

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2009-CP-38-02087

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SC Court of Appeals

Kathy Beason,.....Respondent,

v.

Chatone Lowden,.....Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Kathy Beason,)

Plaintiff,)

-vs-)

Chatone Lowden,)

Defendant.)

**ORDER GRANTING MOTION
FOR NEW TRIAL *NISI ADDITUR***

Case No: 09-CP-38-2087

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This matter was before me on Plaintiff's Motion for a New Trial absolute, or in the alternative, a New Trial *Nisi Additur*. This matter was tried before me, and the Court is well familiar with the underlying facts of this case.

This case involved a rear end motor vehicle collision. At trial, the Plaintiff alleged Defendant was solely responsible for the wreck. She presented medical expenses of \$38,245.21, including surgery to her shoulder, that she claimed were causally related to the wreck. Plaintiff's surgeon testified by video that the wreck was more likely than not the cause of her injuries, and that his treatment was medically necessary and appropriate for her injuries. Defendant presented no medical testimony to contradict Plaintiff's surgeon. Defendant argued to the jury that Plaintiff's job as a distributor for Atlas Foods, a job which required lifting boxes and occasionally working overhead, was the cause of her injuries. The jury ultimately returned a verdict for the Defendant for \$17,000. The manner of the jury deliberations was troublesome to this Court.

During jury deliberations, there were several instances where two distinctly male voices were heard throughout the courtroom. The voices had distinctly angry and aggressive tones. This behavior, coupled with the fact the jury foreperson initially indicated to the bailiff that although the jury had reached a verdict she "took no part in the decision" and did not want to sign the verdict form, raises the specter of improper juror conduct. After this Court gave the jury

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Wingy B. Clark

CLERK OF COURT
ORANGEBURG COUNTY SC

an Allen charge, Plaintiff's counsel asserts they, again heard distinctly male voices emanating loudly from the jury room. Shortly thereafter, the jury returned a unanimous verdict for the Plaintiff, but for \$17,000, an amount that bears no logical relationship to the evidence submitted at trial.

This Court finds that this verdict is significantly insufficient and inadequate to compensate Plaintiff for the injuries which the evidence established, though not so grossly insufficient as to shock the conscience. The insufficiency of the verdict, combined with the manner of deliberations, leads this Court to the conclusion that the jury's verdict is simply not reasonable, in light of the evidence presented.

Trial courts have the authority to grant a new trial absolute under the Thirteenth Juror Doctrine, or when the verdict is so grossly disproportionate to the evidence that it is obviously "the product of passion, caprice, prejudice, or some other influence outside the evidence." *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993).

Plaintiff has requested a new trial absolute, or in the alternative, a new trial *nisi additur*. The Court believes that a New Trial *nisi additur*, is more appropriate, and in keeping with the law in this case. See, *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995). If the jury would have found that Plaintiff's medical costs and/or wage losses were not proximately caused by the Defendant's negligence, then the verdict should have been for the Defendant. See also, *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000). This was not the verdict. The jury found completely for the Plaintiff, but in an amount that is simply not supported by the evidence presented. Accordingly, this Court finds a reasonable verdict to be \$80,000. Therefore, I find that Plaintiff's Motion for a New Trial *Nisi Additur* should be GRANTED.

WHEREFORE, the Clerk of Court is instructed enter judgment in the amount of \$80,000 against the Defendant and in favor of the Plaintiff. However, if Defendant files an objection to the entry of judgment within 15 days from the date of this Order, this case is to be returned to the

trial roster in its original position and will be eligible for trial at the next term of Common Pleas for Orangeburg County.

AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge
First Judicial Circuit

Orangeburg, SC

~~December~~ 19, 2011
October

3/3/20

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

KATHY BEASON,

PLAINTIFF,

v.

CHATONE LOWDEN,

DEFENDANT.

C/A No.: 2009-CP-38-02087

VERDICT

☒ We, the jury, by unanimous consent, find for the Plaintiff the sum of
\$ 17,000 actual damages.

--OR--

☐ We, the jury, find for the Defendant.

SIGNED:

Shateik Butler
JURY FOREPERSON

DATED:

March 2, 2011 in ORANGEBURG, SC

PLEASE NOTIFY THE BAILIFF WHEN YOU HAVE COMPLETED THE VERDICT FORM.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Kathy Beason,)
Plaintiff,)
-vs-)
Chatone Lowden,)
Defendant.)

COMPLAINT
(JURY TRIAL DEMANDED)
Case No: 09-CP-38-____

Plaintiff would respectfully allege and show unto the Court:

1. That the Plaintiff and Defendant are citizens and residents of the County of Orangeburg, State of South Carolina.

2. That at all times hereinafter mentioned Broughton Street is a highway running generally in an easterly/westerly direction and located in the Town of Orangeburg, State of South Carolina.

3. That on December 13, 2008, Plaintiff and Defendant were traveling in an easterly direction on Broughton Street with Defendant traveling behind the Plaintiff. Plaintiff stopped for traffic when suddenly and without warning, Defendant rear-ended Plaintiff's automobile. As a result, Plaintiff was thrown in and about the interior of the vehicle.

4. That as a result of the aforesaid, the Plaintiff suffered bodily injuries and was given medical treatment.

5. That the wreck and resulting injuries to the Plaintiff occurred as a direct and proximate result of the negligent, careless, reckless, willful, and wanton acts and delicts of Defendant in the following particulars, to wit:

- (a) In failing to maintain a proper lookout;
- (b) In failing to maintain proper control of the vehicle;
- (c) In operating the vehicle in an unlawful and reckless manner;
- (d) In operating the vehicle on the highway without due regard for the rights of others, especially the Plaintiff;
- (e) In operating the vehicle at an excessive speed or at a speed too fast for the conditions that existed at the time of the collision;
- (f) In operating the vehicle with defective brakes or, if said brakes were not defective, in failing to apply the same in time to avoid a collision;
- (g) In failing to exercise due care under the circumstances then and there prevailing to avoid injury and damage to others, especially the Plaintiff herein; and,
- (h) In such other particulars as may be shown at trial.

All of the above are in violation of the common and statutory laws of the state of South Carolina and the rules and regulations promulgated by the South Carolina Department of Transportation.

6. As the direct and proximate cause of the aforesaid negligence, carelessness, recklessness, willfulness, and wantonness of Defendant, as set forth above, Plaintiff sustained injuries including pain and suffering, past, present and future; causing her to incur medical expenses, past, present and future; causing her shock, embarrassment, and mental distress, past, present and future; all to the Plaintiff's actual and punitive damages in an amount to be determined by the triers of the facts.

WHEREFORE, Plaintiff prays for judgment for actual and punitive damages in an amount to be determined by the triers of the facts, plus the costs and disbursements of this action.

ATTORNEYS FOR PLAINTIFF

By: _____

Attorney Daniel W. Luginbill

P. O. Box 527

Bamberg, SC 29003

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and

Attorney Clyde Dean

PO Box 1405

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_____, SC

_____, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Kathy Beason,)
Plaintiff,)
v.)
Chatone Lowden,)
Defendant.)

Civil Action No. 2009-CP-38-2087

DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT
(JURY TRIAL REQUESTED)

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2010 FEB - 1 P 4: 28

Defendant answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE
(Improper Service of Process)

1. The Plaintiff has failed to properly affect service upon the defendant and therefore this case should be dismissed pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

3. Paragraph 1 is admitted upon information and belief.

4. Paragraph 2 is admitted.

5. As to Paragraph 3, the Defendant admits that on or about December 13, 2008, the Plaintiff and Defendant were traveling in an easterly direction on Broughton St. with the Defendant traveling behind the Plaintiff and that the Plaintiff began to slow or stop for traffic and that a collision occurred between the vehicle being operated by the Plaintiff and the vehicle being operated

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Winnifred B. Clark
CLERK OF COURT
ORANGEBURG, SOUTH CAROLINA

by the Defendant. Otherwise, the Defendant denies the remaining allegations of Paragraph 3 and demands strict

6. As to Paragraph 4, the defendant lacks sufficient knowledge to form a belief as to the allegations of Paragraph 4, and therefore, denies the same and demands strict proof thereof.

7. Paragraph 5, including but not limited to subsections a.-h. is denied in it's entirety.

8. As to Paragraph 6, the Defendant lacks sufficient knowledge to form a belief as to the allegations of Paragraph 6 and therefore, denies the same and demands strict proof thereof.

FOR A THIRD DEFENSE
(Minor and Inconsequential)

9. The Defendant would show, upon information and belief, that the collision in question was so minimal and inconsequential that no reasonable person could have been injured as a result of such collision, and therefore the Plaintiff cannot recover from the Defendant whatsoever.

FOR A FOURTH DEFENSE
(Sudden Emergency)

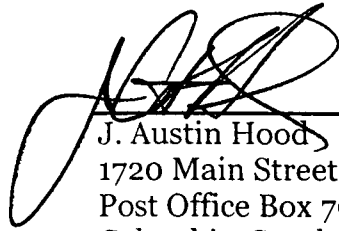
10. This Defendant would show, upon information and belief, that he was presented with a sudden emergency beyond his control and for which he did not contribute and acted as a reasonable and prudent person under the same or similar circumstances and for that reason cannot be held liable to the Plaintiff in any sum whatsoever.

FOR A FIFTH DEFENSE
(Punitive Damages)

11. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendants could be subjected to multiple awards of punitive damages for the same set of facts. The self-incrimination clause is being violated, because the Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages. The assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is in violation of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature. Plaintiff's claim for punitive damages violates Defendant's right to access to the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendant's exercise of that right. The Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed. The Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards. Therefore, the Plaintiff's claim for punitive damages should be dismissed.

SIGNATURE ON FOLLOWING PAGE.

BROWN & BREHMER

A handwritten signature in black ink, appearing to read "J. Austin Hood", is written over a horizontal line.

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Post Office Box 7966
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(803) 252-1620 facsimile
Attorney for Defendant

Columbia, South Carolina
January 29, 2010

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

KATHY BEASON,
PLAINTIFF

versus

CHATONE LOWDEN,
DEFENDANT

BEFORE:

APPEARANCES:

J. AUSTIN HOOD, ESQUIRE
ATTORNEY FOR THE DEFENDANT

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I N D E XPAGE

ARGUMENT BY MR. LUGINBILL

ARGUMENT BY MR. HOOD

E X H I B I T S

NONE

1 DATE:

2 JANUARY 22, 2011

3 THE COURT: Ms. Harry Dot, this is Civil Action Number
4 2009-CP-38-2087, Kathy Beason, Plaintiff, versus Chatone
5 Lowden - I think I came close -- Defendant. Mr. Luginbill
6 represents the Plaintiff and Mr. Hood represents the
7 Defendant. We had a trial on this case a while back, and at
8 the completion of the case Mr. Luginbill moved for a new trial
9 or a new trial Nisi Additur. And we are back before the Court
10 this morning to argue those motions.

11 And Mr. Luginbill, this is your motion, so ...

12 MR. LUGINBILL: Thank you, Your Honor.

13 ARGUMENT BY MR. LUGINBILL:

14 As we indicated in our written post trial motion, Your
15 Honor, we would respectfully submit that in this case we're
16 entitled to a new trial absolute, or in the alternative, a new
17 trial Nisi Additur. And I guess primarily we would base our
18 arguments, what we believe to be the strongest argument on the
19 Thirteenth Juror Doctrine. As I'm sure the Court knows, the
20 Thirteenth Juror Doctrine can be invoked by a judge anytime
21 the Court feels that the evidence did not support the verdict
22 that was given. In this case there was no evidence presented
23 that the medical treatment received by Ms. Beason both
24 emergency room treatment, the family physician treatment, and
25 the surgical treatment was not related. Her treating

1 physician clearly related to it, and there was no counter
2 evidence regarding the fact that it was related. There was no
3 actual evidence, although counsel obviously argued in closing
4 and asked questions on cross-examination about whether it was
5 related, his -- you know, the testimony of the doctor was
6 evidence and his summation was not. Because the only evidence
7 presented to the jury was that the surgery was related,
8 because the jury found that Ms. Lowden was one hundred per
9 cent at fault, and because they awarded some damages, we feel
10 like the verdict just doesn't comport with the evidence that
11 was presented. We presented medical evidence of Thirty-nine
12 thousand Dollars and some change along with another Two
13 thousand Dollars in lost wages. The jury's verdict was
14 Seventeen thousand Dollars, which was Nineteen thousand
15 Dollars less than the undisputed, I won't say undisputed,
16 that's not the right term, but - - -

17 THE COURT: Right.

18 MR. LUGINBILL: --- on the evidence presented, and there
19 was, again, no counter evidence to that. There's just simply
20 no logical way, with the evidence that was before the jury,
21 you can come up with a number of Seventeen thousand Dollars.

22 THE COURT: I don't mean to interrupt you, Mr. Luginbill,
23 and if you want me to wait and ask my questions later I will.

24 MR. LUGINBILL: That's alright.

25 THE COURT: This is the case that the, I guess, forelady

1 of the jury indicated to me at one time that it was ...

2 MR. LUGINBILL: She took note that they had reached a
3 verdict, but that she took no part in it. That's exactly
4 right, Your Honor.

5 THE COURT: And I sent them back in and reminded them
6 they had to ...

7 MR. LUGINBILL: And then five minutes later they came out
8 and claimed it was ...

9 THE COURT: Right. I just wanted to make sure that that
10 was what I ...

11 MR. LUGINBILL: That's exactly the right case, Your
12 Honor.

13 THE COURT: Okay.

14 MR. LUGINBILL: And so, under the Thirteenth Juror
15 Doctrine, and I would have, I've handed up Howard versus
16 Robinson, I think it gives the Court a very extensive
17 breakdown of how the Thirteenth Juror traditionally is to be
18 applied, and when it's to be applied. It gives the Court, You
19 know, as the Thirteenth Juror some very broad discretion
20 there.

21 THE COURT: It's also no nice, -- and it's Judge
22 Anderson's Order so it's thirteen pages at least.

23 MR. LUGINBILL: I've highlighted it for you, Judge, - - -

24 THE COURT: Okay.

25 MR. LUGINBILL: --- the parts that's applicable to this.

1 THE COURT: Okay, thank you, sir.

2 MR. LUGINBILL: And it is, the second part of that is, if
3 you travel the road back a little bit from Howard to Graham
4 versus Whitaker, which would be the second page in your
5 package there, because the jury found that the defendant was
6 liable, and because they found, they hadn't found proximate
7 cause because they came up with a number, we think that there
8 should be a new trial granted as to damages only.

