENTIFICATION.)

20 THE COURT: ALL RIGHT, WE'LL BE AT EASE TILL
21 SOMETHING ELSE HAPPENS.

22 MR. CONNELL: YOUR HONOR, JUST FOR THE RECORD WE
23 WOULD OBJECT TO YOUR CHARGING THE FAMILY PURPOSE DOCTRINE
24 FURTHER.

25 THE COURT: OBJECTION IS NOTED.

1 MR. CONNELL: THANK YOU.

2 THE COURT: THANK YOU.

3 (WHEREUPON, THE JURY KNOCKED WITH A QUESTION AT
4 6:55 P.M.)

5 THE COURT: "NEED CLARIFICATION ON VERDICT FORM
6 AS TO PUNITIVE DAMAGES FOR HUNT, SPECIFICALLY THE LINE IN
7 PARENTHESIS." THEY'RE INTELLIGENT, THEY KNOW WHAT THEY'RE
8 DOING BECAUSE WE HAD IT WRONG, I BELIEVE. WE'RE GOING TO
9 GET YOU A VERDICT FORM RIGHT HERE AND THEN WE'LL FIGURE
10 THAT OUT.

11 LAW CLERK: THAT WAS COMPLETELY MY FAULT.

12 THE COURT: THEY APPROVED IT.

13 MR. ROTHSTEIN: OH, DARN, IT'S A TYPO, ISN'T IT?

14 LAW CLERK: YEAH, THAT WAS MY FAULT.

15 THE COURT: WHAT'S THE EASIEST WAY TO CORRECT
16 IT, JUST --

17 MR. LAWSON: TELL THEM JUST NOT TO PAY ANY
18 ATTENTION TO IT.

19 THE COURT: JUST SCRATCH OUT THE WHOLE THING OR
20 JUST --

21 MR. LAWSON: THAT WAS BASED --

22 MR. NICHOLS: I NEVER SAW ONE WITH A
23 PARENTHESIS, IS THAT SOMETHING THAT WAS ADDED?

24 LAW CLERK: WE ADDED IT CAUSED HE STARTED
25 CHARGING AND ON MY END WHEN WE BROKE UP PUNITIVE DAMAGES

1 BETWEEN THEM AND THEN IT WAS MY FAULT, I TYPED IT.

2 MR. NICHOLS: DO YOU WANT TO JUST TELL THEM IT
3 WAS A TYPOGRAPHICAL ERROR AND JUST GIVE THEM A NEW ONE WITH
4 THE PART STRUCK OUT OR --

5 THE COURT: I THINK SO. JUST SCRATCH OUT THAT
6 WHOLE PARENTHESIS, TAKE IT OFF GIVE THEM A NEW FORM?

7 MR. NICHOLS: YEAH.

8 THE COURT: LET'S DO THAT.

9 MR. NICHOLS: I THINK IF YOU CAN EXPLAIN IT --

10 THE COURT: TYPOGRAPHICAL ERROR, HOW ABOUT WE
11 JUST GET THE FORELADY OUT HERE ONCE WE GET IT AND I'LL JUST
12 GIVE IT TO HER AND TELL HER.

13 MR. NICHOLS: I THINK THAT'S FINE.

14 THE COURT: IS THAT ALL RIGHT?

15 MR. CONNELL: YES, SIR, THAT'S FINE.

16 (WHEREUPON, COURT'S EXHIBIT NUMBER 4 MARKED FOR
17 IDENTIFICATION.)

18 THE COURT: MR. ROTHSTEIN, DOES IT LOOK OKAY
19 WITH YOU?

20 MR. ROTHSTEIN: YES, SIR, THAT LOOKS FINE.

21 THE COURT: ALL RIGHT, HOW ABOUT THE TWO OF YOU,
22 MR. LAWSON?

23 MR. LAWSON: YES, SIR.

24 THE COURT: MR. CONNELL?

25 MR. CONNELL: YES, SIR.

1 THE COURT: ALL RIGHT, BRING THE FORELADY OUT
2 HERE.

3 (WHEREUPON, MADAM FORELADY ENTERED THE COURTROOM
4 AT 7:02 P.M.)

5 THE COURT: YOU CAN COME ON UP HERE, I'VE GOT
6 YOU A CORRECTED VERDICT FORM. THE OTHER ONE IS ---

7 MADAM FORELADY: I'M NOT CRAZY?

8 THE COURT: NO, NO, NO, NOT AT ALL. IT WAS A
9 CLERICAL ERROR, THAT IS NOT SUPPOSED TO BE THERE SO WE JUST
10 TOOK IT OFF AND THIS IS THE NEW ONE.

11 MADAM FORELADY: THERE WAS A WORD WE SEEN UP
12 HERE, TOO, IN THIS SENTENCE.

13 THE COURT: WHICH ONE?

14 MADAM FORELADY: I DIDN'T KNOW WHAT THAT MEANT
15 EITHER SO I DON'T REALLY KNOW HOW TO FILL THE FORM OUT.

16 THE COURT: LET'S GET THE LAWYERS UP HERE AND
17 MAKE SURE WE'RE ON THE SAME PAGE.

18 MR. NICHOLS: I THINK IT SHOULD SAY APPLY OR
19 AWARDED TO, APPLIED OR AWARDED TO.

20 THE COURT: AWARDED TO IS WHAT I WAS THINKING,
21 DAMAGES AWARDED TO, HOW DOES THAT SOUND?

22 MR. NICHOLS: THAT'S FINE.

23 THE COURT: ALL RIGHT, PRINT OUT ANOTHER ONE,
24 WE'LL FIX THAT, TOO.

25 THE LAWYERS WANT TO REVIEW IT REAL QUICK?

1 MR. NICHOLS: YES, SIR.

2 LAW CLERK: THERE SHOULD BE ONE FOR EACH TABLE.

3 MR. NICHOLS: IT'S FINE WITH US, YOUR HONOR.

4 MR. CONNELL: YES, SIR.

5 THE COURT: MR. LAWSON?

6 MR. LAWSON: YES, SIR.

7 THE COURT: ALL RIGHT, THANK YOU.

8 (WHEREUPON, COURT'S EXHIBIT NUMBER 5 MARKED FOR
9 IDENTIFICATION.)

10 (WHEREUPON, AT 7:07 P.M. MADAM FORELADY RETIRED
11 TO THE JURY ROOM TO DELIVER CORRECTED VERDICT FORM AND JURY
12 RESUMED THEIR DELIBERATIONS.)

13 MR. CONNELL: AM I TO UNDERSTAND THAT THE
14 VERDICT FORM THAT WE SAW WAS DIFFERENT THAN THE ONE SENT IN
15 TO THE JURY?

16 LAW CLERK: YES, BECAUSE WHAT HAPPENED WAS HE
17 ASKED TO SEPARATE THE PUNITIVE DAMAGES WHICH WE AGREED AND
18 THEN HE STARTED CHARGING BEFORE WE DID THAT, UNTIL I DID
19 THAT, AND THEN I PROOFREAD IT BUT MISSED THE WORD PLAINTIFF
20 AND DEFENDANT HUNT OBVIOUSLY AND THEN SHE PRINTED IT AND
21 TOOK IT TO THE JURY.

22 MR. CONNELL: COULD WE MARK ---

23 THE COURT: I HAVE.

24 MR. CONNELL: --- THE VERDICT FORM?

25 THE COURT: I HAVE.

1 MR. CONNELL: I APPRECIATE IT.

2 THE COURT: OBVIOUSLY THE FORELADY IS VERY
3 INTELLIGENT.

4 MR. LAWSON: YES, SIR.

5 THE COURT: VERY INTELLIGENT.

6 (WHEREUPON, THE JURY KNOCKED WITH A VERDICT AT
7 7:13 P.M.)

8 THE COURT: ANYTHING FROM ANYONE?

9 MR. ROTHSTEIN: NO, SIR,

10 MR. LAWSON: NO, SIR.

11 MR. CONNELL: NO, SIR.

12 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
13 7:14 P.M. TO DELIVER ITS VERDICT.)

14 THE COURT: ALL RIGHT, HAVE YOU REACHED A
15 VERDICT?

16 MADAM FORELADY: YES, SIR.

17 THE COURT: ALL RIGHT, IF YOU WOULD HAND THE
18 VERDICT FORM TO THE BAILIFF, PLEASE, MA'AM. THANK YOU,
19 SIR.

20 ALL RIGHT, MS. CLERK, IF YOU WOULD PUBLISH THE
21 VERDICT.

22 MADAM CLERK: YES, SIR. THE STATE OF SOUTH
23 CAROLINA COUNTY OF HORRY IN THE COURT OF COMMON PLEAS, CASE
24 NUMBER 2006-CP-26-5391, DON D. GAUSE PLAINTIFF V. NATHAN
25 DALE SMITHERS, EDWARD RAYMOND HUNT AND EDWARD W. HUNT

1 DEFENDANTS, VERDICT, DEFENDANT SMITHERS HAS ADMITTED
2 NEGLIGENCE, WE THE JURY FIND IN FAVOR OF PLAINTIFF.

3 WE THE JURY FIND FOR THE PLAINTIFF AGAINST THE
4 DEFENDANTS IN THE AMOUNT OF \$155,432.64 ACTUAL DAMAGES.

5 WE THE JURY FIND FOR THE PLAINTIFF AGAINST THE
6 DEFENDANT SMITHERS IN THE AMOUNT OF \$60,000 PUNITIVE
7 DAMAGES.

8 WE THE JURY FIND FOR THE PLAINTIFF AGAINST THE
9 DEFENDANT HUNT IN THE AMOUNT OF \$40,000 PUNITIVE DAMAGES.
10 HEATHER B. COX, FOREPERSON, JANUARY THE 6TH, 2011.

11 MADAM FORELADY AND LADIES AND GENTLEMEN OF THE
12 JURY, IS THIS YOUR VERDICT, IF SO PLEASE SIGNIFY BY RAISING
13 YOUR RIGHT HAND.

14 (WHEREUPON, ALL JURORS RESPONDED AFFIRMATIVELY.)

15 MADAM CLERK: THANK YOU.

16 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. IS
17 THERE A NEED FOR FURTHER POLLING FROM THE PLAINTIFF?