9 Secondly, Your Honor, you can also, the Court also has
10 discretion when it's presided over a trial where the verdict
11 is simply excessive or if it's grossly inadequate where the
12 Court believes that the jury was motivated by an improper
13 reasoning. And we think this case is exactly into that
14 category. When you take into consideration the evidence that
15 was presented, you take into consideration the somewhat unique
16 jury deliberations that we all sat here and heard where you
17 could literally hear jurors screaming at each other all the
18 way to the back of the courtroom and into the hallway. Add to
19 that the jury foreperson's initial desire to take no part in
20 the verdict that was ultimately rendered, you take all those
21 factors into consideration of a Seventeen thousand Dollar
22 verdict when you had nearly Forty thousand Dollars in medical
23 bills presented, and the logical conclusion to reach is that
24 the jury considered things that they should not have been
25 considering. And I would point to the -- if you look to the,

1 on Page Three of Three, which is really just the second page
2 of Tide versus Owen, I've set out - - -

3 THE COURT: Bear with me one second. Is that the last
4 one or ...

5 MR. LUGINBILL: It's just a two page Order, it should
6 have been the third one in your package, Judge.

7 THE COURT: Okay.

8 MR. LUGINBILL: It's a very short opinion.

9 THE COURT: I know who it wasn't written by.

10 MR. LUGINBILL: That would be, Tide versus Owen
11 Industrial Products, Incorporated.

12 THE COURT: Okay. Second page.

13 MR. LUGINBILL: This is an appeal from a motor vehicle
14 accident -- and I'm trying to see who the judge was. Off the
15 top of my head, I don't see it. But they quote extensively
16 from the trial judge in his Order granting a new trial, and I
17 think the logic applied here is almost squarely on point, it
18 really is squarely on point with what happened to us. In this
19 case the judge granted a new trial absolutely, saying, for
20 them to have picked a figure of Nine thousand Dollars, and
21 this is a case where they don't really get into the facts of
22 it too much as far as what was really presented, but the quote
23 is, "For them," being the jury, "to have picked a figure of
24 Nine thousand Dollars to me is unrelated to anything in the
25 evidence that you could put your finger on. For them to

1 ignore the evidence of highly qualified experts seems to me
2 that they were acting for reasons outside those of which they
3 ought to." Commenting further, he states, "They chose to
4 ignore that and came up with some figure knowing they had to
5 award something by virtue of the stipulation, and chose Nine
6 thousand Dollars which I cannot relate to anything in the
7 evidence." And I'll remind the Court that in this case the
8 defense didn't really dispute that they were at fault. Ms.
9 Lowden testified that she was at fault. So, it was a case
10 where again the jury had to award something because the
11 liability was not in dispute. And finally, he says,
12 "Believing sincerely that the verdict is offensive and
13 unconscionable, I wouldn't say it was shocking, but clearly,
14 it's unconscionable, so it indicates to the Court that what
15 the verdict expresses is emotional factors and considerations
16 that ought not to have been persuasive or productive in the
17 verdict." Emotional factors, when you look at what, in light
18 of what we heard and what was going on back there, in light of
19 the jury foreman's comments when they first came out, I
20 believe that this, the only way you can get to a Seventeen
21 thousand Dollar verdict is that the jury considered things
22 they did not, or should not have considered, and failed to
23 follow the judge's instructions as to the medical bills, pain
24 and suffering, and the associated orders that obviously they
25 were charged with.

1 Finally, in the alternative, the Court can, in cases
2 where the verdict is simply insufficient the Court has the
3 inherent power to award a new trial Nisi Additur. I would
4 point out that all the cases we've handed up, that the grounds
5 for a Nisi Additur is not that the jury did anything improper,
6 not that they were motivated by passion, prejudice, caprice or
7 other improper factors -- if the Court finds that then the
8 appropriate remedy is a new trial absolute. However, if the
9 jury, if the Court finds that the verdict is just simply
10 insufficient, given the evidence that was presented, the Court
11 can order a Nisi Additur. In this case we believe an
12 appropriate Additur amount would be, basically you have Forty
13 thousand Dollars in medical bills and lost wages, we would ask
14 the Court to raise the verdict to that amount and then, if you
15 find that there has to be some pain and suffering to go along
16 with that, so a simple one to one multiplier for a total of
17 Eighty thousand Dollars on the Additur would be an appropriate
18 number. Obviously, Judge, that is within your sole and
19 unfettered discretion, and we would leave that in your hands.
20 But explaining how we approached it and what we think would be
21 a reasonable number, we believe a jury verdict in the amount
22 of Eighty thousand Dollars, or a judgement in the amount of
23 Eighty thousand Dollars would be appropriate, given the
24 evidence that was presented during this trial.

25 Our motion, first of all, we really believe this is a new

1 trial motion, but if the Court, in the alternative, if the
2 Court does not find, or see fit to grant that, we believe that
3 it is appropriate for a Nisi Additur to some amount, and we
4 would suggest the amount of Eighty thousand Dollars.

5 THE COURT: Okay. A total verdict of Eighty thousand
6 Dollars?

7 MR. LUGINBILL: Total, total, yes, sir.

8 THE COURT: Okay. Mr. Hood.

9 MR. HOOD: Thank you, Your Honor, if it please the Court.

10 THE COURT: Yes, sir.

11 ARGUMENT BY MR. HOOD:

12 MR. HOOD: Judge, I'd like -- what I'd like to do, I want
13 to address it on what Mr. Luginbill just said, and I'd also
14 like to address his motion since it was filed and is before
15 the Court, if I could.

16 THE COURT: Yes, sir.

17 MR. HOOD: I'd like to begin by doing that.

18 THE COURT: Yes, sir.

19 MR. HOOD: Judge, Mr. Luginbill's laid out four distinct
20 grounds for his notice of motion and motion for new trial, or
21 in the alternative for a new trial Nisi Additur, which I think
22 he addressed last there in his oral argument.

23 Judge, the first ground he addressed is one of proximate
24 cause, and he indicated there that the Court erroneously
25 denied the directed verdict in this case as to proximate

1 cause, as the defendant submitted no evidence to refute the
2 plaintiff's testimony establishing proximate cause, and
3 therefore, they're entitled to a new trial absolute. Judge,
4 in this case and in every case it involves an issue of
5 damages. Whether or not there is a contested liability, we
6 know that in this case clearly there was not. Ms. Lowden got
7 up on the stand, as she did in her deposition, and admitted
8 that she was at fault in the accident. However, just because
9 she does that, and just because the defense doesn't present
10 any of its own experts to refute the plaintiff's testimony
11 doesn't not mean that proximate cause as to damages needs, or
12 can be ordered. The question of proximate cause is, in fact,
13 one for the jury. The case law in South Carolina is very
14 clear on that, and I've cited those in my response memorandum.

15 THE COURT: Yes, sir.

16 MR. HOOD: Judge, according to the case law that we have,
17 the trial judge's sole function regarding the issue of
18 proximate cause is to inquire as to whether or not particular
19 conclusions are the only reasonable inferences that can be
20 drawn from the evidence that's been submitted. Only when one
21 inference is a matter of law is there an issue for the judge
22 to decide. Judge, traditionally, and in every case, and
23 including this one, proximate cause, the question of damages,
24 and whether or not Ms. Beason was actually injured from this
25 accident is a question for the jury. And I believe the Court

1 did the correct thing in denying the plaintiff's directed
2 verdict on proximate cause. That is a question for the jury
3 to decide in this case, whether or not Ms. Beason was actually
4 injured in this accident. The defense does not have to put
5 up, and I think the case is very clear and oftentimes judge's
6 charge this, the defense doesn't have the burden of proof in a
7 case like this. The only thing the defense would have had to
8 have proven in this case was whether or not we were at fault,
9 and that was admitted. So, the burden of proof then rests
10 solely with the plaintiff to prove their damages. And yes,
11 they presented an expert who came in and said that Ms. Beason
12 was injured, she was injured from this accident, and their
13 treatment was reasonable and necessary. But if the Court will
14 recall, there was a great deal of cross-examination on the
15 issues regarding that relationship, which I believe creates an
16 issue of proximate cause. There were several things that Dr.
17 Nelson, while a very qualified expert, that he didn't know
18 about Ms. Beason's treatment. And that goes back to whether
19 or not the verdict was wholly supported by the evidence in
20 this case, which, although I'm skipping to Number Four, I
21 think in light of the oral arguments, they kind of hook up a
22 little better.

23 THE COURT: Right, right.

24 MR. HOOD: But whether or not it was wholly supported by
25 the evidence, Judge, the jury has the right to consider, and

1 as you charged them, some, all, or none of what is presented
2 to them during the trial of the case. They are entitled to
3 consider some of the evidence, all of the evidence, or none of
4 the evidence, and the same goes for the testimony that they're
5 presented. Judge, there was a significant gap in the
6 plaintiff's treatment, which was admitted by the plaintiff.
7 She was injured December Thirteenth in the automobile
8 accident, allegedly. She followed up with an emergency room
9 treatment. She then waited six weeks before going to her
10 family doctor, and another two weeks before she went to see
11 Dr. Nelson, and then it was another month before she had
12 surgery. During that time the testimony was clear and
13 uncontradicted that she worked for three months doing what was
14 a physical labor job, without any type of limitations or
15 inability to do her work. She did the job on her own, she
16 continued to do the work for three months without missing any
17 time. Her lost wages did not pick up until after the surgery
18 was performed. Excuse me.

19 Judge, there was also testimony that the plaintiff had
20 arthritis in her shoulder. There was also testimony that Dr.
21 Nelson believed that the plaintiff had failed two months of
22 physical therapy treatment before coming to see him initially.
23 There was evidence that Dr. Nelson did not know what the
24 plaintiff did for a living, which he admitted would have been
25 impossible for him to know, or something that he needed to know

1 in terms of her treatment. He admitted, that is, Dr. Nelson
2 knew, or didn't have any knowledge of what took place in the
3 accident other than the fact that it was a rear end collision.
4 He didn't know what happened to her body in the collision. He
5 didn't know the forces that were applied to the vehicle, the
6 points of impact. His knowledge was simply, this was a rear
7 end accident, and Ms. Beason's claiming she was hurt. Dr.
8 Nelson also admitted, although he said he didn't think that
9 was the case in this situation, that her injury could have
10 been caused by an on the job injury. Now, he did come back
11 and say in his testimony, to be fair, that that is something
12 he didn't believe was the case here, but he admitted it was a
13 possibility.

14 Judge, all of these factors are for the jury's
15 consideration. They all go back to whether or not Ms. Beason
16 was injured in this accident, and if this accident was
17 actually the proximate cause of her injuries. The jury is
18 entitled to consider some of that testimony, all of it, or
19 none of it. They can go in and they can say, well, you know,
20 we've got a gap in treatment here, and this lady continued to
21 work. Maybe she got hurt at work, maybe she didn't. It's Dr.
22 Nelson's opinion that she didn't, and the jury, just because
23 he said that is the case, they don't have to say, oh, well, we
24 have to give her something. I disagree with the assertion,
25 Judge, that because we admitted that we were at fault that the

1 jury has to award a verdict just because liability is not in
2 dispute. That's not the way that the case law works in this
3 State, Judge. The jury can find that proximate cause is not
4 there and can find for the defendant. It happens regularly if
5 they don't believe someone is injured from an accident.

6 Judge, in this case, we talk about the insufficient
7 verdict next. Basically, we got a Seventeen thousand Dollar
8 verdict, and Mr. Luginbill says that there's, I guess, no way
9 that they can come up with that, that just doesn't have any
10 rational relationship to the damages that are claimed. And
11 Judge, I've presented an argument of how I believe it's
12 possible to come up with a rational relationship between that
13 in my brief. There's about Two thousand Dollars in pre-
14 surgical treatment. The jury could have considered some pain
15 and suffering for that time perhaps, and essentially came up
16 with what I count to be somewhere between eight and nine times
17 for that verdict to come up with Seventeen thousand Dollars.
18 I'm often told what Orangeburg juries do in terms of verdicts,
19 it seems to range anywhere between, who I've talked to,
20 anywhere between three times, five times and ten times the
21 medicals I suppose. So, I guess that could be a logical
22 assertion. And Judge, of course, that is my assertion of what
23 I believe the jury could have done. I do believe that they
24 have a backup for the same factual scenario that I just
25 presented to you of why they don't believe the surgery was

1 related, and perhaps why their verdict was less than Forty
2 thousand Dollars. I do believe that, it seems to be clear at
3 least that that Seventeen thousand Dollars probably comes with
4 some form of pain and suffering, maybe it does, maybe it
5 doesn't, I don't know.

6 I guess the point is, and this goes to the last grounds,
7 I guess, as I've combined a couple of them, ---

8 THE COURT: Yes, sir.

9 MR. HOOD: --- which was dealing with the issue of the
10 jury. And I think they called it jury intimidation amongst
11 the jurors or improper consideration of facts when the jury
12 was deliberating the case. Was the jury back there and they
13 were having a discussion about the facts? There's no
14 question. Could we hear some of the raised voices in the
15 room? Yes. Does that happen in a lot of trials? Absolutely.

16 THE COURT: Amen.

17 MR. HOOD: You've got twelve people who do not
18 necessarily have the same opinion on an issue, and sometimes
19 it probably gets heated. The issue with the forelady coming
20 out and apparently telling the bailiff that this verdict, when
21 she handed it to him, did not have any of her, well, she never
22 wanted to have anything to do with that, I guess is what she
23 said.

24 THE COURT: I think something like that.

25 MR. HOOD: Or something to that effect. The bailiff came

1 out and informed you of that, Your Honor, and you brought the
2 jury out and you recharged them and said, look, your verdict's
3 got to be unanimous. I don't remember exactly what the charge
4 was that you gave them, Judge, but - - -

5 THE COURT: I think it was simply, just, you've got to be
6 unanimous.

7 MR. HOOD: --- essentially that was it. And then you
8 sent them back to deliberate. And yes, they came out a few
9 minutes later.

10 Judge, we don't know what the foreperson was thinking on
11 this. Perhaps the foreperson wanted to give the plaintiff
12 nothing. Perhaps the foreperson wanted to give the plaintiff
13 a lot. Perhaps the foreperson wanted to give the plaintiff
14 Ten thousand Dollars, maybe it was Seventeen thousand five
15 hundred. Maybe she just didn't like the dollar amount. Maybe
16 she didn't want to give anything at all, but we don't know.
17 And I guess that's the whole point of the jury deliberation
18 and why we're not, the lawyers don't sit in the room and watch
19 them do it. It's their right to be able to decide the case
20 based on whatever the evidence is, if they consider some, all
21 or none. And apparently, they considered some of it, believed
22 that some was related and some was not, and came back with a
23 verdict. It's obviously not a verdict the plaintiff is happy
24 with, Judge, but I believe that there's simply no reason in
25 this case other than the plaintiff's not happy with the

1 verdict, to overturn the verdict in this case. It appears
2 that there is justification for it. I believe that there is
3 enough counter evi - or at least cross-examination evidence
4 and some testimony that was provided in this case to justify
5 the verdict, and I believe they considered this case for some
6 time, a couple of hours as I recall, I can give you an exact
7 time if you need it, but they were out considering this case,
8 they were out for a while. And yes, they came back quickly
9 after you recharged them, but maybe that was because the
10 foreperson decided, well, maybe I don't want to give them
11 nothing, fine, I'll just give them Seventeen thousand Dollars
12 and walk away, or maybe whatever the number was that she had
13 she just decided she didn't want to do that anymore. Or maybe
14 it was someone else in the room that gave that, we don't know.
15 But Judge, I believe that the motions for a new trial or new
16 trial Nisi Additur are not justified in this case, and we
17 would ask that the Court sustain the jury's verdict.