18 MR. ROTHSTEIN: WE WAIVE POLLING, YOUR HONOR.

19 THE COURT: HOW ABOUT MR. LAWSON?

20 MR. LAWSON: WE WOULD WAIVE POLLING, YOUR HONOR.

21 THE COURT: AND, MR. CONNELL?

22 MR. CONNELL: I WOULD REQUEST A POLLING OF THE
23 JURY.

24 THE COURT: ALL RIGHT, IF YOU'D POLL THE JURY.

25 MADAM CLERK: WHEN I CALL YOUR NAME IF YOU

1 WOULD, PLEASE, STAND. I'LL ASK YOU THE QUESTION AND ANSWER
2 THE QUESTION FOR THE COURT.

3 NUMBER 10, NICHOLAS ARD, IS THIS YOUR VERDICT AND
4 STILL YOUR VERDICT?

5 JURY PANEL MEMBER: YES, MA'AM.

6 MADAM CLERK: THANK YOU, NUMBER 167, PATRICIA
7 HENDERSON, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

8 JURY PANEL MEMBER: YES, MA'AM.

9 MADAM CLERK: THANK YOU, NUMBER 158, DAVID HALL,
10 IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

11 JURY PANEL MEMBER: YES, MA'AM.

12 MADAM CLERK: THANK YOU, NUMBER 96, CYNTHIA DAY,
13 IS THERE YOUR VERDICT AND STILL YOUR VERDICT?

14 JURY PANEL MEMBER: YES, MA'AM.

15 MADAM CLERK: THANK YOU, NUMBER 180, SHIRLEY
16 IMMLER, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

17 JURY PANEL MEMBER: YES, MA'AM.

18 MADAM CLERK: THANK YOU, NUMBER 80, HEATHER COX,
19 IS THERE YOUR VERDICT AND STILL YOUR VERDICT?

20 JURY PANEL MEMBER: YES, MA'AM.

21 MADAM CLERK: THANK YOU, NUMBER 258, CHANEL
22 MUHAMMAD, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

23 JURY PANEL MEMBER: YES, MA'AM.

24 MADAM CLERK: THANK YOU, NUMBER 100, FRANCES
25 DEWITT, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

1 JURY PANEL MEMBER: YES, MA'AM.

2 MADAM CLERK: THANK YOU, NUMBER 371, BONNIE
3 VAUGHT, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

4 JURY PANEL MEMBER: YES, MA'AM.

5 MADAM CLERK: THANK YOU, NUMBER 373, FRENCH
6 VEREEN, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

7 JURY PANEL MEMBER: YES, MA'AM.

8 MADAM CLERK: THANK YOU, NUMBER 219, ROBBIN
9 LOWERY, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

10 JURY PANEL MEMBER: YES, MA'AM.

11 MADAM CLERK: THANK YOU, NUMBER 336, VIRGINIA
12 SMITH, IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

13 JURY PANEL MEMBER: YES, MA'AM.

14 MADAM CLERK: THANK YOU.

15 THE COURT: ALL RIGHT, THANK YOU VERY MUCH, I
16 APPRECIATE YOUR SERVICE. I APPRECIATE YOU BEING HERE AND I
17 APPRECIATE YOUR EFFORTS.

18 MR. CONNELL: YOUR HONOR, WE NEED TO TAKE UP ONE
19 MATTER BEFORE YOU EXCUSE THE JURY, IF WE COULD, YOUR HONOR?

20 THE COURT: ALL RIGHT, IF YOU DON'T MIND
21 STEPPING BACK INTO THE JURY ROOM ONE MORE TIME.

22 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
23 7:17 P.M.)

24 MR. CONNELL: YOUR HONOR, WE DID NOT REALIZE
25 THAT ---

1 LAW CLERK: THEIR DOOR IS OPEN.

2 THE COURT: GO AHEAD.

3 MR. CONNELL: WE DID NOT REALIZE THIS UNTIL JUST
4 NOW, BUT EDWARD RAYMOND HUNT'S NAME APPEARS AS A DEFENDANT
5 ON THE VERDICT FORM. SO, YOUR HONOR, SINCE WE DID NOT SEE
6 THE ORIGINAL VERDICT FORM THAT WAS SENT IN APPARENTLY THE
7 JURORS WERE ASKING QUESTIONS ABOUT WHO THE DEFENDANTS WERE
8 BECAUSE IT HAS EDWARD RAYMOND HUNT WHO IS NOT A DEFENDANT
9 AND THEN EDWARD W. HUNT WHO IS THE ACTUAL OWNER OF THE
10 VEHICLE, SO IT'S OUR POSITION, YOUR HONOR, THAT THE JURORS
11 MUST HAVE THOUGHT THAT EDWARD RAYMOND HUNT.

12 THE COURT: YEAH, AND I THINK THAT WAS DONE
13 BECAUSE IN THE FINAL THE LAST DOCUMENT ON TOP HAD HIM AS A
14 PARTY TO THE MATTER.

15 MR. ROTHSTEIN: IT WAS THE SOURCE OF THE
16 CONFUSION AND THEY ASKED THE QUESTION ---

17 THE COURT: AND THEY CLARIFIED IT.

18 MR. ROTHSTEIN: YOU CLARIFIED, ANSWERED IT, THAT
19 WOULD HAVE CURED ANY PROBLEM.

20 THE COURT: I THINK SO, TOO. WE CAN BRING THEM
21 OUT HERE AND ASK THEM IF THAT CAUSED THEM ANY TROUBLE.

22 MR. CONNELL: I THINK WE NEED TO BRING THEM OUT
23 AND EXPLAIN TO THEM THAT EDWARD RAYMOND HUNT IS NOT LIABLE
24 FOR ANYTHING AND IF THIS MONEY WAS INTENDED TO DO SOMETHING
25 FOR EDWARD RAYMOND HUNT HE IS NOT A PARTY AND NEVER HAS

1 BEEN AND WAS LET OUT BY THE COURT OF APPEALS ALMOST A YEAR
2 AGO.

3 MR. ROTHSTEIN: YOUR HONOR, THE LAW IS THAT
4 EDWARD W. HUNT STANDS, STANDS IN THE SHOES OF EDWARD
5 RAYMOND HUNT. I DON'T THINK THERE WOULD BE ANY, I DON'T
6 HAVE A PROBLEM WITH YOU BRINGING THE JURY BACK AND ASKING
7 THEM THAT BUT I THINK THAT'S WHAT THE QUESTION WAS AND THE
8 SOURCE OF CONFUSION WHEN YOU RECHARGED THE JURY ON THE
9 FAMILY PURPOSE DOCTRINE AND ON THE ISSUE OF WHO IS THE
10 DEFENDANT IN THE CASE THAT OBVIOUSLY CLEARED UP THEIR
11 CONFUSION AND I BELIEVE THAT AFTER THAT IS WHEN THEY
12 RENDERED THE VERDICT IN OR AGAINST EDWARD W. HUNT EVEN
13 AFTER YOUR INSTRUCTION. IT WAS CLEAR TO THEM THAT THEY
14 WEREN'T, MR. EDWARD RAYMOND HUNT WAS NO LONGER A PARTY.

15 THE COURT: I THINK SO, I'M JUST TRYING TO
16 FIGURE OUT A WAY TO MAKE SURE THAT ---

17 MR. CONNELL: ON THE VERDICT FORM IT SAYS WE
18 FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT HUNT, WHICH
19 DEFENDANT HUNT, FIRST CAPTION.

20 MR. ROTHSTEIN: YOUR HONOR, THEY, THEY DIDN'T
21 OBJECT AT THE TIME WHETHER THEY SAW IT OR NOT, YOU KNOW.
22 IF YOU HAVE TO CONTEMPORANEOUSLY OBJECT TO A, TO A ---

23 THE COURT: WHAT IF WE, WHAT IF WE GAVE THEM
24 ANOTHER VERDICT FORM TAKING EDWARD RAYMOND HUNT OFF AND THEN
25 LET THEM KNOW AGAIN THAT, THAT THE DEFENDANT IS EDWARD W.

1 HUNT WHO IS THE FATHER, THAT THE SON IS NOT A PARTY AND
2 JUST ASK THEM TO GIVE US ANOTHER VERDICT? IF THAT CHANGES
3 ANYTHING I DON'T KNOW, THAT'S UP FOR THEM TO DECIDE?

4 MR. CONNELL: YES, SIR.

5 THE COURT: WHAT DO YOU THINK, IS THE PLAINTIFF
6 OKAY WITH THAT?

7 MR. ROTHSTEIN: THAT'S FINE WITH ME, YOUR HONOR.

8 THE COURT: ALL RIGHT, GO AHEAD AND TAKE A, ALL
9 RIGHT, LOOK AT IT VERY CAREFULLY.

10 (WHEREUPON, DEPUTY NOBLES ENTERS THE COURTROOM
11 AND APPROACHES THE BENCH.)

12 DEPUTY NOBLES: YOUR HONOR, THE JURORS ARE GONE.

13 THE COURT: WHO'S GONE?

14 DEPUTY NOBLES: THE BAILIFF RELEASED THE JURORS.

15 THE COURT: LET'S TRY TO GET THEM BACK.

16 MR. CONNELL: WE WOULD MOVE FOR A MISTRIAL AND,
17 YOUR HONOR, THE REASON IS WE ASKED THE JURY TO BE HELD AND,
18 OF COURSE, THE JURY HAS LEFT THROUGH THE FAULT OF WHOEVER,
19 I DON'T KNOW.

20 THE COURT: WELL LET THE RECORD REFLECT NOW IS A
21 GOOD TIME THAT I INSTRUCTED THE BAILIFF TO PUT THE JURY
22 INTO THE JURY ROOM AND I ASKED THE JURY TO STEP OUT INTO
23 THE JURY ROOM ONE MORE TIME. THE BAILIFF HERE DOES NOT
24 HEAR WELL AT ALL AND I DON'T THINK HE HEARD ME AT ALL AND
25 HE ACTUALLY DISMISSED THE JURY, SO FOR THE RECORD WE ARE

1 TRYING TO TRACK THEM DOWN ON A CELL PHONE AND BRING THEM
2 BACK AND CLARIFY.

3 MR. CONNELL: AND, YOUR HONOR, OUR POSITION ON
4 MISTRIAL WOULD BE THAT THEY'VE ALREADY LEFT THE COURTHOUSE,
5 THEY'VE LEFT THE CONFINES OF THE BUILDING, WE DON'T KNOW
6 WHO THEY'VE TALKED TO, WHAT THEY'VE DISCUSSED WITH ANYONE
7 OR THEIR SPOUSES.

8 THE COURT: WELL LET'S GET THEM BACK AND WE'LL
9 TALK TO THEM, THAT'S A LITTLE PREMATURE TO DO, DO SOMETHING
10 LIKE THAT.