18 THE COURT: Okay. Let me just make sure, you gentlemen
19 have the, either fortune or misfortune to be the first people
20 that I've had to address this with. Okay? And so, just from
21 a procedural standpoint I want to make sure, obviously, I can
22 just deny the motion and say, we will live with the verdict.
23 Okay? That's one of my options. The other option, obviously,
24 is, I can pick a number that I think, if I believe that the
25 amount of the verdict just really didn't have any kind of

1 rational relationship to the evidence that we heard, I can
2 pick a number that I think is fair. Okay? Or I can say,
3 maybe the whole thing was just messed up and y'all can try it
4 again. I understand those are the three arguments. But my
5 question is, Mr. Hood and Mr. Luginbill, have y'all been
6 involved in this before?

7 MR. LUGINBILL: I have, I mean, I think I've had it made
8 several times in cases I've been involved with.

9 MR. HOOD: I argued it yesterday afternoon.

10 THE COURT: Oh, did you?

11 MR. HOOD: I finished a trial about five:thirty last
12 night. So, yes, sir, we argued it just last evening.

13 THE COURT: Well, let me just ask a question, because I'm
14 not sure, and I was going to have to call, but I will trust
15 you gentlemen's judgement. Sometimes a judge, if he is trying
16 to decide whether he is going to give money or a new trial,
17 does he ever pick a number and say, if y'all can't agree with
18 it, then we'll have a new trial, or is it, how do they phrase
19 it?

20 MR. LUGINBILL: That's exactly how it's phrased, Your
21 Honor. In fact, I think the case law requires you to couch
22 your Order in that way. It's a number, and then defense as
23 the non-moving party, or if I had a big verdict it would be
24 me, you know, cutting it down, would have the option of either
25 paying that amount or the new trial. And so, they have to be

1 given that option. In fact, if you look at the, there's a
2 pretty good discussion of it in the case I handed up, Graham
3 vs. Whitaker, and that's exactly what the Court did in that
4 case is, in Graham versus Whitaker the Court additured to some
5 amount, but it's an additur with the option of. So, the Court
6 cannot impose its will upon the parties of what it thinks the
7 jury's verdict has to be. It has to be, I'm offering you --
8 as one other case talked about, it's essentially a settlement
9 figure. You're giving the parties a figure, they can resolve
10 this themselves or in the alternative you'll grant the new
11 trial.

12 THE COURT: And just, gentlemen, so you'll know, you
13 know, obviously, the dilemma for me is the fact that, you
14 know, when you got to a jury, you know, I just -- in the
15 middle of a criminal trial this past week, and we just
16 finished it up yesterday evening, and you know, once -- and
17 y'all can sit down, I don't need for y'all to stand. I want
18 y'all to talk as informally as we can even though we -- you
19 know, once a defendant, you know, chooses to go to trial, you
20 know, he gets to live with the verdict, you know. And so, I
21 am reluctant to do that. But on the other hand, I've got to
22 admit, I'm very -- the number doesn't make a whole lot of
23 sense to me, you know. And so, those are my two concerns
24 right now. And so, I am going to double check my notes, and
25 I'll read through this, and I'll make a decision pretty

1 quickly because I want to get everything out before my law
2 clerk leaves, because I don't want to dump it on my new law
3 clerk, you know. I don't mind dumping it on my old law clerk.
4 But let me just think about it and I'll get back to y'all with
5 my decision, and it will be shortly. Okay?

6 And listen, I appreciate y'all coming. I know y'all have
7 got other things to do.

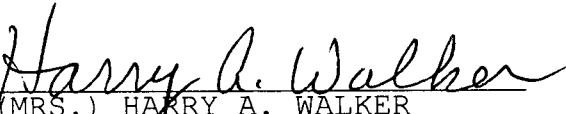
8 END OF TRANSCRIPT.
9

CERTIFICATE

I, the undersigned, Mrs. Harry A. Walker, of Rowesville, South Carolina, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned cause, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the Twenty-second day of July, 2011.

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

DATE: February 10, 2012


(MRS.) HARRY A. WALKER

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ORANGEBURG) COURT OF COMMON PLEAS
No. 2009 CP 38 2087

3

4 KATHY BEASON)
5 Plaintiff)

6 versus) TRANSCRIPT OF RECORD
7)

8 CHATONE LOWDEN)
9 Defendant)

10

Orangeburg, South Carolina
February 28/March 3, 2011

11

12 B E F O R E :

13 HONORABLE EDGAR W. DICKSON, Presiding Judge,
14 and a Jury

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

16 For the Plaintiff: DANIEL W. LUGINBILL, Esq.
17 Wilson, Luginbill &
Kirkland

18 For the Defendant: J. AUSTIN HOOD, Esq.
19 Brown & Brehmer

20 Reporter Present: HARRY A. WALKER

21

22 HARRIET P. BENNETT
Reporter, S. C. Court Administration
23 46 Regency Oaks Drive
Summerville, S.C. 29485

24

25

1 what we can't agree on; that is, whether or not Ms.

2 Beason was injured as a result of this accident.

3 That's the question we don't necessarily agree on, and
4 and that is the question you will be called upon to an-
5 swer for us.

6 We don't disagree with who was at fault. Ms.
7 Lowden agrees she was at fault here, and she will tell
8 you that. You don't need worry about who was at fault.

9 Ms. Beason has the burden of proof in this case.
10 She has to prove her case to you, the jury, by the
11 greater weight or the preponderance of the evidence.

12 She has the tip those scales in her favor. If the
13 scales remain even, she has not met her burden of proof
14 here.

15 You will hear testimony from the witness stand. You
16 will see some photographs, and you will see the Doctor,
17 and you're going to have to weigh all of that.

18 There is no way to put evidence on a scale and to
19 weigh it. It is something you have to determine by using
20 your common sense. You have to evaluate what you hear
21 and make a decision in the matter, using everyday skills.

22 You have to decide in favor of Ms. Beason or Ms.
23 Lowden. At the end of the day the scales have to tip one
24 way or the other, and that is a decision you will have to
25 make. If they remain even, then Ms. Beason has not met

Chatone Lowden - Direct Examination by Mr. Luginbill

1 MR. LUGINBILL: The Plaintiff would call the De-
2 fendant, Chatone Lowden, as an adverse witness.

3 THE COURT: Come on up and put your left hand on the
4 Bible and raise your right hand.

5 CHATONE LOWDEN, being duly
6 sworn, testified as follows:

7 CLERK: Please have a seat and state your name for
8 the Court Reporter.

9 WITNESS: My name is Chatone Lowden.

10 THE COURT: Your witness, Mr. Luginbill.

11 DIRECT EXAMINATION

12 BY MR. LUGINBILL:

13 Q. Thank you, Ms. Lowden.

14 A. Yes, sir.

15 Q. Do you remember way back last May when I took your
16 deposition?

17 A. Yes, sir.

18 Q. And I asked you then whether you thought you were
19 at fault in this wreck, and what did you tell me?

20 A. Yes.

21 Q. And do you still think that?

22 A. Yes.

23 Q. You've always said that? To your credit.

24 A. Yes, sir.

25 Q. And also in that deposition, do you recall me

1 asking you whether or not you wished to be responsible
2 for Ms. Beason's injuries, whatever they are?

3 A. . .

4 MR. HOOD: Objection, Your Honor. That's calling
5 for an incomplete defense and putting the burden on the
6 defense which is improper. The burden is on the Plaintiff.

7 THE COURT: Sustained. Rephrase your question,
8 please, sir.

9 BY MR. LUGINBILL:

10 Q. Do you want Ms. Beason to be fully compensated for
11 her injuries?

12 A. . .

13 MR. HOOD: Same objection, Your Honor. That ques-
14 tion invades the jury's province.

15 THE COURT: I understand.

16 Mr. Luginbill, repeat the question for me again.

17 MR. LUGINBILL: Do you want Ms. Beason to be fully
18 compensated for her injuries.

19 MR. HOOD: It's irrelevant.

20 THE COURT: I'm going to sustain the objection.
21 Okay. That's a question for the jury.

22 Q. You have never discussed or said you were not at
23 fault in this wreck, have you?

24 A. No, I haven't.

25 Q. Please answer any questions that Mr. Hood may ask

Chatone Lowden- Cross Examination by Mr. Hood

1 of you.

2 A. Yes, sir.

3 THE COURT: All right, Mr. Hood.

4 MR. HOOD: Thank you. May it please the Court?

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. HOOD:

8 Q. Ms. Lowden, do you want some water?

9 A. I'm okay, thank you.

10 Q. If it's all right, I will treat this as my Direct
11 Examination of you.

12 A. Okay.

13 Q. Ms. Lowden, where do you currently reside?

14 A. My address is 1160 Jasmine Stret, Orangeburg,
15 South Carolina.

16 Q. Ms. Lowden, you have any children?

17 A. Yes.

18 Q. How many do you have?

19 A. Two.

20 Q. What are their ages?

21 A. Three and six.

22 Q. Are you married?

23 A. No.

24 Q. Are you employed?

25 A. Yes.

DEFENDANT ON CROSS

1 Q. Where do you work at this time?

2 A. Allied Air.

3 Q. And what do you do there?

4 A. I'm an operator two.

5 Q. And how long have you worked there?

6 A. Eight years.

7 Q. Ms. Lowden, you recall the accident of December
8 the 13th of 2008 that we are here about today?

9 A. Yes.

10 Q. And, Ms. Lowden, where did the accident occur?

11 A. On Broughton Street.

12 Q. And at the time of the accident, what were the wea-
13 ther conditions like?

14 A. It was clear.

15 Q. About what time of day was it when this accident
16 occurred?

17 A. About ten A.M.

18 Q. And Broughton Street that morning, how many lanes
19 wide is it where this accident occurred?

20 A. It's two lanes, one each way, coming and going.

21 Q. And where were you headed at the time of the acci-
22 dent?

23 A. I was going to the police station to drop off my
24 daughter off to her father.

25 Q. Okay. Her father was meeting you there?

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DEFENDANT ON CROSS

1 A. Yes, he was.

2 Q. And where were you all coming from immediately before
3 the accident?

4 A. From my home.

5 Q. Were you all in any kind of a rush to get her to meet
6 her dad on that day?

7 A. No, sir.

8 Q. What type of vehicle were you driving that morning,
9 Ms. Lowden, on the day of the accident?

10 A. A pickup truck.

11 Q. And was that your vehicle?

12 A. Yes.

13 Q. Was it in good mechanical condition, on the day of
14 the accident? In good mechanical working order?

15 A. Yes.

16 Q. Did it have any body damage on it before the acci-
17 dent?

18 A. No, sir.

19 Q. If you would, please describe for the jury what took
20 place in this accident?

21 A. Like I said, I was heading down Broughton Street to
22 drop my daughter off. Ms. Beason made a quick stop. I
23 stopped behind her and tried to avoid hitting her, but I
24 went into the other lane and oncoming cars was coming, so
25 I bumped her in the back.

50

DEFENDANT ON CROSS

1 Q. And, if you would, tell us what part of your ve-
2 hicle hit Ms. Beason's vehicle?

3 A. My right front passenger side hit the left rear of
4 her car.

5 Q. And before the accident occurred, you just indicated
6 you tried to avoid the accident, is that correct?

7 A. Yes.

8 Q. All right, and was there anything that distracted
9 your attention from the roadway before the accident oc-
10 curred, Ms. Lowden?

11 A. No.

12 MR. HOOD: Your Honor, if I may approach the wit-
13 ness, please?

14 THE COURT: Yes, sir.

15 (Brief pause)

16 THE COURT: Have you seen those, Mr. Luginbill?

17 MR. LUGINBILL: I believe so -- black and white . .

18 THE COURT: Are they already marked?

19 MR. HOOD: No, sir, they are not.

20 THE COURT: Have them marked. Mr. Luginbill, any
21 objection?

22 MR. LUGINBILL: No objection, Your Honor.

23 MR. HOOD: I'd ask that they be entered as Ex-
24 hibits, Your Honor.

25 THE COURT: All right.

DEFENDANT ON CROSS

1 (Photographs entered in evidence without objection
2 as Defense Exhibits 1 and 2)

3 BY MR. HOOD:

4 Q. Ms. Lowden, if you would, take a look at these two
5 photographs, and tell me whether you can identify the ve-
6 hicles shown in these photographs?

7 A. Yes, sir.

8 Q. Is that your -- is that the vehicle you were driv-
9 ing on the day of this accident?

10 A. Yes, sir.

11 Q. And is that how your vehicle looked after this acci-
12 dent?

13 A. Yes, sir.

14 MR. HOOD: These are Defendant's Exhibits 1 and 2.

15 MR. LUGINBILL: No objection, Your Honor.

16 THE COURT: Admitted without objection.

17 BY MR. HOOD:

18 Q. Ms. Lowden, after the accident occurred, did you get
19 out of your vehicle?

20 A. Only after the police came.

21 Q. And after you got out of your vehicle after the offi-
22 cer arrived, did you speak to Ms. Beasley?

23 A. Yes, to see if she was all right.

24 Q. And what did she say?

25 A. She said she was all right. She was just shaken up.

DEFENDANT ON CROSS

1 Q. Did she complain of any injuries to you at
2 that time?

3 A. No, she didn't.

4 Q. While you were out there on the scene that day, did
5 you ever hear Ms. Beason complain of any injuries?

6 A. No, I didn't.

7 Q. Have you spoken with her since the accident oc-
8 curred?

9 A. No, sir.

10 Q. Have you seen her since the accident occurred?

11 A. Yes, sir.

12 Q. And where have you seen her?

13 A. At my job.

14 Q. All right. What was she doing at Allied Air or what
15 was she doing when you saw her at your job?

16 A. She serviced the vending machines that they have out
17 there.

18 Q. Drink machines, snack machines? What kind of ma-
19 chines?

20 A. Snacks and soda.

21 Q. And after this accident occurred, did you see her
22 out there working at this same job?

23 A. Yes.

24 Q. All right. How often would you see her?

25 A. Oh, I'd say maybe twice a week when I was on my

DEFENDANT ON CROSS

1 break.