11 DEPUTY NOBLES: YOUR HONOR, WE'VE CONTACTED
12 ABOUT FOUR, I'VE GOT TWO, THE OTHERS THEY DON'T ANSWER.
13 TWO OF THE NUMBERS THEY'VE GOT HERE DON'T, CANNOT DIAL IT.
14 ONE OF THEM DOESN'T HAVE A CELL PHONE AND LIVES IN AYNOR,
15 HADN'T GOTTEN HOME YET. THE NUMBER WE DIALED HE ANSWERED
16 THE PHONE SAID SHE'S GOT NO WAY TO BE CONTACTED UNTIL SHE
17 GETS HOME IN AYNOR AND TWO OF THESE NUMBERS I, I DON'T GET,
18 I CAN'T DIAL THEM, THEY'RE INOPERATIVE.

19 THE COURT: SO TWO PEOPLE YOU CANNOT GET NO
20 MATTER WHAT. WELL YOU HAVE THEIR ADDRESS, YOU COULD GET
21 THEM.

22 DEPUTY NOBLES: YEAH, WE COULD GET A HOLD OF
23 THEM AND HAVE THEM BACK.

24 THE COURT: LET'S GET THEM BACK IN THE MORNING
25 AND LET'S TALK TO THEM. I CAN ASK THEM WHO THEY TALKED TO,

1 IF ANYBODY, AND SEE IF WE CAN'T CLARIFY THE PROBLEM.

2 MR. ROTHSTEIN: YOUR HONOR, I THINK THAT, THAT
3 WHEN THE QUESTION CAME OUT AND YOU CLARIFIED IT THAT CURED
4 ANY CONFUSION THAT THE JURY HAD.

5 THE COURT: AND I AGREE WITH YOU BUT OUT OF AN
6 ABUNDANCE OF CAUTION MAYBE WE CAN JUST GET THEM BACK,
7 CORRECT THE VERDICT FORM, AND JUST LET THEM FILL IT OUT
8 AGAIN.

9 MR. ROTHSTEIN: I THINK MR. CONNELL IS RIGHT,
10 THOUGH. I MEAN WE DON'T KNOW WHO THEY'VE TALKED TO AT THIS
11 POINT, BUT I DON'T KNOW THAT THAT'S A BASIS FOR A MISTRIAL.
12 AGAIN IT'S ---

13 THE COURT: I'M NOT GOING TO MISTRY IT, I THINK
14 THEY KNEW EXACTLY WHAT THEY WERE DOING.

15 MR. NICHOLS: AND THE OTHER THING, JUDGE, I
16 DON'T HAVE A COPY OF THE VERDICT FORM THAT WE SAW BEFORE
17 THE, BEFORE THE CHARGE BUT IT WAS MY RECALL, I MEAN IT MAY
18 ACTUALLY --

19 MR. ROTHSTEIN: I BELIEVE THE SOURCE OF THE
20 CONFUSION WHEN THEY ASKED THAT FIRST QUESTION WHO IS ---

21 MR. NICHOLS: AND WE JUST DIDN'T NOTICE.

22 MR. ROTHSTEIN: AND NOBODY NOTICED IT.

23 THE COURT: I THINK WHAT I'M GOING TO DO IS JUST
24 LET IT STAND AS IT IS AND DENY YOUR MOTION. I REALLY
25 BELIEVE THEY KNOW EXACTLY WHAT THEY WERE DOING.

1 MR. ROTHSTEIN: YOUR HONOR, WE, WE DO HAVE A
2 POST TRIAL MOTION ALSO.

3 THE COURT: SURE.

4 MR. ROTHSTEIN: WE WOULD LIKE TO MOVE FOR A NEW
5 TRIAL NISI ADDITUR. THERE'S A SPECIFIC CASE RIGHT ON POINT
6 THAT OBVIOUSLY THE JURY FOUND LIABILITY ON GROSS NEGLIGENCE
7 AND GAVE PUNITIVE DAMAGES. THE AWARD HERE WAS THE
8 UNCONTROVERTED ONLY THE AMOUNT OF THE MEDICAL BILLS AND
9 YOUR HONOR INSTRUCTED THE JURY THAT PAIN AND SUFFERING IS
10 SEPARATE, FUTURE WAGES ARE SEPARATE, LOSS WAGES ARE
11 SEPARATE; AND I BELIEVE THE CASE, THERE'S A CASE WARING V.
12 JOHNSON 2000 SOUTH CAROLINA COURT OF APPEALS CASE 300, 341
13 S.C. 248, 533, S.E. 2ND, 906, WHICH IS EXACTLY ON POINT
14 HERE, YOUR HONOR, WHERE THE JURY RETURNS EXACTLY THE
15 MEDICAL BILLS, THAT'S A GROUND FOR A NEW TRIAL NISI
16 ADDITUR, AND WE WOULD SUGGEST AN APPROPRIATE AMOUNT WOULD
17 BE \$300,000 FOR COMPENSATORY DAMAGES.

18 THE COURT: I'LL BE GLAD TO HEAR FROM THE
19 DEFENSE.

20 MR. LAWSON: YOUR HONOR, THE, WHILE THE VERDICT
21 WAS FOR THE AMOUNT OF THE MEDICAL BILLS THERE WERE A
22 CONTENTIOUS DEBATE ABOUT WHAT WAS RELATED TO THE ACCIDENT
23 AND WHILE I AGREE THAT THAT IS THE AMOUNT OF THE MEDICAL
24 BILLS I DON'T KNOW IF THE COURT SHOULD GO BEHIND THE JURY
25 AND SAY THAT THAT'S WHAT THEY CAME UP WITH. IT'S A NUMBER

1 THEY COULD HAVE PICKED BASED ON A LOT OF THINGS.
2 DISCUSSIONS COULD HAVE GONE IN ANY DIRECTION THAT SOME
3 JURORS THINK THAT 19,000 WAS RELATED, SOME THINKING THEY'RE
4 ALL RELATED, AND THAT WAS, THEY REACHED A COMPROMISE AND
5 THAT WAS THEIR VERDICT. I THINK THERE'S PLENTY IN THE
6 RECORD TO SUGGEST THAT IF THEY, SOME JURORS BELIEVED OUR
7 VERSION OF THE CASE THAT IT COULD VERY WELL BE THE MEDICAL
8 PLUS SOME FOR PAIN AND SUFFERING, SOME FOR MENTAL ANGUISH,
9 AND WHATEVER. BUT I DON'T THINK THE COURT SHOULD GO BEHIND
10 THE PROVINCE OF THE JURY WHEN THAT HAS BEEN ONE OF THE
11 ISSUES THAT WE HAVE BEEN DEBATING FOR THE LAST THREE DAYS.

12 THE COURT: SURE, MR. CONNELL?

13 MR. CONNELL: AND, YOUR HONOR, WE, I ALSO CONCUR
14 WITH THAT ISSUE OF CAUSATION, PROXIMATE CAUSE. DR. MILLS
15 WAS HERE, THERE'S EXTENSIVE TESTIMONY ABOUT THAT. I DON'T
16 THINK YOUR HONOR SHOULD GO BEYOND THAT EITHER.

17 MR. ROTHSTEIN: JUST BRIEFLY, THIS ISN'T JUST
18 ANY NUMBER, THIS IS TO THE DOLLAR THE AMOUNT OF THE
19 SUMMARY, YOUR HONOR. THEY DIDN'T JUST, THEY, THEY, IT'S
20 NOT A CAUSATION QUESTION OF WHETHER THE SURGERY IS RELATED.
21 THEY GAVE US THE SURGERY AND, AND THE LAW SAYS THAT YOU'RE
22 ENTITLED TO, YOU KNOW, SEPARATELY, THE MEDICALS ARE
23 SEPARATE, PAIN AND SUFFERING, YOU KNOW, LOST WAGES.
24 THERE'S UNCONTROVERTED TESTIMONY THAT HE LOST TIME FROM
25 WORK. CERTAINLY UNCONTROVERTED TESTIMONY ABOUT PAIN AND

1 SUFFERING THAT'S HE'S ENDURED AND WILL CONTINUE TO ENDURE
2 IN THE FUTURE. THERE'S TESTIMONY FROM DR. MILLS THAT THERE
3 WAS A FIFTEEN PERCENT IMPAIRMENT RATING BEFORE THE SURGERY
4 SO IT'S CLEAR THAT THE JURY, YES, THEY DID REACH A
5 COMPROMISE VERDICT, AND I THINK THAT IT WOULD BE
6 APPROPRIATE TO DO AN ADDITUR IN THIS CASE, YOUR HONOR.

7 MR. CONNELL: YOUR HONOR, WE WON'T AGREE. WE
8 WOULDN'T AGREE ON ADDITUR BASED ON WHAT WE'VE ALREADY SAID.
9 THEIR OTHER REQUEST IS A NEW TRIAL, THERE ARE PLENTY OF
10 REASONS TO HAVE A NEW TRIAL IN THIS CASE. AS YOUR HONOR
11 KNOWS WHAT WE'VE ALREADY TALKED ABOUT SO ---

12 THE COURT: I'M GOING TO DENY YOUR MOTION.

13 MR. LAWSON: THANK YOU, JUDGE.

14 THE COURT: ANYTHING FURTHER FROM THE PLAINTIFF?

15 MR. NICHOLS: NO, SIR.

16 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

17 MR. LAWSON: NO, SIR.

18 THE COURT: ALL RIGHT, ANYBODY LIKE TO WEIGH IN
19 ON THE PUNITIVE DAMAGES?

20 MR. NICHOLS: I THINK THE PUNITIVES ARE
21 PERFECTLY APPROPRIATE, YOUR HONOR, IT'S A VERY CONSERVATIVE
22 ---

23 MR. LAWSON: I GUESS FOR THE RECORD, YOUR HONOR,
24 WE WOULD ASK FOR A POST TRIAL REVIEW OF PUNITIVE DAMAGES
25 UNDER THE LATEST CASE I GUESS IS ---

1 MR. ROTHSTEIN: MITCHELL.

2 MR. LAWSON: MITCHELL V. FORTIS INSURANCE
3 COMPANY AND I THINK THE THINGS WE'VE LOOKED AT WOULD BE
4 REPREHENSIBILITY AND THE RATIO AND THE COMPARATIVE PENALTY
5 AWARDS AND THOSE SORT OF THINGS. THE ONE THING THAT'S
6 MISSING FROM THE RECORD, OF COURSE, IS THE ABILITY TO PAY
7 BUT I WOULD HAVE TO CONCEDE THAT THE RATIO, OF COURSE, IS
8 LESS THAN THE ONE WE WON AND ON THE REPREHENSIBILITY I
9 UNDERSTAND WHAT I WAS DEALING WITH BUT I WOULD ASK THE
10 COURT TO REVIEW THOSE AS REQUIRED BY THE CASE LAW.

11 THE COURT: THE WAY I SEE IT I DO NOT FIND THE
12 AWARD OF PUNITIVE DAMAGES TO BE GROSSLY DISPROPORTIONATE TO
13 THE AWARD. THEY ARE CERTAINLY LESS THAN ONE TIME WHAT THE
14 AWARD IS AND IN THIS PARTICULAR CASE, YOU KNOW, YOU'VE GOT
15 TWO GUYS OUT THERE IN THE MIDDLE OF THE NIGHT, THERE'S A
16 WHOLE LOT OF DRINKING. ONE GUY DOESN'T EVEN SHOW UP TO
17 COURT, DEFENDANT SMITHERS DOESN'T EVEN COME TO COURT. HE
18 WAS ARRESTED FOR DRUNK DRIVING; I THINK HE WAS CONVICTED IF
19 I'M NOT MISTAKEN FOR DRUNK DRIVING AND HE SMASHES INTO THE
20 BACK OF A PATROL CAR THAT HAS THE BLUE LIGHTS GOING, THE
21 FLASHING LIGHTS GOING, ALL THE LIGHTS GOING IN THE MIDDLE
22 OF THE NIGHT ON A FOUR LANE HIGHWAY. THE OTHER DEFENDANT
23 WHO I UNDERSTAND IS THE FATHER BUT THE NEGLIGENCE OF THAT
24 SON, YOU KNOW, YOU COULD ASSUME HE WAS DRINKING AS WELL.
25 HE'S HANGING OUT AT A CLUB UNTIL LATE AT NIGHT AND LEAVES

1 THE CLUB AND GOES TO SLEEP AND GETS IN THE CAR AND RIDES
2 DOWN THE ROAD, GETS PULLED, DOESN'T EVEN PULL OFF THE ROAD,
3 HE JUST STOPS IN THE MIDDLE OF THE ROAD. I THINK THERE'S
4 PLENTY FOR THE JURY TO AWARD PUNITIVE DAMAGES IN THIS CASE.
5 IT'S MY OPINION THE JURY WAS VERY, VERY INTELLIGENT AND
6 DIDN'T GET INFLAMED BY ANYTHING. THEIR DAMAGE AWARD AND
7 THEIR PUNITIVE AWARDS APPEAR TO BE VERY RATIONAL TO ME.

8 MR. CONNELL: OF COURSE, YOUR HONOR, WE WOULD
9 MOVE FOR A NEW TRIAL ON A NUMBER OF GROUNDS. ONE IS THAT
10 YOUR HONOR DIRECTED THE JURY TO STAY AFTERWARDS, THEY LEFT,
11 WE CAN'T GET THEM BACK. THE JURORS FOR WHATEVER REASON
12 MADE AN ERROR. THE BAILIFF, I REALLY DON'T WANT TO TALK
13 ABOUT ANYTHING IN THAT REGARD, BUT THAT WAS EXPLICITLY
14 AGAINST THE COURT'S INSTRUCTIONS. THAT'S ISSUE NUMBER ONE.

15 THE OTHER ISSUE THAT WE ARGUE, YOUR HONOR, IN THE
16 CASE WAS THE ISSUE OF WHETHER OR NOT PUNITIVE DAMAGES APPLY
17 TO THE FAMILY PURPOSE DOCTRINE AND THE ISSUE OF WHETHER OR
18 NOT THE FAMILY PURPOSE DOCTRINE AND PUNITIVE DAMAGES WERE
19 ACCEPTABLE IN SOUTH CAROLINA. YOUR HONOR, OF COURSE RULED
20 ON THAT AT THE DIRECTED VERDICT STAGE AND AT THE
21 INVOLUNTARY NON SUIT STAGE AND FIRST DENIED OUR MOTION. WE
22 WOULD RENEW IT THIS TIME, AND THERE'S NO EVIDENCE THAT MR.
23 HUNT, MR. HUNT WHO WAS THE OWNER OF THE VEHICLE OR ALLEGED
24 OWNER, DID ANYTHING TO CAUSE ANY PUNITIVE DAMAGES AND WE
25 WOULD ASK THE COURT TO REVISIT THAT AND ISSUE A WRITTEN

1 OPINION, IF YOUR HONOR WILL, BASED ON OUR MOTIONS FOR
2 DIRECTED VERDICT AND VOLUNTARILY NON SUIT.

3 YOUR HONOR, WE WOULD ALSO ASK YOUR HONOR TO
4 REVISIT THE CASE THAT WE CITED EARLIER REGARDING
5 INTERVENING, INDEPENDENT INTERVENING CAUSE AS TO THE GROSS
6 CASE, I BELIEVE IT IS, THAT WE DISCUSSED EARLIER INVOLVING
7 A TRAFFIC ACCIDENT IN WHICH SIMILAR CIRCUMSTANCE OCCURRED
8 AND WE WOULD ASK YOUR HONOR TO CONSIDER THAT AS AN
9 ADDITIONAL GROUND.

10 AND WE ALSO ASK YOUR HONOR TO CONSIDER A GRANTING
11 US A NEW TRIAL BASED ON THE, ON THE, ON THE VERDICT FORM
12 ITSELF. ONE VERDICT FORM YOUR HONOR SHOWED TO US, OF
13 COURSE; ONE VERDICT FORM WAS SUBMITTED WITHOUT US KNOWING
14 ABOUT IT. IT WAS ONLY BROUGHT TO OUR ATTENTION WHEN THE
15 FORELADY CAME OUT, AS YOUR HONOR KNOWS, AND MADE A COMMENT
16 ABOUT THAT. IT WAS NOT UNTIL THE CLERK ACTUALLY READ THE
17 CAPTION THAT WE REALIZED THAT EDWARD RAYMOND HUNT HAD BEEN
18 NAMED AS A DEFENDANT WHICH OBVIOUSLY WAS A MISTAKE THAT
19 YOUR HONOR CAN RECTIFY, AND I DON'T THINK IT MAKES ANY
20 DIFFERENCE. IF THEY WANT A NEW TRIAL BASED ON AN ADDITUR
21 ANY WAY YOUR HONOR COULD GRANT THEIR NEW TRIAL, DENY THEIR
22 REQUEST FOR AN ADDITUR OF \$300,000, GIVE US A NEW TRIAL ON
23 ALL ISSUES. CERTAINLY BASED ON WHAT'S GOING ON IN THIS
24 CASE IT'S A VERY UNUSUAL SITUATION OF ALL OF THE, ALL OF
25 THE ERRORS COMPOUNDED, ONE UPON ANOTHER, IF YOUR HONOR

1 CONSIDER IN THE INTEREST OF JUSTICE THAT WE GET A NEW
2 TRIAL.

3 THE COURT: I'M GOING TO DENY THE MOTION. THE
4 JURY, THE FORELADY CAME OUT AND WELL TO SUBMIT A QUESTION
5 AND WE BROUGHT THEM OUT AND WE ANSWERED THE QUESTION I
6 THINK IN DETAIL AND THEY APPEARED TO UNDERSTAND IT. THEY
7 FILLED OUT THE JURY FORM WHAT APPEARS TO BE PROPER TO ME.
8 I WAS JUST GOING TO TRY TO GET THEM BACK JUST TO CLARIFY
9 THE RECORD, IF I COULD, BUT APPARENTLY THEY HAD TAKEN OFF
10 AND WE CAN'T GET THEM. I'M JUST GOING TO LET IT STAND LIKE
11 IT IS.

12 MR. CONNELL: YOUR HONOR, ALL THE ISSUES THAT WE
13 RAISED AT DIRECTED VERDICT WOULD YOUR HONOR LIKE THOSE
14 HEARD FOR US SO THAT WE COULD GET A SAME RULING, I ASSUME,
15 THAT YOU ---

16 THE COURT: WE'VE ALREADY HEARD THOSE MOTIONS
17 AND MY RULINGS ON THOSE MOTIONS STAND THE SAME.

18 MR. CONNELL: THANK YOU, YOUR HONOR.

19 MR. LAWSON: YOUR HONOR, IF I MAY ON JUST SO THE
20 RECORD IS CLEAR ON BEHALF OF DEFENDANT SMITHERS, WE WOULD
21 MOVE FOR A NEW TRIAL BASED UPON THE SAME REASONINGS AND
22 GROUNDS THAT MR. CONNELL HAS TOLD YOU ABOUT FOR DEFENDANT
23 HUNT.

24 THE COURT: ALL RIGHT, THANK YOU, THAT'S DENIED
25 AS WELL. ALL RIGHT, THAT CONCLUDES THIS CASE.

CONWAY MEDICAL CENTER
P.O. BOX 829
300 SINGLETON RIDGE ROAD
CONWAY, SC 29526

HISTORY & PHYSICAL

Patient Name: GAUSE, DON D.
Visit Number: V00005613196
Unit Number: M000372623
Admit Date: 06/07/05
Room Number: ODSU

DOB: 12/14/69

CHIEF COMPLAINT:
Low back and bilateral leg pain.

HISTORY OF PRESENT ILLNESS:

Mr. Gause is a 35-year-old white male who has had 2 work related accidents. The first was in November 15, 2003 when he was at work and was involved in a rear end type motor vehicle accident. He recovered well from that accident and his back pain resolved. He had another accident sometime in November of 2004 after he was pushing a car out of the road while working as a police officer. Since that time he has had persistent low back pain which has begun radiating down both legs. Conservative treatment with facet injections and medications have given him suboptimal pain relief. He feels that he can no longer live with his back and bilateral leg pain and would like to consider possible surgical intervention.

PHYSICAL EXAMINATION

GENERAL APPEARANCE: A well developed well nourished 35-year-old African American male in no apparent distress. Alert and oriented.

HEENT: Normocephalic, atraumatic. Extraocular muscles intact. Oropharynx clear.

NECK: Supple without adenopathy.

LUNGS: Clear to auscultation bilaterally.

HEART: Regular rate and rhythm without appreciable murmur.

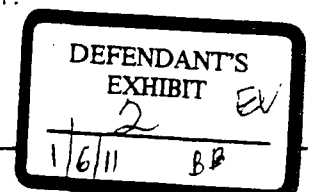
ABDOMEN: Soft and nontender. Normoactive bowel sounds.