2 Q. And did you see her some time soon after this acci-
3 dent occurred?

4 A. Yes, sir.

5 Q. And when you'd see her there working after this ac-
6 cident occurred, did she have somebody working with her,
7 or was she working alone?

8 A. She was working alone.

9 Q. After this accident occurred, did you suffer with any
10 type of injuries as a result of the accident?

11 A. No, I didn't.

12 Q. And you say your children were in the car with you?

13 A. Yes, they were.

14 A. Were they injured?

15 A. No, they weren't.

16 Q. And did you all seek any medical treatment after the
17 accident?

18 A. No.

19 Q. And who was at fault in causing this accident?

20 A. I was.

21 Q. Were you able to drive your vehicle away from the
22 scene?

23 A. Yes, I did.

24 Q. Did Ms. Beason drive her vehicle from the scene?

25 A. Yes, she did.

DEFENDANT ON CROSS

Charlene Lowden - Re-Direct Examination by Mr. Luginbill

1 Q. That's all the questions I have. Thank you.

2 A. Yes, sir.

3 THE COURT: Any Redirect, Mr. Luginbill?

4 MR. LUGINBILL: Yes, sir. Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. LUGINBILL:

7 Q. Ms. Lowden, you indicated that Ms. Beason didn't com-
8 plain at the scene after the accident?

9 A. Yes.

10 Q. You all had just one brief conversation . .

11 A. Yes.

12 Q. . . when you got out of your car after the police
13 arrived?

14 A. Yes sir.

15 Q. It wasn't like you were hanging out with her for a
16 while?

17 A. No, sir.

18 Q. All of the damages that we see on Plaintiff's Exhi-
19 bit 1, the denting of the hood, wrinkling of the quarter
20 panel, knocking the light out, all of that was done from
21 the wreck. Is that right?

22 A. Yes, sir.

23 THE COURT: Is that a Plaintiff's Exhibit?

24 MR. LUGINBILL: Defendant's Exhibit -- I'm sorry.

25 THE COURT: Just wanted to make sure we were

DEFENDANT ON REDIRECT

1 looking at the same photograph.

2 MR. LUGINBILL: That's all I have, Your Honor, on
3 Redirect.

4 MR. HOOD: No further questions, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 (Witness excused from the stand)

7 THE COURT: All right, Mr. Luginbill, your next wit-
8 ness.

9 MR. LUGINBILL: Your Honor, I know we haven't been
10 going very long but if we could take a short break at this
11 time before we continue with the testimony.

12 THE COURT: All right. Ladies and gentlemen, as I
13 told you yesterday -- I told you we normally take breaks
14 mid-morning. We're a little bit ahead of that right now,
15 but it's going to take a while -- you're going to watch
16 the video deposition of Dr. Nelson, and it's going to
17 take a while to get it set up.

18 So what I'm going to do right now is ask you to go
19 back into your jury room. You know, you may go to the rest-
20 room, have a cup of coffee if you wish. Go ahead and do
21 that.

22 Remember that you have only heard one witness in the
23 trial so far. I want to remind you that you cannot talk
24 about the case because you haven't heard everything in the
25 case.

1 You can talk about anything else that you want to, the
2 upcoming March Madness, spring is around the corner -- what-
3 ever else you all want to talk about, but you cannot talk
4 about this case yet. Okay?

5 If you all would retire to your jury room, it's going
6 to take about ten minutes to get set up.

7 Thank you.

8 (Jury excused from Courtroom)

9 THE COURT: We'll be in a break for about ten minutes
10 or so.

11 (Court stood in recess for a brief period, after which
12 the case was resumed)

13 (Discussion between counsel and the Court not con-
14 tained on the record)

15 THE COURT: Do you have other witnesses?

16 MR. LUGINBILL: Yes, sir.

17 THE COURT: Bring in the jury, please.

18 (Jury returned to Courtroom)

19 THE COURT: Ladies and gentlemen, I appreciate your
20 patience.

21 We have had some technical difficulties so we need
22 to get someone in to fix those over the lunch time.

23 We will come back and do the Doctor's deposition af-
24 ter lunch. For now, we are proceeding with live witnesses.

25 Please call your next witness.

Kathy Beason - Direct Examination by Mr. Luginbill

1 MR. LUGINBILL: The Plaintiff would call Ms. Kathy
2 Beason.

3 THE COURT: Ms. Beason, if you would put your left
4 hand on the Bible, please, and raise your right hand to
5 be sworn.

6 KATHY BEASON, being duly sworn,
7 testified as follows:

8 CLERK: Please have a seat and state your name for
9 the Court Reporter.

10 WITNESS: My name is Kathy Beason.

11 THE COURT: Your witness, Mr. Luginbill.

12 MR. LUGINBILL: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. LUGINBILL:

15 Q. Ms. Beason, I'm going to stand over here and away
16 from the jury so they can kind of see everything.

17 Tell us a little bit about yourself. Where did you
18 go to school?

19 A. I went to school at North High School -- went my last
20 two years of high school at North High School in North,
21 South Carolina.

22 Q. So you've been in Orangeburg County for a while?

23 A. Most all of my life, but I lived from nine years old
24 to age fifteen -- I lived in Greenville.

25 Q. Okay. And are you married?

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PLAINTIFF ON DIRECT

1 A. Yes, sir.

2 Q. Is this your husband here?

3 A. Yes, he is. That's my husband.

4 Q. And how long have you been married?

5 A. Twenty-four years.

6 Q. All right. Have you got kids?

7 A. I've got two girls.

8 Q. How about grandkids?

9 A. I've got four grands, three girls and one boy.

10 Q. Now, where do you currently work?

11 A. I work for Atlas Foods System.

12 Q. What do you do?

13 A. I'm a route driver, doing vending machines.

14 Q. How long have you been with them?

15 A. Thirteen years.

16 Q. All right. Tell me a little bit about what it means
17 to be a route driver?

18 A. A route driver goes to different locations to ser-
19 vice machines, for snacks, drinks, coffee machines.

20 I put food in the snack machines, put soft drinks in
21 the drink machine, and set up the coffee machine.

22 Q. Now, does that work require you to -- does some of
23 the things come in big boxes? Do chips come in big boxes?

24 A. They come in big boxes, but I load them on my truck
25 and I have smaller containers that I put chips and things

PLAINTIFF ON DIRECT

1 in to take in to the machines.

2 Q. Now, how heavy are these boxes that you have to carry
3 around? Are they a little heavy, real heavy, not too bad?

4 A. Not too bad, but I feel the pain.

5 Q. Now, in the time you've been working there, have you
6 had any pain in either of your shoulders or did you prior
7 to this accident?

8 A. No.

9 Q. Nothing bothered you at all?

10 A. No, sir.

11 Q. Tell the jury what you were doing on December 13th
12 of 2008?

13 A. I had one stop to make on my daily route, a kind of
14 small one, so I put chips in the container right there
15 and fit the tray with pastries, so all I had to do was
16 just to take it out from the baseboard to put in the ma-
17 chine.

18 I put the Mountain Dews and Pepsis in cans -- the
19 Mountain Dew in bottles -- since it was just one stop,
20 I could just . .

21 Q. What day of the week was it?

22 A. It was on a Saturday.

23 Q. So you Saturdays you still sometimes would have to
24 make deliveries?

25 A. Yes.

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1 Q. All right, and so after you made your deliveries, did
2 anything unusual happen?

3 A. When I left that stop, I was going to WalMart that
4 day. I had a baby shower to go to so I was going there
5 to buy a present to take to her.

6 And I got to 301, the stop light, and had stopped.
7 It turned green, and I went straight across and there was
8 a vehicle in front of me, a pickup truck, and he put on
9 his signal light to turn to the right.

10 So I seen that and I began to slow down, and I slowed
11 down to the point where he was still in my way so I had
12 to come to a complete stop.

13 So I come to a complete stop, and in the meantime he
14 had turned. So I thought, well, I can go, but I couldn't
15 go because Ms. Lowden hit me from the rear end.

16 There was a big, loud noise, and I thought, I just
17 got hit. Then I seen the pickup truck that had hit me..

18 Q. When you were slowing down, how long did it take for
19 you to slow down to a stop do you think?

20 A. When the light turned -- it's a distance from Market
21 Street to 301 -- it's kind of a short distance, so I then
22 began to slow down and then I had to stop.

23 It wasn't that long. It's just a short distance from
24 there to . .

25 Q. So would you say two seconds, three seconds, four

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1 seconds?

2 A. I'd say five seconds.

3 Q. Okay, so it wasn't like you had to hit your brakes
4 quick?

5 A. No.

6 Q. Who called nine one one?

7 A. I called nine one one.

8 Q. Okay. How long did you have to wait?

9 A. For about ten minutes before the first person got
10 there.

11 Q. All right, and what did that person tell you to do
12 when he got there?

13 A. He told us to pull to -- pull on that side street
14 to the right. To pull over there and park.

15 Q. And both of you all did that?

16 A. Yes.

17 Q. When did you first get out of the car?

18 A. When we got to the side street, he came over and he
19 got my information from me; he asked if I was all right,
20 and I told him, I think so.

21 I was in a little bit of pain from this shoulder to
22 my elbow, a small pain, and he got my information and left.
23 I waited about five or ten minutes, and he come back with
24 another piece of paper for me.

25 I wait a couple more minutes and then I got out, and

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1 when I got out pain was in my arm so I started moving it
2 around to exercise it some.

3 Then I looked over at Ms. Lowden, and I asked was
4 she all right and she said yes. She asked me if I was
5 all right, and I said, I think I'm all right.

6 Q. After the officer finished doing the paperwork, what
7 did you do next?

8 A. When he finished the paper work, he brought it to
9 me and told me I was free to go, and he asked me again
10 was I all right. I told him I was still having some pain
11 in my left arm, and he said, I advise you to go get it
12 checked out because you're going to be sore. You're going
13 to have a lot more pain in a couple more days.

14 So I took his advice and went to the emergency room
15 to get checked out.

16 Q. You went to the emergency room -- when you checked
17 in there, on a scale of one to ten, how would you describe
18 the pain you were having in your shoulder by the time you
19 got seen?

20 A. I'd say it was probably about a four pain-wise.

21 Q. All right. Did they give you any medication for
22 that pain?

23 A. They gave me something for pain that day, and they
24 gave me a prescription for a pain-killer.

25 Q. All right, and did you fill that?

PLAINTIFF ON DIRECT

1 A. Yes.

2 Q. Did you go back to work that Monday?

3 A. Yes.

4 Q. Was it bothering you?

5 A. Yes, it still bothered me but I had to go to work.

6 I needed my job, had to pay my bills so I worked.

7 Q. Did your job give you any paid time-off for injuries
8 or anything like that?

9 A. I'm sorry?

10 Q. Did your job give you any paid time-off for injury
11 or anything like that?

12 A. No, they don't give me no time-off for things that
13 is not related to the job.

14 Q. You don't work, you don't get paid?

15 A. Yes, sir.

16 Q. Did you expect your shoulder to get better?

17 A. I thought it would get better. I took the pain pills
18 that were prescribed for me at night and I had to keep
19 on . . .

20 Q. Why did you take pain pills during the day?

21 A. For the pain I was having, I didn't take pain pills
22 during the day because the pain pills he prescribed for
23 me were strong.

24 Q. How did they make you feel?

25 A. The pain pills . . .

PLAINTIFF ON DIRECT

1 Q. Did they make you drowsy or dizzy or affect your
2 ability to . .

3 A. The pain pills made me a little bit sleepy, so I
4 couldn't take them during the day.

5 Q. All right, so tell the jury about how your shoulder
6 did. Did it get better, get worse?

7 A. It didn't get no better. I was still having severe
8 pain down my arm, so I called my family doctor and told
9 them what happened.

10 That I was in a accident and I was still having se-
11 vere pain. I made an appointment to come in and it took
12 me a while to get in -- two or three weeks, two weeks
13 later when they seen me or I went in to see her.

14 Q. And what did she do for you?

15 A. She looked at my shoulder and she pressed down --
16 does it hurt here or does it hurt here, and I said it
17 hurts there from my shoulder down to my elbow.

18 Q. Okay.

19 A. And she said she wanted them to do an MRI.

20 Q. Did she refer you to anyone else?

21 A. After the MRI was done, she referred me to Dr.
22 Nelson.

23 Q. All right, and tell me about your first meeting with
24 Dr. Nelson? How did that go?

25 A. I went to see Dr. Nelson and he looked at my MRI,

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PLAINTIFF ON DIRECT

1 and he immediately said I was going to need to have sur-
2 gery to relieve the pain I was having in my arm.

3 He looked at me and said I needed surgery, and I
4 said if I have surgery I would be out of work, and I
5 can't lose my job. I said, if I'm out of work I'll lose
6 my job, but everything my job required me to do was caus-
7 ing me more pain.

8 Q. How long could you financially survive being out of
9 work?

10 A. I can't survive even a week without getting behind
11 on my bills. That's why I worked everyday.

12 Q. Were you scared of the surgery physically?

13 A. Yeah, I was scared of surgery. I don't like surgery.
14 I don't like to be away from work. I like my work.

15 Q. Did Dr. Nelson go through all the risks of the sur-
16 gery with you?

17 A. Yes, he said some risks to my shoulder, about having
18 the surgery . .

19 MR. HOOD: Your Honor, I would object . .

20 THE COURT: Hold on one second, Ms. Beason.

21 MR. HOOD: This would be hearsay, what the doctor
22 may have told her.

23 Dr. Nelson will testify.

24 MR. LUGINBILL: Your Honor, what he told her was for
25 the purpose of medical treatment, and therefore should

PLAINTIFF ON DIRECT

1 be an exception to the hearsay rule.

2 Well, I can rephrase it I think.

3 THE COURT: Rephrase your question.

4 MR. LUGINBILL: Yes, sir.

5 BY MR. LUGINBILL:

6 Q. After Dr. Nelson told you all the risks of the
7 surgery and all of that, what sort of -- what was going
8 through your mind as you had to sit there in his office
9 and weigh all of that?

10 A. I was kind of scared that I couldn't go back to my
11 job. I was -- after the surgery if there was any kind of
12 complication I'm not going to be able to do that, and I
13 needed my job, needed to work, so . .

14 Q. So with all the fears you had, did you decide to go
15 ahead and have the surgery?

16 A. I went and had the surgery because the pain was still
17 in my arm severe to relieve that pain. So I went ahead
18 and done the surgery.

19 Q. Do you think you would have been able to continue to
20 do your job with the pain you were in?

21 A. Not at that time. Not with that pain. Not with what
22 I had to do every day as a route driver.

23 Q. So you really didn't have a choice, did you?

24 A. No.

25 Q. Tell the jury how you felt when you got out of the

PLAINTIFF ON DIRECT

1 surgery?