VASCULAR: Two + dorsalis pedis pulse bilaterally.

NEUROLOGICAL: Manual motor testing reveals 5/5 strength bilaterally of the quadriceps, ankle dorsiflexors, and extensor hallucis longus. One + patellar and 2+ ankle jerk reflex bilaterally.

X-RAYS:

Lumbar magnetic resonance imaging scan dated 5/16/05 as reviewed by Dr. Mills reveals disk degeneration at L4-5 and L5 S1. Central to left herniated nucleus pulposus at L5 S1.



CONWAY MEDICAL CENTER
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300 SINGLETON RIDGE ROAD
CONWAY, SC 29526

HISTORY & PHYSICAL

Patient Name: GAUSE, DON D.
Account Number: V00005613196
History Number: M000372623
Admit Date: 06/07/05
Room Number:

ASSESSMENT:

Lumbar spondylosis L4-5, L5 S1.
Central to left HNP L5 S1.

PLAN:

To better define the pain generator, Dr. Mills recommends discograms at L3-4 and L4-5.
Scheduling is underway.

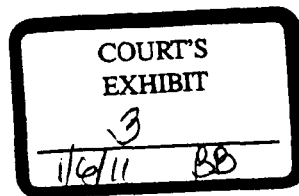
Dictated by Todd Beebe, PA-C


WILLIAM L. MILLS, M.D.

CW
Dictated: 05/18/05, @ 12:37
Typed: 05/18/05, @ 12:49
Job #: 144874

① CLARIFY LAWS AS TO ~~HOW~~¹ FAMILY
LAW¹¹

② CLARIFY DEFENDANTS



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Don D Gause,

Plaintiff,

vs.

Nathan Dale Smithers, Edward Raymond
Hunt, and Edward W. Hunt

Defendants.

C/A NO. 2006-CP-26-5391

Verdict

VERDICT

Defendant Smithers has admitted negligence.

We the jury find in favor of: _____ Defendant Hunt OR _____ Plaintiff

If you selected "Defendant Hunt" above, the following actual damages only apply to Defendant Smithers.

If you selected "Plaintiff" above, the following actual damages to Defendant Smithers and Defendant Hunt.

We, the Jury, find for the Plaintiff against the Defendant(s) in the amount of

155,432.64 actual damages.

We, the Jury, find for the Plaintiff against the Defendant Smithers in the amount of

60,000.00 punitive damages.

We, the Jury, find for the Plaintiff against the Defendant Hunt in the amount of

_____ punitive damages. (Do not find any amount in this blank if

you check "Plaintiff" above.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
		06-CP-26-5391
COUNTY OF HORRY	)	
Don D. Gause,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	Hearing
	)	
Nathan Dale Smithers and	)	October 24, 2007
Edward W. Hunt,	)	
	)	
Defendants.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

David E. Rothstein, Esquire
Attorney for Plaintiff

Gene M. Connell, Jr., Esquire
Attorney for the Defendants,
Edward W. Hunt and Edward Raymond Hunt

Stephanie Drawdy, Esquire
Attorney for Defendant,
Nathan Dale Smithers

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 (On the record, October 24, 2007.)

2 THE COURT: All right, this is case number 2006-
3 CP-26-5391, the case of Don D. Gause versus Nathan Dale
4 Smithers, Edward W. Hunt and Edward Raymond Hunt. I've got
5 several motions pending. Present at the call Gene M. Connell,
6 Jr., as attorney for the Defendants, Edward W. Hunt and Edward
7 Raymond Hunt, and you are?

8 MR. ROTHSTEIN: David Rothstein, Your Honor.

9 THE COURT: Mr. Rothstein as attorney for ---

10 MR. ROTHSTEIN: Plaintiff, Don Gause.

11 THE COURT: Plaintiff. Yes, ma'am.

12 MS. DRAWDY: I'm here for the Defendant Smithers.
13 We're not involved in the motion. I just wanted to let you
14 know we were here.

15 THE COURT: All right, and your name?

16 MS. DRAWDY: Stephanie Drawdy.

17 THE COURT: Okay, Ms. Drawdy, thank you.

18 All right I've got one, two, three motions to dismiss and a
19 motion to compel; is that correct?

20 MR. CONNELL: Your Honor, the motion to compel
21 we've agreed to and that -- we'll withdraw that.

22 THE COURT: Okay, so, the motion to compel is
23 withdrawn. All right, three -- I've got -- who all has a
24 motion to dismiss, in what order do we want to go in or does
25 it matter?

1 MR. CONNELL: Your Honor, the motions are all mine.

2 THE COURT: They are?

3 MR. CONNELL: Yes, sir.

4 THE COURT: They are, okay. Are you together or
5 separately or how do we want to do it?

6 MR. CONNELL: I think once you hear the gist of it
7 they're really kind of all interrelated.

8 THE COURT: Okay, all right, let me go ahead and
9 hear from you then.

10 MR. CONNELL: Your Honor, this is an automobile
11 accident that happened back on November 15, 2003, here in the
12 Conway area and the automobile accident happened in the City
13 of Conway and there actually was a car driven by an Edward
14 ~~Hunt and owned by an Edward Raymond Hunt.~~ So, if you look at
15 the pleadings you will see that they are actually -- if you'll
16 look at the amended complaint you'll see there's Edward
17 Raymond Hunt and Edward W. Hunt, and for purposes of you
18 understanding what happened, Your Honor, a lawsuit was filed
19 on November 2nd, 2006, against Edward W. Hunt. That lawsuit
20 was filed against Edward W. Hunt. It was -- the answer was
21 filed by us on December 19th, 2006, with a motion to dismiss
22 and the basis of the motion to dismiss was is that Edward W.
23 Hunt was not the driver of the vehicle. The driver of the
24 vehicle was Edward Raymond Hunt.

25 THE COURT: All right.

1 MR. CONNELL: Thereafter, we received from
2 Plaintiff's counsel an amended complaint, that was not filed
3 with a motion, that named the driver as Edward Raymond Hunt,
4 Edward Raymond Hunt being Edward W. Hunt's son.

5 THE COURT: Okay.

6 MR. CONNELL: You follow what happened? So ---

7 THE COURT: I got you. Edward R. is the driver
8 son, Edward W. is the owner dad.

9 MR. CONNELL: Yes, sir.

10 THE COURT: Got you, okay.

11 MR. CONNELL: And this was an accident that the
12 highway patrol investigated. So, anyway, we got an amended
13 complaint in the mail from Plaintiff's counsel without a
14 ~~motion and without an order of the court, and as a result~~
15 therein, Edward Raymond Hunt was served and he was served more
16 than three years after the statute of limitations. In other
17 words, they served the owner, Edward W. Hunt, on November 2nd,
18 2006, but did not serve Edward Raymond Hunt until after the
19 amended complaint, which was filed on December 19th
20 thereabouts. So, our motion to dismiss is simply this, Your
21 Honor, as Your Honor knows the South Carolina Rules of Civil
22 Procedure require that you file the summons and complaint and
23 that you file it by the statute date. You don't have to serve
24 it by then, but you have to file it by then, and while counsel
25 did file a lawsuit against Edward W. Hunt, the owner, he did

1 not file, unfortunately, a lawsuit against the driver, Edward
2 Raymond Hunt, until after the statute of limitations had run.

3 THE COURT: All right, so the statute -- the
4 date of the accident?

5 MR. CONNELL: The date of the accident was
6 November 15th, 2003, and counsel served Edward W. Hunt on
7 November 2nd, 2006. That was, that was the owner. Once we
8 answered the complaint and filed a motion to dismiss, counsel
9 then filed an amended complaint without approval of the court
10 and named a new party, Edward Raymond Hunt.

11 THE COURT: When did -- well, like I'm looking
12 here. I've got the amended complaint.

13 MR. CONNELL: The amended complaint.

14 ~~THE COURT: December 19th.~~

15 MR. CONNELL: Is dated December 15. We received
16 it December 19th and our position regrettably, Your Honor, is
17 is that you cannot file an amended complaint adding a new
18 party without approval of the court after the statute of
19 limitations and the rules are pretty clear that Rule 3 is, of
20 course, one of the first rules in the Code of Civil Procedure
21 and it provides that you have to serve someone within -- you
22 have to file within the statute of limitations. You don't
23 have to serve them.

24 THE COURT: So, Edward R. ---

25 MR. CONNELL: Edward.

1 THE COURT: --- Hunt did not appear.

2 MR. CONNELL: He was not named in the initial
3 lawsuit.

4 THE COURT: Until the amended complaint.

5 MR. CONNELL: Yes, sir, and that was on December
6 19th, 2006, and we did not consent to that. Counsel sent us
7 the amended complaint without a motion and without order of
8 the court and we do not believe, Your Honor, that you can file
9 an amended complaint and add a new party after the statute of
10 limitations. See what you've got here is ---

11 THE COURT: Yeah, I see what you -- I understand
12 your argument. I see what you're saying. So, you're seeking
13 an order of dismissal only as to Edward R.?

14 MR. CONNELL: We seek an order of dismissal as to
15 Edward Raymond Hunt, who was served after the statute of
16 limitations, then his -- and the amended complaint was filed
17 after the statute of limitations and the argument, quite
18 simply, Your Honor, is is that if you want to amend your
19 complaint to add an additional cause of action against someone
20 that you've already timely served under the statute of
21 limitations you can certainly do that.

22 THE COURT: Right

23 MR. CONNELL: But you cannot add a new party after
24 the statute of limitations without either order of the court,
25 and you certainly have to meet the statute of limitations.