2 A. I couldn't move -- after surgery, I couldn't move it
3 because it was kind of stiff and I had to have a sling.

4 There was still a whole lot of pain, so he give me
5 some more pain pills to take, and I couldn't go back to
6 work.

7 He took me out of work. I thought I was going to go
8 back in a couple of days after the surgery. I thought I'd
9 go back in a couple of days, but he took me out.

10 Q. How long did he keep you out?

11 A. I was out for about five weeks.

12 Q. Okay. Did you have some physical therapy?

13 A. Yes, sir. After two weeks I went back to Dr. Nelson
14 and he took the stitches out of my arm, and then I asked
15 him if I could go back to work.

16 He said, no, we have to get you some physical ther-
17 apy before I send you back to work.

18 Q. All right, and did physical therapy help you to get
19 back to work?

20 A. Yes, it did help me. I went and it did help me to
21 exercise my arm. I went five times and it did help to
22 get some more sense back in it so I could go back to work
23 after that.

24 Q. Now, immediately after the surgery, were you able to
25 do anything around the house?

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1 A. No, I couldn't do too much around the house. If I
2 did, it was with one arm and I couldn't put pressure on
3 this arm because it hurt, my left arm.

4 Q. Did it affect your sleep?

5 A. Yes, sir, because I sleep on this arm -- sleep on my
6 side, but I couldn't sleep on this arm, and I tossed and
7 turned every night.

8 Q. How were you doing or how were you feeling generally?
9 With this not sleeping and all of that with your shoulder,
10 how were you doing for those six weeks, those first six
11 weeks?

12 A. I was restless and could not sleep, and the pain was
13 still there. If I laid on it too much there still was a
14 lot of pain.

15 Q. Now, obviously you've had a good deal of medical
16 treatment from a variety of people, is that right?

17 A. Say that again.

18 Q. You had to seek medical treatment from a variety of
19 people, is that right?

20 A. A lot of medical treatment?

21 Q. Yes, maam.

22 A. Yes.

23 Q. You went to the emergency room initially, right?

24 A. Yes.

25 Q. Then you had to go back after the surgery was done?

PLAINTIFF ON DIRECT

1 A. Yes.

2 Q. Is that right?

3 A. Yes.

4 Q. So you had radiology bills?

5 A. Uh hm.

6 Q. And you testified about your family doctor already,

7 Dr. Padgett?

8 A. Yes.

9 Q. And there was the MRI that was done, and Dr. Nelson

10 was with South Carolina Orthopedics. Right?

11 A. Yes.

12 Q. Okay, and where did you do your physical therapy?

13 A. At the -- by the Orangeburg Hospital.

14 Q. And you did -- you got your medicine from where?

15 A. From CVS.

16 Q. All right. I'm going to show you a summary -- does

17 this appear to be all the places you went to

18 following the wreck and the bills -- the medical bills

19 that you got from them?

20 A. Yes.

21 MR. LUGINBILL: Your Honor, at this time we would

22 like to move in Plaintiff's Exhibit 1.

23 THE COURT: Have you shown it to Mr. Hood?

24 MR. LUGINBILL: Yes, sir.

25 THE COURT: Mark it as Plaintiff's Exhibit 1.

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1 REPORTER: Let me just put my initials on it.

2 MR. LUGINBILL: Thank you, Your Honor.

3 (Summary of medical bills admitted as Plaintiff's
4 Exhibit 1 with no objection noted)

5 BY MR. LUGINBILL:

6 Q. Ms. Beason, you are back to work now, is that cor-
7 rect?

8 A. Yes. I still need my job.

9 Q. Does your shoulder give you any trouble at work now,
10 Ms. Beason?

11 A. At times it still gives me some pain, and I have to
12 put some more weight on my right hand to ease some of the
13 pain off the left.

14 Q. But it's not every day, right?

15 A. No, it's not every day.

16 Q. And how is our right arm doing?

17 A. . . .

18 Q. Does it pick up the slack okay?

19 A. It gets slightly stiff when it gets tired, and I have
20 soreness in it.

21 Q. And how often does your left shoulder flare up on
22 you?

23 A. Sometimes twice a week and sometimes once a week. I
24 sometimes go a whole week not hurting, and sometimes I'll
25 go a whole week almost with it hurting, especially in cold

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1 weather, you know.

2 Q. Tell the jury about the pain itself. You've testi-
3 fied you have this pain, but you know what it's like and
4 they don't.

5 Tell the jury what it feels like, that shoulder?

6 A. The shoulder feels like it's stiff and sometimes I
7 can't move it. It gets sore and I have to massage it at
8 times.

9 After a day of work and I always work hard, work long
10 hours, so it's a lot of pain there.

11 Q. And did you have anything like this before your acci-
12 dent?

13 A. No, sir.

14 Q. What do you do for it now? What do you take for it
15 now?

16 A. Sometimes at work I take BC -- I've got to take a
17 BC. Sometimes I take some Advils.

18 Q. So you stay away from prescription medication?

19 A. I do.

20 Q. Do the Advil and BC power knock it out?

21 A. It doesn't knock it completely out but it will knock
22 it out so that you can go on and work, yes.

23 Q. Tell me how this has affected your work and your life
24 outside of work?

25 A. . .

PLAINTIFF ON DIRECT

1 Q. How does it affect you around the house? Tell the
2 jury about that.

3 A. Well, whenever I clean up or vacuum and use it to
4 do that I can't put too much pressure on it. It still
5 hurts. In sweeping -- a lot of housework -- it gets tired
6 and causes pain in my arm, tightness in my shoulder.

7 Q. You have mentioned in your deposition back in May
8 that you used to play some church volleyball?

9 A. Yes. Sometimes at church we would have fun days and
10 I had played volleyball.

11 Q. Can you do that now?

12 A. No. I can't play sports now. I don't have enough
13 strength in my hands.

14 Q. So that was before the wreck?

15 A. Yes, before.

16 Q. Did you try to do it?

17 A. I tried it.

18 Q. How did that go?

19 A. I couldn't hit the ball too well.

20 Q. Okay, you said earlier you have a little grandson?

21 A. Yes.

22 Q. How old is he?

23 A. He's six now.

24 Q. Before this wreck when he would be with you would
25 you pick him up?

PLAINTIFF ON DIRECT

1 A. Yes, I would pick him up and hold him.

2 Q. And are you still able to do that?

3 A. I can't do it now. I can't pick him up.

4 Q. How does it make you feel, not being able to pick
5 him up?

6 A. Well, it hurts because he wants me to hold him.

7 Q. You just can't do it?

8 A. No.

9 Q. Do you sleep through the night?

10 A. Sometimes I can and sometimes I can't because of the
11 pain.

12 Q. Does that make you tired the next day?

13 A. Oh, yes, sir.

14 Q. How does that affect you?

15 A. I get so tired that some days I can't do all of my
16 stops. I'm just too tired.

17 Q. Okay. Is your shoulder the same now as it was be-
18 fore this wreck?

19 A. No.

20 Q. And that was in 2008?

21 A. Yes.

22 Q. December of 2008.

23 A. Yes.

24 Q. So we are now three years past it, and based on what
25 you've been through so far do you expect it to get any

PLAINTIFF ON DIRECT

Kathy Beason - Cross Examination by Mr. Hood

1 better?

2 A. I don't expect it to get no better.

3 Q. So you're just going to have to live with it?

4 A. Yes, sir. I'll just have to live with the pain and
5 I've still got to do my job.

6 Q. Please answer any questions Mr. Hood has for you.

7 A. Yes.

8 THE COURT: All right. Mr. Hood, your witness.

9 MR. HOOD: Thank you. May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. HOOD:

13 Q. Ms. Beason, this accident happened on Broughton Road,
14 is that right?

15 A. Yes.

16 Q. And that's a two lane road?

17 A. Yes.

18 Q. And at the time this accident occurred, I think you
19 testified that you had already brought your vehicle to a
20 stop. Is that right?

21 A. Yes.

22 Q. You said you'd been stopped for a couple of seconds,
23 is that right?

24 A. Yes.

25 Q. And at the time the accident happened, your foot was

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1 on the brake. Correct?

2 A. At the time . .

3 Q. I'm sorry. At the time the accident happened, your
4 foot was on the brake. Correct?

5 A. Yes.

6 Q. And after the accident happened, your foot was still
7 on the brake. Right?

8 A. Yes.

9 Q. Okay. Your vehicle wasn't pushed forward at the
10 time of the accident, was it?

11 A. I don't remember.

12 Q. Okay. You don't remember moving after the accident
13 at all?

14 A. I don't remember.

15 Q. Okay. There were no other vehicles involved in the
16 accident other than yours and Ms. Lowden's, is that cor-
17 rect?

18 A. Right.

19 Q. Just yours and hers?

20 A. Yes.

21 Q. After this accident occurred, did you have a chance
22 to get out of your vehicle at some point and look at your
23 vehicle?

24 A. I got out after we went to the side street and the
25 officer came and got my information. I sit there for a

PLAINTIFF ON CROSS

1 while and then I got out and that's when my arm was --

2 I was having some pain in my arm, and then Ms. Lowden was
3 there and I asked was she all right.

4 Q. Did you have a chance to look at your vehicle . .

5 A. Yes, I did go out there and look at my vehicle.

6 Q. And what part of your vehicle was struck in the back?
7 Do you remember?

8 A. . .

9 Q. What part of your vehicle was hit?

10 A. On the driver's side rear end.

11 Q. Okay, and at the time of the accident what kind of
12 vehicle were you driving?

13 A. I was driving a 2007 Ford Explorer.

14 Q. Okay. One second, please.

15 MR. HOOD: Judge, may I approach the witness?

16 THE COURT: Yes.

17 BY MR. HOOD:

18 Q. Ms. Beason, I'd like you to take a look at three photo-
19 graphs I'm going to show you. If you would take a look
20 at all three of those.

21 A. . .

22 Q. Do you recognize the vehicle that is in those pic-
23 tures?

24 A. Yes, I do.

25 Q. Is that the car you were driving at the time of the

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PLAINTIFF ON CROSS

1 accident?

2 A. Yes.

3 Q. And do those photographs show the area of your ve-
4 hicle that was struck in this accident?

5 A. It shows the -- yes.

6 Q. And it shows the damage to your vehicle from this ac-
7 cident?

8 A. Yes.

9 MR. HOOD: Your Honor, at this time I would ask that
10 these three exhibits marked Defense Exhibits 3, 4 and 5
11 be admitted.

12 A. Also, it don't show the lining . .

13 THE COURT: Yes, maam?

14 A. The only thing it don't show is the inside lining,
15 the rubber part, that had came loose.

16 BY MR. HOOD:

17 Q. That was on the inside?

18 A. On the inside, and I had to get that replaced.

19 Q. Okay. Do the photographs show all the damage to the
20 outside?

21 A. To the outside.

22 MR. HOOD: At this time I'd ask to admit Defendant's
23 Exhibits 3, 4 and 5.

24 MR. LUGINBILL: No objection.

25 THE COURT: They will be admitted in evidence without

PLAINTIFF ON CROSS

1 objection.

2 (Three photographs admitted without objection as
3 Defendant's Exhibits 3, 4 and 5 in evidence)

4 THE COURT: Thank you. Yes, sir.

5 BY MR. HOOD:

6 Q. Ms. Beason, I think you told us you did have a
7 chance to speak to Ms. Lowden at the scene. Is that
8 right, ma'am? You stated that earlier?

9 A. Yes.

10 Q. Okay, and she asked you if you were okay at that time.
11 Right?

12 A. Yes.

13 Q. And I think you told us earlier you said you thought
14 you were okay at that time. Correct?

15 A. Yes.

16 Q. I think you said earlier a police officer came to
17 the accident, the scene of the accident?

18 A. He came and took our information.

19 Q. And did an ambulance come to the scene of the acci-
20 dent?

21 A. No.

22 Q. Did you ask for an ambulance to come?

23 A. No.

24 Q. And you did drive your vehicle from the scene of the
25 accident?

PLAINTIFF ON CROSS

1 A. Yes.

2 Q. And, Ms. Beason, as a result of this accident, as I
3 recall, in your deposition you indicated no part of your
4 body, your arm, head, body -- no part of it struck any
5 part of the inside of your car.

6 Is that right?

7 A. As best I remember, no.

8 Q. As best you remember, no?

9 A. I guess not.

10 Q. And you didn't strike the door, the steering wheel,
11 the console or the dash or anything. Right?

12 A. I didn't strike it.

13 Q. As a result of this accident, you stated in your depo-
14 sition -- you indicated that you body went backwards and
15 to the side. Is that right?

16 A. When she hit me my foot -- I remember it striking
17 more down to the brake, and I jerked the steering wheel,
18 as I remember, and then I went backward.

19 Q. All right. You testified earlier that you went to
20 the emergency room, is that correct, after the accident?

21 A. Yes.

22 Q. And you drove yourself there, is that right?

23 A. Yes.

24 Q. When you went to the emergency room, you went there
25 complaining of pain in your left arm, is that correct?

PLAINTIFF ON CROSS

1 A. Yes.

2 Q. You weren't having any pain in your left shoulder at
3 that time, is that right?

4 A. No.

5 Q. You weren't having any pain anywhere but in your left
6 arm?

7 A. It was pain in my left arm.

8 Q. Your left arm but not your shoulder?

9 A. I could -- I explained that later on, what the Doc-
10 tor said . .

11 Q. But you weren't having pain in your left shoulder, is
12 that right?

13 A. No, it was to my arm.

14 MR. LUGINBILL: Your Honor, I believe she can explain
15 her answer.

16 THE COURT: She can explain her answer, yes. Would
17 you like to explain your answer?

18 WITNESS: Yes, sir. I have pain in my shoulder, . .

19 THE COURT: Yes, maam.

20 WITNESS: But when I did go to the Doctor he explained
21 what had happened to my arm -- when the injury is done to
22 your neck or your shoulder . .

23 MR. HOOD: Well, now, Your Honor, She's giving us
24 hearsay now.

25 THE COURT: I'm sorry, Ms. Beason.

PLAINTIFF ON CROSS

1 WITNESS: There was pain down my arm.

2 THE COURT: You may continue. She's explained it.

3 BY MR. HOOD:

4 Q. At the time you were treated at the emergency room,
5 you weren't there overnight or anything?

6 A. No.

7 Q. They saw you that day and then you were released on
8 that day?

9 A. Yes.

10 Q. Okay, and you drove yourself home from the emergency
11 room?

12 A. Yes.

13 Q. Nobody had to come and get you or drive you home?

14 A. No.

15 Q. The next doctor that you saw after going to the
16 emergency room on the day of the accident was Dr.

17 Padgett's office. Is that right?

18 A. Yes.

19 Q. And that's your family doctor?

20 A. Yes.

21 Q. And according to the bill that your attorney has put
22 in the record, Plaintiff's Exhibit 1, the first time you
23 saw Dr. Padgett was January 23rd of '09. Is that right?