1 That's the first thing you have to do. Now, if he had filed
2 it back before the statute of limitations he would have 120
3 days under the new law to serve that person, but
4 unfortunately, he did not do that; and so, our motion first --
5 our first motion is to dismiss Edward Raymond Hunt as a
6 Defendant based upon the fact that he did not -- he was not
7 served -- the lawsuit was not filed before the statute of
8 limitations, and the second motion, Your Honor, is simply we
9 ask for a dismissal, or in the alternative, we will let him
10 re-plead against Edward W. Hunt, who he named as the driver.
11 Edward W. Hunt is not the, is not the driver of the car.
12 Edward W. Hunt is the owner of the vehicle in question and
13 there are two cases, Your Honor, I don't know if you've had
14 this issue before, but there are two cases that deal with
15 this. One is from Bennettsville, the Supreme Court called
16 McLean versus Eckerd Drugs [spelled phonetically], and the
17 Supreme Court in an opinion there made clear that you have to
18 file the lawsuit within the statute of limitations even if you
19 don't serve it, and in this case, of course, unfortunately Mr.
20 Edward Raymond Hunt was not -- the statute of limitations was
21 not met for him and you can't relate that back and add a new
22 party. If you could, you could go on forever with naming new
23 Defendants, but there's the case of McLean versus Eckerd Drugs
24 and there's also a case called Blythe versus Marcus [spelled
25 phonetically] a Court of Appeals opinion which says that

1 unless an action is commenced before the expiration of the
2 limitations period the Plaintiff's claim is barred as a matter
3 of law, and the Plaintiff's claim against the Defendant,
4 Edward Raymond Hunt, is most certainly barred as a matter of
5 law because they didn't file it within the statutory period.
6 As to the Edward W. Hunt, the owner of the vehicle, if they
7 want to name him as the owner that's one thing but he
8 certainly is not the driver.

9 THE COURT: So, you're saying the amended
10 complaint against -- okay, tell me again what you're basing
11 your motion for dismissal as to Edward W. Hunt.

12 MR. CONNELL: Only -- the original complaint named
13 ---

14 ~~THE COURT: Listed him as the owner ---~~

15 MR. CONNELL: Yeah.

16 THE COURT: --- I mean, as the driver.

17 MR. CONNELL: Driver, if they want to make him the
18 driver, I mean, the owner, I'm fine with that, but I don't
19 think that you can go back later on and add a new Defendant
20 after the statute of limitations.

21 THE COURT: I understand new, add a new
22 Defendant, but with regard to Edward W. Hunt.

23 MR. CONNELL: He's been served and if they want to
24 make -- just put in the complaint he's the owner of the
25 vehicle and argue some sort of respondeat superior or

1 whatever they want to argue that's fine. I don't have any
2 problem with them reshaping the complaint to ---

3 THE COURT: But I'm trying to figure out your
4 motion to dismiss as to Edward W. Hunt.

5 MR. CONNELL: Yeah, my motion to dismiss
6 originally as to Edward W. Hunt was the fact that they named
7 him as the driver but the research indicates that once you've
8 named him if you want to add an additional cause of action ---

9 THE COURT: Right.

10 MR. CONNELL: --- or whatever you can certainly do
11 that. So, I don't really have that motion that's really
12 viable any longer I would think.

13 THE COURT: All right

14 MR. CONNELL: And that's our --- I've got the cases
15 if you want to look at them. There's Blythe and I brought the
16 ---

17 THE COURT: You have -- I've got three motions
18 to dismiss ---

19 MR. CONNELL: Well, the ---

20 THE COURT: --- unless one's just repeated.

21 MR. CONNELL: I think you have the same thing.
22 Let's see.

23 THE COURT: Let's see. I haven't -- let's see.

24 MR. CONNELL: See, the original one was for
25 failure to state a cause of action but against Edward W. Hunt.

1 THE COURT: Okay.

2 MR. CONNELL: But I'm saying the court that if he
3 wants to, wants to straighten that out somehow that's fine
4 with me. I just don't think you can bring a claim against
5 Edward Raymond Hunt at this time.

6 THE COURT: Okay, all right, sir.

7 MR. ROTHSTEIN: Your Honor, if I may, Rule 14 is
8 pretty clear. Rule 15A says that I can amend the complaint as
9 a matter of right within 30 days. I don't need leave of
10 court. I don't need consent of the Defendant, that after 30
11 days of receiving the answer I have as a matter of right can
12 amend the complaint without leave of court. That's what the
13 rule says. It says a party may amend his pleading.

14 THE COURT: Yeah, but I think his argument is is
15 that you went beyond just amending the complaint and you added
16 a party after the statute of limitations.

17 MR. ROTHSTEIN: Well, that goes to the Rule 15C
18 which is relation back.

19 THE COURT: Okay.

20 MR. ROTHSTEIN: And Rule 15C says that whenever the
21 claim or defense arises out of the same transaction or
22 occurrence and what I've done in the amended complaint was
23 named Edward W. Hunt under the family purpose doctrine and
24 negligent entrustment. Those claims clearly relate back to
25 the original complaint. The confusion about this father and

1 the son, you know, they both have very similar names and the
2 accident report that was at issue here and let me explain what
3 happened. The first driver stopped his car under suspicion of
4 driving under the influence of alcohol. My client, Don Gause,
5 was a City of Conway police officer. He was called to the
6 scene to assist the highway patrol who had stopped Edward
7 Raymond Hunt for suspicion of driving under the influence.
8 Edward Raymond Hunt was taken into custody. He had stopped
9 his car on Highway 501 in the left-hand lane of traffic rather
10 than pulling off the side of the road. His car was there in
11 the lane of traffic about three o'clock in the morning. Mr.
12 Gause, the City of Conway patrol officer, was in his patrol
13 car behind the car waiting for a wrecker to come tow Edward
14 ~~Raymond Hunt's car out of the road. He had his blue lights~~
15 flashing and his hazard lights on, and another drunk driver,
16 Edward -- I mean, Nathan Smithers came along and smashed into
17 the back of Mr. Gause's patrol car. So, we sued Nathan
18 Smithers who is uninsured. We sued Edward Raymond Hunt. Mr.
19 Hunt, since he was not the -- I think the accident report
20 initially was written up for Nathan Dale Smithers, the second
21 drunk driver, and it only mentioned that the Edward W. Hunt as
22 the owner of the first vehicle. So, I didn't know exactly who
23 was -- I just knew an Edward Hunt was driving the first
24 vehicle, and so, I brought the lawsuit against Edward W. Hunt
25 because that's the only name that was on the accident report

1 as the owner of the first vehicle. It was a mistake. As soon
2 as we found out that he was the owner of the car, but not the
3 driver we moved to amend the complaint. Rule 15C deals with
4 relation back and the second paragraph of Rule 15C says, "An
5 amendment changing the party against whom a claim is asserted
6 relates back if the foregoing provision is satisfied," that
7 deals with arising out of the same transaction or occurrence,
8 "and, within the period provided by law for commencing an
9 action against the party to be brought in by amendment, they
10 have received notice of the institution of the action that he
11 will not be prejudiced in maintaining his defense on the
12 merits," and two, "He knew or should have known that, but for
13 a mistake concerning the identity of the proper party, action
14 ~~would have been brought against him."~~ Here the Edward W.
15 Hunt clearly knew about the claim and I'm sure he put his son
16 or he found out that his son was driving the car within the
17 statute of limitations. There's no prejudice here because
18 they're defended by the same party, same insurance company,
19 same party. In fact, Mr. Edward Raymond Hunt was served with
20 the lawsuit before Nathan Smithers, the drunk driver, the
21 second drunk driver was served by publication in the case. I
22 believe that Rule 15C is pretty clear that we have a relation
23 back here for the mistaken identity party. It should relate
24 back to the original filing of the complaint, which would be
25 November 2nd, 2006, within the statute of limitations. It's a

1 very straightforward application of Rule 15A and Rule 15C and
2 I think the motion, the first motion to dismiss is clearly, I
3 think, moot at this point because we did in the amended
4 complaint include a cause of action against Edward W. Hunt for
5 negligent entrustment and for family purpose doctrine, so.

6 THE COURT: As I understand you're not pursuing
7 your motion to dismiss for failure to state a cause of action.

8 MR. CONNELL: Yes, sir, that's correct.

9 MR. ROTHSTEIN: So, that one should be moot. The --
10 interestingly the second two motions to dismiss are really the
11 same motion, but they were actually filed on behalf of Edward
12 W. Hunt, not Edward Raymond Hunt. If you look at the motions
13 they weren't filed on behalf of Edward Raymond Hunt. They
14 were filed on behalf of Edward W. Hunt and, you know, I think
15 if you look Rule 15C it's very straightforward. This is a
16 mistaken identity of party. The son certainly would have had
17 notice that -- and I haven't taken the deposition yet of the
18 father. I intend to do that but, you know, here we are on
19 motion to dismiss. If there's any doubt it should be resolved
20 in my favor and the case at this point should be allowed to go
21 forward. Again, there's no additional expense. You've got
22 the same insurance company providing a defense through the
23 same insurance company, the same attorneys. There's no
24 additional burden on Allstate on allowing Edward Raymond Hunt
25 to stay in the case at this point. You know, certainly Edward

1 W. Hunt, the father, had to find out who was driving the car
2 or what the circumstances were on the night in question to
3 file his affidavit. So, I'm sure the son had notice of the
4 lawsuit within the 120 days of the commencement of the action.
5 I think that their motion to dismiss should be denied at this
6 point, Your Honor.

7 THE COURT: All right, I think I've got a pretty
8 good hold on the facts. As far as the motion to dismiss for
9 failure to state a cause of action you're withdrawing that.

10 MR. CONNELL: Yes, sir.

11 THE COURT: Motion to dismiss as to Edward W.
12 Hunt I'm denying that motion and the motion to dismiss as to
13 Edward R. Hunt I'm going to take that under advisement. I
14 ~~need to read Rule 15 and get a little bit better holding of~~
15 that, as well as look at these cases that you cite, and I'll
16 let you know my decision.

17 MR. ROTHSTEIN: Thank you, Your Honor.

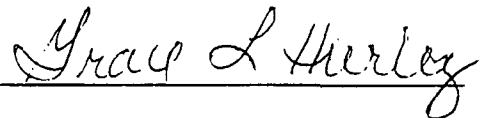
18 THE COURT: All right, thank you very much.

19 (Adjourned.)
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, 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 hearing held in the case of Don D. Gause v. Nathan Dale Smithers, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on October 24, 2007.

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



Grace L. Hurley, CVR-CM

Official Reporter

February 15, 2008.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Don D. Gause,
Appellant

VS.

Nathan Dale Smithers, Docket No. 16749
Edward W. Hunt, and
Edward Raymond Hunt,
Defendants.

Of whom Edward Raymond
Hunt is Respondent.

TRANSCRIPTION OF ORAL ARGUMENT

1 APPEARANCES:

2

3 DAVID E. ROTHSTEIN, ESQUIRE

4 Rothstein Law Firm, P.A.

5 514 Pettigru Street

6 Greenville, South Carolina 29601

7 On behalf of the Appellant

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10 GENE M. CONNELL, JR.