24 A. Yes.

25 Q. Okay, so this accident was December 13th and the next

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1 doctor you saw was on January 23rd, is that right?

2 A. Yes, but I had to wait to get in.

3 Q. Well, let me ask you about that. When you went to
4 the emergency room, did they tell you to come back if you
5 were having additional problems?

6 A. . .

7 MR. LUGINBILL: Objection, Your Honor. Mr. Hood
8 can't have it both ways. If she can't testify to what
9 Dr. Nelson said, she can't testify to what the emergency
10 room said.

11 MR. HOOD: I'll be happy to rephrase.

12 BY MR. HOOD:

13 Q. Ms. Beason, after you left the emergency room, did
14 you feel like you could go back to the emergency room if
15 you needed additional treatment?

16 A. Yes.

17 Q. You've been treated at Urgent Care in the past, is
18 that right, when you needed a doctor?

19 A. Yes.

20 Q. And I think you testified earlier that when you went
21 to see Dr. Padgett, you were still having that same pain
22 in your left arm?

23 A. Yes.

24 Q. Okay, and in response to Mr. Luginbill's questions --
25 you were asked about pain medication you were given in

PLAINTIFF ON CROSS

1 the emergency room. Is that right?

2 A. . .

3 Q. The prescription??

4 A. I was asked?

5 Q. Yes, maam. He asked you some questions about pain
6 pills. Were you given a prescription for pain medication
7 from the doctors in the emergency room?

8 A. Yes.

9 Q. And you got that filled?

10 A. Yes.

11 Q. You mentioned earlier about two medications you were
12 taking. What did you mean by that?

13 A. Well, I took the pain pills at night mostly, and when
14 I finished taking those I was out, so I took an over-the-
15 counter -- took Advil.

16 Q. Okay.

17 A. To ease the pain.

18 Q. You ran out of the prescription pain pills?

19 A. Right.

20 Q. Before you saw Dr. Padgett?

21 A. Yes.

22 Q. Not long before you saw Dr. Padgett, is that right?

23 A. A couple of weeks.

24 Q. How many pain pills did they give you in that
25 prescription at the emergency room?

PLAINTIFF ON CROSS

1 A. . .

2 Q. Twelve pain pills. Is that right?

3 A. I don't remember exactly how many.

4 Q. What do you think it was?

5 A. About ten or twelve.

6 Q. Okay, and at the time of this accident you were work-
7 ing at Allied Food Systems as a route driver?

8 A. Yes.

9 Q. And you've been working there I think you said earl-
10 ier for thirteen years now. Is that right?

11 A. Yes.

12 Q. You started somewhere around 1997 or 1998?

13 A. Something like that.

14 Q. You've been doing that same job as a route driver
15 throughout that time?

16 A. Yes.

17 Q. How many hours a week did you usually work?

18 A. Ten.

19 Q. Ten a day or ten a week?

20 A. Ten a day.

21 Q. And as a route driver, I think when Mr. Luginbill was
22 asking you questions you indicated you stocked vending
23 machines or filled machines with food and drinks. Is that
24 right?

25 A. Yes.

PLAINTIFF ON CROSS

- 1 Q. And when you do this routing in the truck, do you
2 have to go to a warehouse to stock up? To fill the truck?
3 A. I fill up at the end of each day.
4 Q. Okay.
5 A. That's how I did it.
6 Q. Did someone go with you or . .
7 A. No.
8 Q. So you stock your own truck?
9 A. Yes.
10 Q. All right. You fill it with boxes of snacks that
11 you talked about earlier?
12 A. Yes.
13 Q. You fill it with cases of drinks?
14 A. Yes.
15 Q. And does coffee come in just a big can or how does
16 it come?
17 A. No, it's in bags.
18 Q. Okay, in bags. All right, and the van you drive, is
19 it a big van?
20 A. It is kinda big, like a Lay's Potato Chip truck.
21 Q. And does it have power steering in it?
22 A. Yes. I believe so.
23 Q. It does as far as you know?
24 A. Yes.
25 Q. But it's a big truck, is that right?

PLAINTIFF ON CROSS

1 A. Yes.

2 Q. And you do this driving of the route and stocking
3 of the truck and of the machines yourself or on your own,
4 is that right?

5 A. Yes.

6 Q. And when you get to the places for your clients,
7 their places of business, you have to take the materials
8 out of the truck, drinks or snacks or whatever, and in-
9 side the business? You have to transport them inside the
10 business?

11 A. Yes.

12 Q. And nobody helps you do that, is that correct?

13 A. I have a cart, a big cart, I put all that on.

14 Q. And you push that cart by yourself?

15 A. I do.

16 Q. You did this on your own before this accident hap-
17 pened, is that right?

18 A. Yes.

19 Q. After this accident happened, you went back to work
20 on Monday, December 15th, is that right?

21 On Monday morning, December 15th of '08?

22 A. Yes.

23 Q. And you were doing the same job that you were doing
24 before the accident, correct?

25 A. Yes.

PLAINTIFF ON CROSS

1 Q. And you continued to do that same job, do that same
2 work, from Monday after the accident, December 15th, as
3 I understand it, to when you had your surgery on March the
4 5th. Is that correct?

5 A. Yes.

6 Q. And during that time, you did it the same hours, the
7 same job, full time. Is that correct?

8 A. There were times after it happened when I was a lit-
9 tle bit slower.

10 Q. Okay.

11 A. Quite a bit slower.

12 Q. But you didn't have any limitations on your ability
13 to do your job, is that correct?

14 A. No.

15 Q. The job that you do is a physical job, is that
16 right?

17 A. Yes.

18 Q. And you've got to use your arms and you feet and
19 your legs and everything to move around?

20 A. Yes.

21 Q. You saw Dr. Padgett just that one time in January of
22 '09. Right?

23 A. Yes.

24 Q. And you went to see Dr. Nelson after that time on
25 February 11th?

PLAINTIFF ON CROSS

1 A. Yes, sir.

2 Q. And between the time that you -- that the accident
3 happened and you went to the emergency room, and the time
4 that you saw Dr. Nelson on February 11th, you didn't see
5 any other doctors. Is that right?

6 A. No.

7 Q. Other than Dr. Padgett?

8 A. No. It took a little while to get in to see Dr.
9 Nelson too.

10 Q. You had the surgery you testified on March 5th of
11 2009, is that right?

12 A. Yes.

13 Q. And then after that, I think Mr. Luginbill asked you
14 if you had some physical therapy, and you did have some
15 physical therapy?

16 A. Yes.

17 Q. You had just five visits of physical therapy, is
18 that right?

19 A. Yes.

20 Q. And Dr. Nelson said you could go back to work after
21 April the 13th of 2009. Is that right?

22 A. That sounds about right. I'm not sure I heard you.
23 You said on April ..

24 Q. On April 13th.

25 A. I'm thinking that I went to see Dr. Morrow on the

PLAINTIFF ON CROSS

1 the last visit before I went back to work.

2 Q. You said you were out of work for five weeks after
3 the surgery. Is that right?

4 A. Yes.

5 Q. Okay, so five weeks, if you start somewhere around
6 March 5th, puts you somewhere around April 13th, I would
7 guess.

8 A. . .

9 Q. If you assume that four weeks gets you to April the
10 5th, then another week would get you to the 13th. Is
11 that about right?

12 A. Yes.

13 Q. And when you were referred back to work, you went
14 back with no limitations on your ability to do your job.
15 Is that right?

16 A. I had no limitation but I was slower.

17 Q. But Dr. Nelson didn't give you any limitations?

18 A. No.

19 Q. And when you went back to work on April 13th you
20 went back to the same job you had had before this accident
21 happened. Is that right?

22 A. Yes.

23 Q. Same job that you had, that you had worked full time
24 from the time of the accident to March 5th of '09, is
25 that correct?

PLAINTIFF ON CROSS

1 A. Yes.

2 Q. Same rate of pay, same duties?

3 A. Yeah.

4 Q. And you were never on light duty at all after this
5 accident?

6 A. No.

7 Q. And since you finished up with Dr. Nelson's office,
8 you haven't treated with anyone else from this accident,
9 have you?

10 A. No.

11 Q. You haven't seen any other doctors, is that right?

12 A. On July 5th of last year I seen the doctor one more
13 time.

14 Q. Okay. You've seen the bills we have here, Plaintiff's
15 Exhibit Number 1, and I'm just looking at the summary here,
16 and it shows the last medical date of service I have is
17 June 30, 2009, so about eight months ago.

18 Would that be about right?

19 A. Yes.

20 Q. That was the last visit?

21 A. Yeah.

22 Q. You don't know if any doctor -- I'm sorry. Strike
23 that.

24 The treatment that you received from Dr. Nelson, I
25 think you indicated earlier, Ms. Beason, that it helped.

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PLAINTIFF ON CROSS

Kathy Beason - Re-Direct Examination by Mr. Luginbill

1 A. It helped some.

2 Q. And I think you testified that you are still having
3 some pain in your left shoulder occasionally, is that
4 right?

5 A. I still have some pain.

6 Q. Okay, but you do not take any kind of prescription
7 medication for that, is that right?

8 A. Yes.

9 Q. You are taking some over-the-counter things, is that
10 right?

11 A. Yes.

12 Q. And despite that, you have not gone to see any other
13 doctor since you were in Dr. Nelson's office back in June
14 or July of '09?

15 A. No, I haven't.

16 Q. That's all I have. Thank you.

17 THE COURT: Do you have any questions on Redirect,
18 Mr. Luginbill?

19 MR. LUGINBILL: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. LUGINBILL:

22 Q. Mr. Hood asked you about going back to work. You
23 went back to work on April 10th. Does that sound right
24 to you?

25 A. It was the middle of April.

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PLAINTIFF ON REDIRECT

1 Q. All right.

2 A. Of '09.

3 Q. And you were out from March 5th which is when the
4 surgery was?

5 A. Yes.

6 Q. And we have a statement that says you were out until
7 April 10th. Does that sound right?

8 A. I was out . .

9 Q. If the wage statement says that is when you were out,
10 would that be correct?

11 A. I was out from . .

12 Q. Let me show you this wage statement. Does that re-
13 fresh your memory?

14 A. I think it is. They fill it out from -- I can't really
15 read it.

16 Q. It is confusing, isn't it?

17 A. Yes, the way they have it down there.

18 Q. Do you see it there?

19 A. Yes, it says 4 10.

20 Q. Is that . .

21 A. It says 4 10. It was a Monday after that I went back
22 to work.

23 Q. Okay. And you missed a total of twenty-seven days
24 of work, is that right?

25 A. Yes.

PLAINTIFF ON REDIRECT

1 Q. How much do you make a day?

2 A. I was making at that time -- I was making Five Hundred
3 from commissions.

4 Q. So a Hundred Dollars a day?

5 A. Yes.

6 MR. LUGINBILL: Your Honor, we would move to admit the
7 wage summary, Plaintiff's Exhibit 2.

8 MR. HOOD: Your Honor, I would have an objection, in
9 that it would be hearsay.

10 MR. LUGINBILL: She just testified she was out 27
11 days and was making a Hundred Dollars a day.

12 MR. HOOD: I didn't object to that so I guess I
13 don't have a problem with the summary. (Portion not aud-
14 ible on tape)

15 THE COURT: The summary is admitted as Plaintiff's
16 Exhibit -- Exhibit 2?

17 REPORTER: Plaintiff's Exhibit 2.

18 THE COURT: All right.

19 MR. LUGINBILL: Thank you.

20 BY MR. LUGINBILL:

21 Q. Mr. Hood asked you if the surgery helped you. How
22 much better off are you now than before you had the sur-
23 gery? Are you able to complete tasks?

24 A. . .

25 Q. In other words, I want you to compare for the jury

PLAINTIFF ON REDIRECT

1 the pain you were in sitting in Dr. Nelson's office
2 that first day and the pain you are in now?

3 A. The pain when I was sitting in Dr. Nelson's office --
4 when I was sitting in Dr. Nelson's office, I was in a lot
5 of pain. I could never get any relief.

6 Following the surgery, after the surgery, I was in
7 a lot of pain in my arm. You can't work with a lot of
8 pain when you work with your arms. I mean, I had to work
9 so I worked and did what I could to relieve it.

10 And now I am in pain at times. I try to still work,
11 work through the pain. I do my job and I feel the pain
12 if I have it.

13 Q. Are you saying then that the surgery helped with your
14 pain?

15 A. It helped. It did help but I still have it. I've
16 still got some pain.

17 Q. We're not here saying you are disabled by any means,
18 are we?

19 A. No, I'm not disabled.

20 Q. You're not trying to make the jury think you are
21 disabled?

22 A. No.

23 Q. Have you ever been diagnosed with having a contusion
24 following this wreck?

25 A. They said I had contusions when I went to the

PLAINTIFF ON REDIRECT

1 emergency room that day of the accident.

2 Q. And where did they say you had a contusion?

3 A. They said in my shoulder.

4 Q. All right. Now, Mr. Hood made a great deal about
5 the fact that you are back doing your job as you did be-
6 fore the wreck, doing the same things as you had done
7 before.

8 Is your job as easy now as it was?

9 A. No, it's not as easy as it was.

10 Q. All right.

11 A. I have pain I didn't have before the wreck.

12 Q. Why did you continue to work?

13 A. Because I've got to work. I've got to make a liv-
14 ing. I have to pay my house payments, I've got to eat,
15 buy food, pay my bills. I have to work.

16 Q. You don't have a choice?

17 A. I have no choice.

18 Q. Thank you.

19 MR. LUGINBILL: That's all, Your Honor.

20 THE COURT: Mr. Hood, anything further?

21 MR. HOOD: No further questions.

22 THE COURT: Okay. Ms. Beason, thank you so much. You
23 may step down.

24 (Witness excused from stand)

25 THE COURT: Mr. Luginbill, please call your next

1 (Brief pause in the proceeding)

2 (Jury returned to the Courtroom)

3 THE COURT: Has the jury reached a verdict?

4 FORELADY: Yes, sir.

5 THE COURT: Is that verdict unanimous?

6 FORELADY: Yes, sir.

7 THE COURT: All right, please hand up the verdict
8 for me.

9 All right. In CaseNumber 2009 CP 38 2087, Kathy
10 Beason, Plaintiff, versus Chatone Lowden, Defendant.

11 We, the jury, by unanimous consent, find for the
12 Plaintiff the sum of Seventeen Thousand Dollars in act-
13 ual damages.

14 The verdict form is signed by the Forelady and dated
15 with today's date.

16 Anything from the Plaintiff before we excuse the
17 jury?

18 MR. LUGINBILL: Your Honor, I would request to poll
19 the jury.

20 THE COURT: All right, ladies and gentlemen. I've
21 been asked to poll the jury by Mr. Luginbill, and what
22 that means is that I'm going to ask you if this was your.
23 decision and is it still your decision.