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12 1500 U.S. Highway 17 North

13 Surfside Beach, South Carolina 29587

14 On behalf of the Respondent

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1 CLERK: (Indiscernible). Any persons having anything to
2 do before the Honorable Judges of the Court of
3 Appeals draw near and (indiscernible). The Court
4 is now in session. (Indiscernible) of South
5 Carolina and this Court.

6 MR. _____: Please be seated. Clerk, if you'll
7 call the case.

8 CLERK: Docket No. 16749, Gause vs. Smithers.

9 MR. _____: Mr. Rothstein, (indiscernible) at this
10 time, sir.

11 MR. ROTHSTEIN: Good morning. May it please the Court?

12 MR. _____: Yes, sir.

13 MR. ROTHSTEIN: My name is David Rothstein. I'm here
14 today on behalf of the Appellant, Don Gause. Your
15 Honor, I, a couple of times, have been accused of
16 being somewhat nerdy on the Rules of Court and the
17 Rules of practicing law. And I'll have to accept
18 service on some of that. I'm not as bad as my
19 friend, John Nichols, but I do like to look at the
20 Rules.

21 MR. _____: You left Mr. Connell out of that,
22 didn't you?

23 MR. ROTHSTEIN: And I think my favorite rule is Rule 1
24 of the South Carolina Rules of Civil Procedure.
25 And, you know, it's an often overlooked rule, but

1 it's the very first rule in the book. And it says
2 that the Rules of Civil Procedure, quote, "shall
3 be construed to secure the just, speedy, and
4 inexpensive determination of every action."

5 I also like Rule 8(f) which says that, "All
6 pleadings shall be so construed to do substantial
7 justice to all parties." If you take a step back
8 and look at this case, this case was thrown out on
9 a motion to dismiss based on the statute of
10 limitations. And if you kind of look back and
11 just say, what's the purpose of the statute of
12 limitations? The purpose of the statute of
13 limitations is to protect Defendants from stale
14 claims.

15 well, in this case, the son, Edward Raymond
16 Hunt, had notice of the lawsuit before Nathan Dale
17 Smithers, one of the Defendants in the original
18 case. And I think some of the confusion here --
19 and let me just step back. The other thing that's
20 kind of interesting about this case is that the
21 father, Edward W. Hunt, was served -- filed and
22 served timely. He has the same lawyers and the
23 same insurance company as the son, so there's no
24 prejudice to allowing the relation back in this
25 case.

1 MS. _____: When you said the son had notice at the
2 same time or before Smithers, tell me what you
3 mean.

4 MR. ROTHSTEIN: Mr. Smithers was sort of an unknown
5 (indiscernible). He was a drunk driver. He
6 smashed into the back of my --

7 MS. _____: DUI 2?

8 MR. ROTHSTEIN: That's right. And we tried to locate
9 him for months. We couldn't find him. We had to
10 get the Court -- eventually, the hundred and
11 twenty days was kind of running, so I had to get
12 the Court to authorize notice by publication. So
13 I actually served Mr. Smithers by publication
14 about probably two months after the Amended

15 Complaint was served on Edward Raymond Hunt.

16 So I think some of the confusion and
17 ambiguity that arises in this case is when the
18 Rule 15(c) was originally enacted, in South
19 Carolina to toll the statute of limitations, you
20 had to serve -- you had to file and serve the
21 Complaint to toll the statute. Well, they, you
22 know a few years ago amended that and now if you
23 file it, you toll the statute as long as you serve
24 it within a hundred and twenty days. So you
25 really have three years to commence the action and

1 a hundred and twenty days to serve. And if you
2 look at the purpose -- if you serve -- if you file
3 it in three years and serve it on the hundred and
4 twentieth day, that -- I mean you're protecting
5 defendants who knew about the case or -- you know,
6 the whole idea of statutes of limitations is you
7 don't want people to have to defend stale claims.
8 So really the period for commencing the action, if
9 you file it in the -- within three years, as long
10 as you serve it within a hundred and twenty days
11 you're okay.

12 Now, the problem is is Rule 15(c) was not
13 amended when they changed the filing and service
14 rules. And the precedent that came up under Rule
15 15(c) occurred before the amendment to the Rule.
16 So 15(c) now says that if you amend the Complaint,
17 which I did timely and properly, that it relates
18 back -- one, it arises out of the same transaction
19 and occurrence, no question about that. And then
20 15(c) goes on to say that if you're changing the
21 party -- it doesn't say changing the name of the
22 party. It says if you're changing the party
23 against whom the claim is asserted, it relates
24 back to the original filing date if two things,
25 one, he receives such notice of the institution

1 of the action, that he will not be prejudiced in
2 (indiscernible) on the merits. No question he's
3 not prejudiced by the Amended Complaint because of
4 same lawyer and same insurance company, and the
5 father in the case; and two, he knew or should
6 have known that but for a mistake concerning the
7 identity of the proper party, action would have
8 been brought against him.

9 The confusion here is that when -- my client
10 was a patrol officer and Mr. Hunt, the son, rammed
11 into the back of him. I'm sorry; let me -- was
12 stopped by actually a highway patrolman. My
13 client worked for the City of Conway. He came to
14 ~~assist the highway patrolman who had to leave the~~
15 scene. There were actually two Conway officers
16 involved. One took Edward Hunt to jail and my
17 client stayed back to secure the scene and to wait
18 for the tow truck to haul the car out of the road.
19 All my client knew was that he -- the first car
20 driver was named Edward Hunt. Okay? The accident
21 report in this case doesn't list the driver. It
22 says the owner of the vehicle was Edward W. Hunt.
23 So I was like, all right -- when we got ready to
24 file the Complaint, I said Edward Hunt, Edward W.
25 Hunt. I named Edward W. Hunt as the Defendant --

1 as one of the Defendants. We served Edward W.
2 Hunt. Turns out, he's the father. As soon as we
3 got notice that his son was -- Edward Raymond Hunt
4 was driving, we amended the Complaint and served
5 Edward Raymond Hunt. And as I mentioned, it was
6 before Nathan Smithers was served.

7 MS. _____: But that was after the statute of
8 limitations?

9 MR. ROTHSTEIN: We served the Complaint on the son after
10 the three years, but still before the hundred and
11 twenty days. So I've got two theories on how
12 Edward Raymond Hunt --

13 MR. _____: So the party changed from Edward W.,
14 Sr. to the son?

15 MR. ROTHSTEIN: Edward W. Sr. -- or Edward W. Hunt to
16 Edward Raymond Hunt, that's right.

17 MR. _____: Raymond; not senior and junior, but
18 father and son.

19 MR. ROTHSTEIN: Right. If I had just named Edward Hunt
20 --

21 MR. _____: You'd have been okay.

22 MR. ROTHSTEIN: I would have been okay. And then if I
23 served the father and he said, "That wasn't me,
24 that was my son," I would still have a hundred
25 and twenty days to get the son, right, so I was

1 probably a little overly technical in naming the
2 -- but I think there's two things that saved me.
3 Either, one, the father gets the lawsuit and calls
4 the son, "Now, what in the hell have I been sued
5 for?" So he's gotten -- the son's gotten notice
6 of the Complaint before the statute of limitations
7 has run.

8 MR. _____: Under what basis does he have notice of
9 the suit before the hundred and twenty days?

10 MR. ROTHSTEIN: I actually served him with the Amended
11 Complaint before the hundred and twenty -- before
12 the original hundred and twenty days had run. So
13 --

14 MS. _____: well, you don't reach your hundred and
15 twenty days if you -- you filed against the father
16 before the statute of limitations had run?

17 MR. ROTHSTEIN: That's right.

18 MS. _____: Okay. You filed and served him before
19 the statute of limitations had run?

20 MR. ROTHSTEIN: No. I filed before the statute. I had
21 him served -- it was after the --

22 MR. _____: The father or the son?

23 MR. ROTHSTEIN: I had the father served -- it was after
24 the three year anniversary of the date -- of the
25 accident date, but it was still within the hundred

1 and twenty-day period. So as soon as I found out
2 that the father -- that Edward W. Hunt was just
3 the owner of the vehicle, but not the driver, I
4 said, well, I need to amend the Complaint. So I
5 did two things in the Amended Complaint. One, I
6 substituted the son as the -- as -- I now know
7 that Edward W. Hunt wasn't the driver, it was
8 Edward Raymond Hunt. So I amended that, but then
9 I said, well, I've got the father already here,
10 and the son using the father's car. So I said,
11 family purpose doctrine, so I added the family
12 purpose doctrine to keep the other Defendant in
13 there that I had, and I also added the father on
14 the theory of un -- I'm sorry; negligent trust
15 because the son was driving the father's car
16 intoxicated.

17 MS. _____: Mr. Rothstein, the part where I want
18 you to address is the question of adding versus
19 substitution of the parties. That's where we run
20 squarely into 15(c).

21 MR. ROTHSTEIN: Now, Your Honor, if I had not added the
22 two -- the family purpose doctrine and the
23 negligent entrustment, this would have been a pure
24 substitution. And I'm only substituting as to the
25 first cause of action. Negligence and parking

1 that car in the roadway when you're stopped by a
2 blue light, that's negligence per se under the
3 statute. So, you know, if I hadn't brought
4 negligent entrustment and family purpose doctrine
5 into this, we'd be squarely into this is just a
6 substitution of the parties.

7 And really it is a substitution of the
8 parties. I mean the only reason I'm adding a
9 Defendant is under a new theory of liability. The
10 cases that the Respondents cited all talk about
11 cases where you're -- you know, you're trying to
12 add a new party and it's an inconsistent position
13 with naming the original parties in the suit.

14 And I think there was a case where the
15 plaintiff had named a John Doe driver because he
16 didn't know who the driver was. And then they
17 amended the complaint to try and substitute the
18 party, but they kept the John Doe driver in there.
19 So, you know, I'm not contending that I don't know
20 who the driver is. I mean I know now that it's
21 Edward Raymond Hunt, and I think this is more like
22 those cases where you try and name a corporation
23 and you mess -- like that water slide case that's
24 cited where you had the wrong technical legal name
25 of the defendant, that people that needed to know

1 about the lawsuit were the same, it's just you're
2 -- and I think that's the same thing here. You've
3 got the same defendant, same insurance company.
4 It's the father. I think he probably told the son
5 within the hundred and twenty days after I filed
6 this suit that --

7 MR. _____: But you left the father in the suit?

8 MR. ROTHSTEIN: I left the father in the suit, but not
9 in the first cause of action. He's only in the
10 suit --

11 MR. _____: Family purpose?

12 MR. ROTHSTEIN: Family purpose and negligent
13 entrustment.

14 MR. _____: And negligent entrustment?

15 MR. ROTHSTEIN: Yes, sir. And the reason that matters
16 is because I've got to prove additional things to
17 get family purpose and negligent entrustment. And
18 it's possible for me to lose the father on the
19 merits on the case for some family -- like if his
20 son took the car without the knowledge of the
21 father, that may be a problem with the family
22 purpose doctrine, or if -- you know, I may have a
23 problem with negligent entrustment.