24 (Whereupon, each juror was asked individually by
25 name whether this was their decision and if it is still

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1 their decision.

2 Each juror answered in the affirmative to both
3 questions when their name was called, including the
4 Forelady, Ms. Butler.)

5 THE COURT: All right, Mr. Luginbill. I have polled
6 the jury.

7 Is there anything further?

8 MR. LUGINBILL: No, sir. Not for the jury.

9 THE COURT: Not at this time. Okay.

10 All right, ladies and gentlemen of the jury, I ap-
11 preciate your attention and your willingness to serve
12 as jurors.

13 Since there are no more trials for this week, you
14 are now excused. Thank you for your service.

15 (Jurors excused from the Courtroom)

16 THE COURT: All right, Mr. Luginbill.

17 MR. LUGINBILL: Your Honor, the Plaintiff would
18 move for a new trial nisi or additur.

19 The jury found for the Plaintiff, and there is no
20 cascading injury here. They found for the Plaintiff
21 who had surgery, and her medical bills at the very
22 least would have been greater than the verdict of the
23 jury.

24 So we would move for an additur or for a new
25 trial, Your Honor.

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

KATHY BEASON,
Plaintiff,

VS.

Case No. 09-CP-38-2087

CHATONE LOWDEN,
Defendant.

VIDEO DEPOSITION OF MATTHEW K. NELSON, M.D.

The video deposition of Matthew K. Nelson, M.D. was taken on December 8th, 2010 at the approximate hour of 5:30 p.m., at Raleigh Orthopedic Associates, 1717 Harper Road, Beckley, West Virginia, 25801.

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Amanda J. Meadows, CCR



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1 LEGAL VIDEO SPECIALIST: This is a
2 videotaped deposition of Matthew K. Nelson, M.D. taken
3 by the defendant in the matter of Beason versus Lowden
4 being Case Action Number 09-CP-38-2087 and the Court --
5 in the Court of Common Pleas of Orangeburg, South
6 Carolina, held at the Raleigh Orthopedic Associates
7 Building in Beckley, West Virginia on this 8th day of
8 December 2010.

9 My name is Scott Cunningham and I am the
10 legal video specialist. The court reporter is
11 Amanda Meadows.

12 We're now on the record. The time is
13 approximately 5:31 p.m.

14 Would counsel please introduce yourselves
15 and who you represent.

16 MR. LUGINBILL: My name is Dan Luginbill. I
17 represent Ms. Beason, the plaintiff.

18 MR. HOOD: My name Austin Hood. I represent
19 the defendant, Ms. Chatone Lowden.

20 LEGAL VIDEO SPECIALIST: Will the court
21 reporter please swear in the witness?

22 MATTHEW K. NELSON, M.D.,
23 called as a witness, first being duly sworn by the Court
24 Reporter/Notary Public, testified as follows, to wit:



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EXAMINATION

BY MR. LUGINBILL:

Q. Dr. Nelson, as I said, I am Dan Luginbill. I represent Ms. Beason. And we're taking your deposition today for use at trial in this matter down in South Carolina.

If you would please, tell the jury a little bit about your educational background.

A. Okay. Starting from I guess college, I was educated at Wesleyan University in Littleton, Connecticut. I got a B.A. Then I taught science for a while, high school -- to middle school, high school students. Thereafter, I went to medical school at Howard University; did four years of medical school there. I graduated the top of my class an Alpha Omega Alpha, a scholar. Then I went on to Howard University -- orthopedic training program for about five years. Thereafter, I went to practice -- well, I passed my -- step one of my boards. Then I went to practice as an orthopedic surgeon. I spent two years in Orangeburg, and then I came here to West Virginia.

Q. Where are you from originally?

A. I am from Hartford, Connecticut.

Q. Okay. Are you currently board certified?



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1 A. No. I'm board eligible.

2 Q. And how long have you been board eligible?

3 A. For the past year.

4 Q. Wish you best of luck on those when they come
5 around.

6 A. Thank you.

7 Q. Your specialty is obviously in the field of
8 orthopedics?

9 A. Yes.

10 Q. Can you tell the jury a little bit about
11 primarily what it is -- that specialty entails?

12 A. Orthopedics is just -- I would say bone and joint
13 surgery. So the field of bone and joint surgery. So
14 anywhere from muscle sprains to broken bones to
15 arthroplasty or placement of joints.

16 Q. And do you have any particular subspecialty that
17 you've developed in your career?

18 A. Not fellowship trained, but I do -- I do a lot of
19 sports work. I also do a lot of toe (sic) joint work.

20 Q. All right. Turning specifically to Ms. Beason --
21 well, strike that.

22 Before we get that far, I would offer Dr. Nelson
23 as an expert in the field of orthopedic surgery.

24 MR. HOOD: No objection.



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1 BY MR. LUGINBILL:

2 Q. Turning now to Ms. Beason. You've had a chance
3 to review the records and you have them in front of her
4 (sic). Do you recall this patient?

5 A. Yes, I do recall Ms. Beason. She's a pleasant,
6 I'd say, middle-aged woman I had the pleasure of meeting
7 and treating.

8 Q. And what was it that she first presented to you
9 for?

10 A. She presented to me with shoulder pain. That was
11 her predominant complaint was shoulder pain -- left
12 shoulder pain.

13 Q. And what did you find upon your initial
14 evaluation?

15 A. Initial evaluation, I found that patient had
16 predominant pain in the left shoulder concentrated
17 towards the anterior -- the anterior lateral aspect of
18 the shoulder. She had problems with forward elevation,
19 with abduction. And then she was tender on the
20 anterior/anterior lateral aspect of the shoulder.

21 Q. And for the jury's -- to benefit them in
22 understanding some of those terms, when you say
23 abduction, what do you mean?

24 A. Abduction, if you're watching me, I mean, just



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1 bringing the arm straight up like this (indicating).

2 Forward flexion, you'd be bringing the arm straight up
3 like this (indicating).

4 Q. And both of those movements caused her pain?

5 A. Yes.

6 Q. Now, what does that tell you clinically?

7 A. Clinically, I would say that there was a problem
8 per se with the rotator cuff. Usually you have a
9 problem with the rotator cuff, especially if you're at
10 90 degrees. So she had no problem going up to about
11 90 degrees. But beyond 90 degrees is where patient had
12 a pain problem. She was more -- it was more
13 uncomfortable for her to go past that. And usually the
14 rotator cuff comes into play usually at 90 degrees and
15 above.

16 Q. Did you then order any diagnostic studies?

17 A. I did. I ordered an MRI for her shoulder.

18 Q. And what did the MRI reveal?

19 A. MRI of the shoulder revealed increased signal in
20 the rotator cuff.

21 Q. Now, based on the MRI, based on your clinical
22 findings that you saw when meeting Ms. Beason, what did
23 you determine was the most appropriate course of
24 treatment?

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1 A. I felt the most appropriate course of treatment
2 in that she failed NSAIDS -- she had taken NSAIDS for
3 two months straight and had no relief, so I thought
4 arthroscopy would be the best -- best for this patient.

5 Q. And did you ultimately perform that?

6 A. Yes.

7 Q. All right. Describe for me and for the jury, if
8 you would, what the procedure was and what you found.

9 A. Well, upon entry into the joint -- into the
10 shoulder -- left shoulder joint, what I found was -- I
11 found -- for the two parts -- well, the shoulder joint
12 is divided into three main parts. The first part is
13 intracicular (phonetic), so I went inside the actual
14 joint. On the inside of the actual joint, I found a
15 labral tear. I found scuffing of the -- on the surface
16 of the rotator cuff was the two predominant findings
17 inside the actual shoulder.

18 Q. Did that corroborate with what you found
19 clinically?

20 A. That did corroborate with what I found
21 clinically. Now, we did not see a full labral tear on
22 the MRI, but on the -- in the -- at arthroscopy, we did
23 see a labral tear.

24 Q. Is that unusual?

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1 A. Not unusual. Sometimes we -- we -- sometimes you
2 can have a -- a pull to the rotator cuff that's not
3 picked up on the MRI, but you can see at arthroscopy.

4 Q. And based upon what you saw once you got into the
5 joint, what sort of repairs did you perform?

6 A. Oh, okay. So in that particular compartment, the
7 labral tear was debrided. It was curved (sic) and found
8 to be stable. Now, with a labral tear, if it was
9 unstable, she would have had more of a -- of an
10 instability issue. She didn't have any stability issue.
11 The tear was there. It was being stable, so all I had
12 to do was just do some shaving around that particular
13 tear.

14 Q. Now, if I'm reading the records correctly, you
15 also did a subacromial decompression?

16 A. And that's the second part of the shoulder.

17 Q. Okay.

18 A. And that's -- somebody took the camera out -- the
19 arthroscopic tools out of the inside part and went
20 underneath the clavicle and underneath the acromion
21 bone, and that's called the second part of the shoulder.
22 In there I found a lot of synovial tissue -- inflamed
23 tissue.

24 Q. And how did you treat that?

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1 A. I did shaving. I shaved underneath that bone --
2 plain underneath the bone, so I shaved the inflammation
3 out of the bone, shaved just a layer of that bone, the
4 top layer of that bone to clear a space for her.

5 Q. All right. And then you also did I believe a
6 distal clavicle excision?

7 A. Yes. That's the third part. And that's further
8 medial where the clavicle -- the AC joint meets the
9 clavicle. The acromion meets the clavicle, hence the AC
10 joint. There I found underhang of the clavicle, so the
11 clavicle was unstable and pushing on the rotator cuff.
12 So at that point I did a shaving of the distal end of
13 the clavicle.

14 Q. In your workup of Ms. Beason prior to doing the
15 actual surgery, what was your understanding of her
16 medical history as far as any prior problems with the
17 shoulder?

18 A. She did not tell me any problems with the
19 shoulder before. She told me her shoulder was pain free
20 before the injury.

21 Q. All right. What was your understanding of the
22 mechanism of injury?

23 A. Mechanism was she was involved in a motor vehicle
24 accident. So therefore, there's -- mechanism involving



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1 in most motor vehicles are -- there's impact. There's
2 twisting forces also with the shoulder.

3 Q. In a -- in this particular motor vehicle
4 accident, it's been fairly well established through
5 other testimony that this was a rear-end collision --

6 A. Uh-huh (The witness responds affirmatively).

7 Q. -- and Ms. Beason had her hands on the steering
8 wheel --

9 A. Uh-huh (The witness responds affirmatively).

10 Q. -- at the time of impact.

11 A. Uh-huh (The witness responds affirmatively).

12 Q. Given that physical position --

13 A. Uh-huh (The witness responds affirmatively).

14 Q. -- are the injuries that you saw consistent with
15 that type of an accident?

16 A. Definitely. Especially the AC joint. With that
17 said -- you know, just like football players. Football
18 players do a lot of blocking. They tend to injure the
19 AC joint because all the action forces are going
20 straight through. And if you're holding something like
21 this (indicating), the forces go straight up, and the
22 thing that's right there is that AC joint. And that's
23 very reasonable that, you know -- that goes in line with
24 the -- with the injury.

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1 Q. All right. Now, I get to ask you one of these
2 lawyerly questions. But based on what you found
3 clinically, based on what you know on speaking with
4 Ms. Beason, based on what you found surgically and your
5 understanding of the mechanics of the accident, do you
6 have an opinion to a reasonable degree of medical
7 certainty that the injuries you treated Ms. Beason for
8 were in fact caused by the motor vehicle accident?

9 A. I do believe they were caused by the accident.

10 Q. Are there any other -- to your knowledge, is
11 there anything else in the record that would indicate
12 any other cause?

13 A. No.

14 Q. Now, later after you had -- you had left the
15 practice and moved up here, I believe your partner,
16 Dr. Morrow (phonetic) gave Ms. Beason a 2 percent
17 overall impairment rating to the shoulder based on a --
18 somewhat of a lack of range of motion.

19 MR. HOOD: Objection.

20 Off the record.

21 MR. HOOD: I've got a -- are you going to
22 refer to his letters? Is that what you're going to
23 refer to?

24 MR. LUGINBILL: Yeah.



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1 MR. HOOD: My objection is that
2 Mr. Luginbill I believe is asking Dr. Nelson about a
3 letter written by another physician in his practice.
4 That letter was written after Dr. Nelson left the
5 practice and was written after Dr. Nelson had ended his
6 treatment of Ms. Beason and had been passed on to
7 Dr. Morrow. His treatment of Ms. Beason did not in any
8 way involve this letter or the impairment rating
9 assigned by Dr. Morrow to her, and therefore he cannot
10 testify as to that. It had nothing to do with his
11 treatment. It would have nothing to do with anything he
12 did. It was done by another physician.

13 We can go back on.

14 BY MR. LUGINBILL:

15 Q. Dr. Morrow indicated that she had a 2 percent
16 overall impairment rating to the left shoulder. Is it
17 unusual for a patient, not specifically this patient,
18 but your patients that you treat in general, for them to
19 have some residual decrease in range of motion or just
20 overall function of the shoulder?

21 A. The shoulder is a very complex joint. And a lot
22 of patients underestimate how much rehab it takes to get
23 the shoulder working after such an injury. I find a lot
24 of patients do end up lacking some motion after injuries

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1 LEGAL VIDEO SPECIALIST: Off the record at
2 5:45 p.m.

3 (There was an off-the-record discussion.)

4 LEGAL VIDEO SPECIALIST: We're back on the
5 record. It's 5:46 p.m.

6 EXAMINATION

7 BY MR. HOOD:

8 Q. Dr. Nelson, again, my name is Austin Hood. I am
9 here today representing Ms. Chatone Lowden who is the
10 defendant in this case, sir.

11 A. Yeah.

12 Q. You indicated earlier when Mr. Luginbill was
13 asking you questions that you actually recall treating
14 Ms. Beason; is that correct?

15 A. Yes.

16 Q. And is there anything about her treatment that
17 stood out to you, or do you just happen to recall her as
18 a patient?

19 A. I recall her as a patient because she happened to
20 be a pleasant woman who seemed, you know, to have a true
21 problem.

22 Q. All right.

23 A. And I was just drawn to her.

24 Q. All right. The -- you are now practicing in West



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1 Virginia, no longer with the South Carolina Orthopaedic
2 Institute --

3 A. Yes.

4 Q. -- in Orangeburg, correct?

5 A. Yes.

6 Q. Okay. And in preparing for this deposition -- or
7 excuse me. What did you do to prepare for this
8 deposition today?

9 A. Well, I did have a chance to review the entire
10 record, so...

11 Q. And those are the records from the South Carolina
12 Orthopaedic Institute?

13 A. Yes.

14 Q. Do you remember where you got those from or how
15 you got those?

16 A. How I got those? I got those from my secretary
17 back at South Carolina Orthopaedic Institute.

18 Q. Okay. The first time as I understand that you
19 saw Ms. Beason was February 11th, 2009; is that correct?

20 A. Correct. I believe so.

21 Q. Do you know what the day of the accident was that
22 this case concerns?

23 A. No. But I do believe -- I do not have the
24 written date, but I do believe it was about two months



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1 prior.