24 MS. _____: Finish your thought.

25 MR. ROTHSTEIN: So I did substitute the party, and this

1 rule -- I mean it says, "Amendment changing the
2 party." I mean anytime you name the -- I mean
3 amend the Complaint, it's not just you're changing
4 the name of the party, you're actually changing a
5 party. So you're -- it's not -- if I just
6 substituted, that would take -- I mean if I just -
7 - it didn't have those last two causes of action,
8 Mr. Connell would not have that argument. And I
9 think the Court was wrong in doing -- I see my
10 time is up. I'll reserve the rest of the time.

11 MR. _____: we'll hear from you (indiscernible).

12 Mr. Connell? I hope I'm pronouncing it correctly.

13 MR. CONNELL: Yes, sir, you are. What I think he misses

14 is Rule 15 says -- (c) says, "Changing the party
15 within the limitations period." And the only way
16 that you can get around that in a situation is to
17 hold that if you file a lawsuit, you can add any
18 other defendant for another hundred and twenty
19 days. And unfortunately, I don't think that's
20 what was intended by our Rule 3 or Rule 15 because
21 the statute of limitations for any defendant in
22 South Carolina would then be three years and a
23 hundred and twenty days, and it doesn't make sense
24 to do that.

25 As to the water slide case, the water slide

1 case is a very different situation. The water
2 slide's name was in front of the water slide.
3 That was -- they were served -- the president of
4 the company was served. All they were doing was
5 trying to get the technical corporate name right.
6 And in this case, we're adding a wholly new party,
7 Edward R., and Edward W. was originally -- was the
8 original defendant. So there's a big difference
9 in that, and the only way you could ever get
10 around that would be to allow any lawsuit to be
11 filed and add any additional defendant over a
12 hundred and twenty days, and that's just not the
13 way the law is.

14 And if you look at the cases that have been
15 cited in brief, there's the Doe case. They found
16 out four years later that somebody wasn't the
17 driver of the car. There's no difference between
18 four years and a hundred and twenty days. The
19 statute of limitations in South Carolina is three
20 years. It's three years. It's not three years
21 and a hundred and twenty days. And as a result,
22 unfortunately, he cannot add Edward R. as a
23 defendant at this point.

24 MR. _____: Would it make a difference to you had
25 he not kept (indiscernible) and added the new

1 causes of action?

2 MR. CONNELL: Oh, I don't think there's any question
3 that -- you're talking about against the original
4 Defendant or a new Defendant?

5 MR. _____: In this case. If he had just changed
6 the name and sort of (indiscernible). Would it
7 make a difference to you in your position had he
8 just substituted on his -- corrected the name of
9 (indiscernible) the son and not left the dad in
10 the lawsuit, so just kept the same causes of
11 action and only put in the son's name?

12 MR. CONNELL: So you mean for instance if he'd have just
13 had -- substituted Edward R. for Edward W. is what
14 I'm hearing you say.

15 MR. _____: Yeah.

16 MR. CONNELL: I don't think you could have done that
17 either, and the reason why is --

18 MR. _____: Because the statute had run.

19 MR. CONNELL: The statute had run, unfortunately, for
20 the Plaintiff. The statute had already run.

21 There's just no way to -- now, if he had wanted to
22 add causes of action, I think Rule 15 is -- you
23 can -- if you serve the right Defendant and you
24 want to add ten causes of action after the statute
25 has run, I mean that's clearly allowed. But when

1 you don't have the right Defendant, I just don't
2 think that you can -- you have to get -- the
3 purpose of the hundred and twenty day rule, as I
4 understand it, is because the rules changed such.
5 It was a reasonable time. Rule 3 said a
6 reasonable time for a number of years and then
7 the Court interpreted what that was and people
8 wouldn't serve for two years because they couldn't
9 find somebody.

10 The purpose of the hundred and twenty day
11 rule is to get your defendants served, either by
12 publication or personally within a hundred and
13 twenty days. And I just don't think that under
14 the way the rules are currently, unless the
15 Court's going to change the law and add a hundred
16 and twenty days, to allow you to add a new
17 defendant during that period, and I don't think
18 that's the way the case law or the statutes are.
19 Thank you.

20 MR. _____: Thank you. Mr. Rothstein, we'll hear
21 from you in reply.

22 MR. ROTHSTEIN: Just briefly, Your Honor. Mr. Connell
23 just said that you had to change the party within
24 the statute, period. Well, you wouldn't need to
25 relate back if you amended the Complaint within

1 the time of the statute. The only time the
2 relation back is an issue is if you have to save
3 the statute of limitations. And Mr. Connell is
4 also wrong about Rule 15(c) only applying to
5 changing, or adding new theories with the new
6 defendants. That's what the first part of Rule
7 15(c) says. Rule -- the second part of Rule 15
8 (c) says, "An amendment changing the party against
9 the claim -- against whom the claim is brought."

10 So relation back only becomes important after
11 the statute of limitations has run, and the
12 DeLoach v. Griggs case is interesting. It says --
13 from 1952. It says, "Much latitude of amendment
14 is properly allowed to save the cause of action if
15 possible to bar the statute of limitations. It
16 has been many times suggested the Court should be
17 inclined to disregard subtleties and technical
18 objections to the sufficiency of the pleadings in
19 an effort to determine the real issues on the
20 merits and to try to do substantial justice to the
21 litigants." That case basically says that
22 statutes of limitations should not be hyper-
23 technical rules that deprive people of their day
24 in court.

25 I mean there is a legitimate purpose of the

1 statute of limitations. That's preventing stale
2 claims. The South Carolina Court of Appeals is --
3 and the South Carolina General Assembly has said
4 that if you start the action within three years,
5 as long as you get it served within a hundred and
6 twenty days, you've provided sufficient notice to
7 the defendant to satisfy the purposes of the
8 statute of limitations.

9 MR. _____: For your added causes of actions, would
10 they still be relevant even if the son wasn't
11 added, or brought under the suit?

12 MR. ROTHSTEIN: They would be. I think the son would
13 still be responsible -- I mean not legally
14 responsible. He did the actions. I mean the
15 underlying facts are going to be the same, it's
16 just that I could lose on the family purpose
17 doctrine and negligent entrustment, and I'd be out
18 of luck. But again, the idea is that did the son
19 have notice of the action, and did he realize that
20 there was just the mistake as the identity parties
21 within the time set forth for commencing the
22 action, and the answer to that is yes. The -- and
23 there's two ways to get there. Either he knew it
24 through the father or he knew it when I served him
25 with the Amended Complaint.

1 And again, I served the Amended Complaint
2 before the original hundred and twenty day period
3 ran out. So he -- like I said, he had knowledge
4 and notice of the Complaint and the fact that he
5 was being sued before one of other Defendants in
6 --

7 MR. _____: What evidence is there directly in the
8 record to show that he had knowledge?

9 MR. ROTHSTEIN: There's not because the judge dismissed
10 this case on a motion to dismiss. He didn't allow
11 me to put that into the record, so I have not
12 taken the son's deposition.

13 MR. _____: I mean there was no affidavits or
14 anything certifying that he had notice of all the
15 filings of the original Complaint?

16 MR. ROTHSTEIN: No, but by the same token, they moved to
17 dismiss. They have the burden of proving that he
18 didn't have notice and that he'd be prejudiced by
19 the amendment to the Complaint.

20 MR. _____: And did (indiscernible)?

21 MR. ROTHSTEIN: No, they did not. Thank you, Your
22 Honor.

23 (END OF AUDIO)

24

25

C E R T I F I C A T E

The within hearing/statement was transcribed to the best of my ability from an audio recording provided to me by David E. Rothstein, Rothstein Law Firm, P.A.

The below-named court reporter was not a party to nor present at the proceedings.

Date of transcription: October 27, 2011

S. Smith

Sheila B. Smith, CVR-CM

Gallagher Court Reporting

Notary Public for South Carolina

My Commission Expires: 3/09/2014

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2006-CP-26-5391

Don D. Gause, ... Respondent,

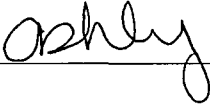
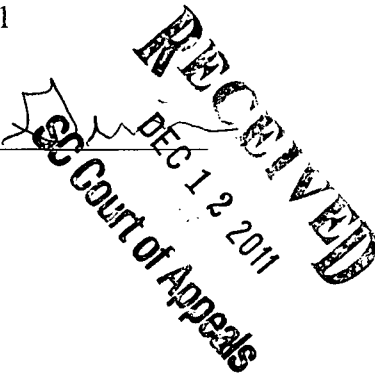
vs.

Nathan Dale Smithers and Edward W. Hunt
of Whom Edward W. Hunt is Appellant.

CERTIFICATE OF MAILING

I certify that I have served the Record on Appeal and Certificate of Mailing by depositing one
(1) copy in the United States Mail on December 8, 2011, to David Rothstein at his address of
record, with sufficient postage attached thereto as follows:

David E. Rothstein, Esq.
Rothstein Law Firm, P.A.
514 Pettigru Street
Greenville, SC 29601

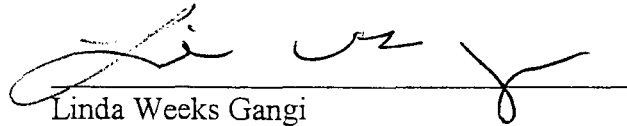
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Conway, South Carolina

December 8, 2011.

THOMPSON & HENRY, P.A.

A handwritten signature in black ink, appearing to read 'Linda Weeks Gangi', is written over a horizontal line.

Linda Weeks Gangi
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(843) 248-5741
Attorney for Appellant
Edward W. Hunt

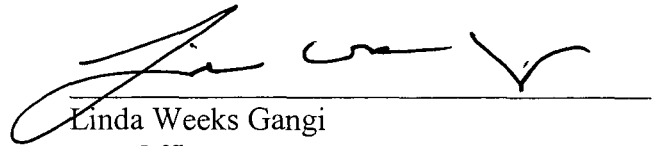
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Conway, South Carolina

January 20, 2012.

THOMPSON & HENRY, P.A.



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