2 Q. Okay. So you are aware that there was about
3 60 days between the time of the accident and the time
4 she first saw --

5 A. Uh-huh (The witness responds affirmatively).
6 Yes.

7 Q. -- you, correct?

8 A. Uh-huh (The witness responds affirmatively).
9 Uh-huh.

10 Q. I think you mentioned earlier about the MRI scans
11 that Mr. Luginbill asked you about, and I think you
12 testified that you sent her to have those scans done --

13 A. I believe so.

14 Q. -- is that what you indicated?

15 The records I reviewed indicate that Dr. Pageant
16 (phonetic) was the one that actually referred her for
17 those scans. Do you know if that's correct or not?

18 A. Then I stand corrected.

19 Q. Okay. All right. And in those scans -- and you
20 reviewed those scans however as part of your treatment?

21 A. Uh-huh (The witness responds affirmatively).

22 Q. In those scans, it notes that the plaintiff,
23 Ms. Beason, has a positive shoulder impingement; is that
24 correct?



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1 A. Uh-huh (The witness responds affirmatively).

2 Q. All right. And in fact, I think it was -- a left
3 humerus MRI scan was done along with a left shoulder MRI
4 scan; is that correct?

5 A. Uh-huh. Uh-huh (The witness responds
6 affirmatively).

7 Q. And the left humerus MRI scan showed
8 osteoarthritis of the AC joint. Is that the -- I don't
9 know if I'm saying it right, but the --

10 A. Uh-huh (The witness responds affirmatively.)

11 Q. -- acromioclavicular joint; is that correct?

12 A. Uh-huh. Uh-huh. Uh-huh (The witness responds
13 affirmatively).

14 Q. Where is a humerus if you could show me?

15 A. The humerus is right here (indicating).

16 Q. Okay. That's your upper part of your arm,
17 correct?

18 A. Well, the whole arm bone is called humerus.

19 Q. All right. And it meets though with the shoulder
20 bone, correct -- or the shoulder, correct?

21 A. Yes, it does meet with the shoulder.

22 Q. Now, if it's showing osteoarthritis -- arthritis
23 is a degenerative condition; is that correct?

24 A. Uh-huh. (The witness responds affirmatively).



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1 Yes.

2 Q. That's something that develops over time?

3 A. Yes.

4 Q. Arthritis is not something that --

5 A. You can't get arthritis in two months.

6 Q. Right. From the accident.

7 A. Uh-huh (The witness responds affirmatively).

8 Q. That was something that was already present. So
9 the MRI scan we know from the left humerus it shows
10 'osteoarthritis of the AC joint --

11 A. Uh-huh (The witness responds affirmatively).

12 Q. -- so she's -- so before this accident occurred,
13 Ms. Beason already had - if I understand correctly -
14 arthritis in her shoulder; is that correct?

15 A. It's accurate to say that Ms. Beason had
16 arthritis just like it would be accurate to say that I
17 have arthritis in my shoulder. And we all have
18 arthritis. I mean, we start to have it past the age of
19 20 and that continues on forward. So if you look at
20 seven out of ten people -- seven people at the age of 50
21 would have arthritis in their shoulder.

22 Q. Okay.

23 A. And would not be symptomatic though.

24 Q. Ms. Beason is -- I believe at the time she began



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1 treating with you was I think approximately 54 years
2 old; is that correct?

3 A. Uh-huh (The witness responds affirmatively).
4 Correct.

5 Q. Would you be surprised in a 54-year-old female to
6 see arthritis developing in her shoulder?

7 A. No. Again, I would see arthritis -- normally, I
8 would see arthritis in seven out of ten people in the AC
9 joint; especially if you're a worker, someone who used
10 your hands to work. However, maybe only one in ten
11 would be symptomatic. But none would be symptomatic
12 unless they were presenting with that chief complaint.
13 Ms. Beason had physical therapy, she tried the NSAIDS,
14 and then came to my office.

15 Q. Okay. You made reference to that physical
16 therapy. I was going to ask you about that because that
17 is in your surgical note. You indicated she failed
18 physical therapy.

19 A. Uh-huh (The witness responds affirmatively).

20 Q. Is it your understanding she went through
21 physical therapy --

22 A. She went to --

23 Q. -- prior to coming --

24 A. -- she went to based on records from her primary

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1 care physician sent me after two months.

2 Q. And that was Dr. Pageant?

3 A. I believe so.

4 Q. Do you know where she did physical therapy at?

5 A. No. No. No. No.

6 Q. Okay. But it's your understanding she did do
7 that --

8 A. She did some physical therapy.

9 Q. Would it be appropriate for a person with a --
10 prominent arthritis in her shoulder to do physical
11 therapy, take the NSAIDS, which are the nonsteroidals -
12 as you indicated - the anti-inflammatories before
13 undergoing surgery? Would that be standard practice?

14 A. Standard practice, uh-huh (The witness responds
15 affirmatively).

16 Q. Okay. And so before recommending surgery, you
17 would recommend doing physical therapy first?

18 A. Not -- not always.

19 Q. Okay.

20 A. It really depends on how symptomatic the patient
21 is. It really depends on if the patient has responded
22 to the NSAIDS. Just so -- there's some people where I
23 take to surgery if I see a positive MRI and a -- clearer
24 symptoms, I would take them to surgery.



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1 Q. Okay.

2 A. But if I feel that physical therapy can help,
3 sometimes I will try physical therapy.

4 Q. All right.

5 A. Most of the time I do try physical therapy. I
6 always try to let the person's body heal by itself first
7 before I do the surgery.

8 Q. Okay. The MRI of the left shoulder was done. As
9 I said earlier, it was my understanding two were done;
10 one of the humerus and one of the left shoulder.

11 A. Uh-huh (The witness responds affirmatively).

12 Q. It's my understanding that one showed some
13 moderate osteoarthritis of the AC joint again; is that
14 correct?

15 A. Uh-huh (The witness responds affirmatively).
16 Correct.

17 Q. And it showed also mild supraspinatus
18 tendinopathy; is that correct?

19 A. Uh-huh (The witness responds affirmatively).

20 Q. And again, the supraspinatus tendinopathy, that's
21 basically a degenerative condition as well?

22 A. No. No. Not if -- if you have inflammation --
23 an increased signal in the rotator cuff, that's what
24 we're talking -- the supraspinatus is of the rotator



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1 cuff. It's one of those five muscles. If you have an
2 increased signal of that, that signals an injury.

3 Q. Okay.

4 A. It usually doesn't signal arthritis.

5 Q. And could that be caused also by arthritis?

6 A. Not usually arthritis, no. Usually about active
7 inflammation.

8 Q. Okay. Could active inflammation be caused by
9 arthritis, by the rubbing of the joint?

10 A. Yes.

11 Q. Okay. The surgery that you performed -
12 Mr. Luginbill asked you - was a subacromial
13 decompression and a distal clavicle resection; is that
14 correct?

15 A. Yes.

16 Q. And as I understood from what you just told me,
17 the -- and those are the first two. I understand there
18 was also a labral tear, correct?

19 A. Uh-huh (The witness responds affirmatively).

20 Q. I'll get to that in a moment.

21 But the subacromial decompression and the distal
22 clavicle resection basically involves shaving of the
23 bone; is that correct?

24 A. Yes.

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1 Q. And the shaving of the bone, is that where you're
2 shaving off the parts of the bone that have become
3 arthritic since you've got extra length of the bone
4 that's impeding with the tendons? Or if you could,
5 explain that to me.

6 A. A subacromial decompression is just shaving the
7 undersurface of the bone, just clearing space out. So
8 you can do -- there are many different types of
9 subacromial decompressions. But the traditional one is
10 where you do shave a layer of bone. But also, you take
11 the layer of inflammation tissue -- synovial tissue out.

12 Q. By shaving that bone, is that where the --
13 because arthritis is essentially a development of extra
14 bone in the area; is that correct?

15 A. Not necessarily. Sometimes you have not
16 developed this extra bone, you just have pain in that
17 joint.

18 Q. Okay.

19 A. So the chromium (sic) -- the subacromial
20 decompression is not -- is not an arthritis treatment
21 because that's just -- you're planting (sic) the bone,
22 you're really taking out inflamed tissue in the middle
23 of that space.

24 Q. Okay.

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1 A. And now when you talk about the actual distal
2 clavicle excision, that's actually taking out -- even to
3 say in laymen's terms, you would be taking out some of
4 the arthritis, but you're actually taking out part of
5 that joint.

6 Q. Okay. And you would do those procedures I
7 presume in people that have never been involved in a
8 trauma such as an automobile accident? This would be a
9 conversation too for folks who just are suffering from
10 osteoarthritis pain; is that correct?

11 A. You can -- yes. You can do those procedures
12 depending on where that pain -- the shoulder has, again,
13 three different parts.

14 Q. Okay.

15 A. So this would be surgery for that one particular
16 part of the shoulder. Those two parts; subacromial
17 space and the AC joint.

18 Q. Okay. But those two -- basically the shaving of
19 the bone in those two areas could be somebody, correct
20 -- a degenerative condition that's developed; is that
21 correct?

22 A. Yes.

23 Q. Okay. The problem with those bones, that was not
24 something that was caused by the accident, correct?



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1 A. When you say -- what do you mean --

2 Q. If there's a gross (sic) -- if there's a gross of
3 osteoarthritis on the bone -- arthritis on the bone,
4 that's something -- it's not something caused by the
5 accident - I believe we've established that earlier -
6 correct?

7 A. Well, no. I would say that you can have
8 osteoarthritis in the joint that's asymptomatic. When
9 you do have an injury, you can flare that up. So when I
10 look into her -- when I looked at her AC joint, the AC
11 joint had -- the clavicle had marked underhangings that
12 was dropped down, so that joint was unstable. So you
13 can get that picture from dormant arthritis with a
14 superimposed injury.

15 Q. Okay. You said you do a lot of -- you do some
16 sports treatment --

17 A. Uh-huh (The witness responds affirmatively).

18 Q. -- is that correct, in your practice? Is that
19 correct?

20 A. Uh-huh (The witness responds affirmatively).

21 Q. A lot of times when you've got an athlete --
22 overuse of a shoulder can be something that leads to
23 this labral tear like what Ms. Beason had; is that
24 correct?

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1 A. Not overuse. No -- not -- usually labral tears
2 is usually from some type of trauma, whether you have a
3 sudden jerk or dislocation -- especially dislocations
4 can cause labral tears.

5 Q. Ms. Beason didn't have a dislocation; is that
6 correct?

7 A. No. No.

8 Q. Okay. The overuse of a shoulder, like in a
9 sports injury, somebody that does a lot of lifting or
10 pulling --

11 A. Uh-huh (The witness responds affirmatively).

12 Q. -- I think you described earlier, a pushing
13 motion can lead to a shoulder impingement however; is
14 that correct?

15 A. Correct, yes.

16 Q. And the labral tear - as I understand earlier -
17 you didn't find that until you actually went in and did
18 the procedure?

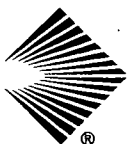
19 A. Correct.

20 Q. That didn't show up in the MRI scan?

21 A. Correct.

22 Q. I believe you said that wasn't uncommon to have
23 that happen?

24 A. You can -- you can have those happen also, yes,

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1 but it's uncommon.

2 Q. So it's not your opinion, however, that labral
3 tears occur from repetitive trauma?

4 A. No.

5 Q. You don't believe that's correct?

6 A. No, not at all.

7 Q. Okay. The labrum -- as someone ages -- the
8 labrum becomes more brittle as someone gets older; is
9 that correct?

10 A. Everything in the body gets more brittle.

11 Q. But the labrum does; is that correct?

12 A. The labrum and the bones. Everything becomes
13 more -- anything that's fibrocart -- fibro -- made of
14 fibrocartilage can become more calcified with time.

15 Q. All right. So as the labrum becomes more brittle
16 with age, you can flare or -- excuse me -- fray and tear
17 apart as you get older; is that correct?

18 A. Yes.

19 Q. Okay. And that's just part of the aging process
20 again; is that correct?

21 A. Yeah.

22 Q. With regard to this accident -- Ms. Beason's
23 accident, you know that she was in -- as I understand it
24 from your previous testimony, you know she was involved



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1 in a rear-end accident; is that correct?

2 A. Yes.

3 Q. Have you treated folks that have been involved in
4 similar type accidents before --

5 A. Yes.

6 Q. -- rear-end type accidents?

7 A. Yes.

8 Q. In a rear-end accident, your body doesn't go
9 forward, it goes backwards; would you agree with me?
10 Traditionally, it goes forward in the initial impact?

11 A. Initial impact, yes, but then there's also
12 recoil.

13 Q. Okay. But the initial impact can cause strain --
14 you would go backwards into the seat, not forwards into
15 the steering wheel, correct?

16 A. Depending -- I mean, there's a counterforce
17 injury. So I mean, if you're holding something and you
18 -- if you go forward, you're going to have to go
19 backwards. That force is dissipated somehow.

20 Q. Okay. But you usually go back first?

21 A. You may go back first, yes.

22 Q. And do you know anything about the forces -- how
23 hard this impact was for this accident Ms. Beason was
24 involved in, the severity of the impact?



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1 A. I recall -- I would have to look back at my notes
2 to see if the car was totaled and what speed she was
3 going. But I don't have that on the records I have
4 today.

5 Q. Okay. So you don't know what -- one way or
6 another what the severity of the impact was, you just
7 know it was a rear-end impact?

8 A. Yes.

9 Q. Okay. Do you know if any part of her arm struck
10 or shoulder struck -- specifically if the left arm and
11 shoulder struck anything inside the vehicle in the
12 accident? One way or another, do you know?

13 A. No. No.

14 Q. Okay. Do you know what Ms. Beason does for a
15 living?

16 A. What?

17 Q. What she does for a living. What she did for a
18 living at the time of the accident.

19 A. What she does, no. I do not recall my notes
20 today. I could not tell you that.

21 Q. All right. Would that be something that -- as
22 part of your treatment of her would be important for you
23 to know if she was -- if she had -- what type of job she
24 did?

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1 A. Usually occupation is very important. And
2 usually occupation -- I do -- I mark up somewhere in the
3 chart what the patient does in terms of their
4 occupation.

5 Q. But do you know --

6 A. Nothing struck me -- nothing struck me -- nothing
7 struck me that was -- meaning that, normally that --
8 that in West Virginia I work with a lot of coal miners.
9 So if someone comes in with an injury, whether it's from
10 work or from -- not from work, I -- you know, something
11 like that, a coal miner, I put that down. Because
12 that's one -- that will dictate how I'm going to treat
13 you, dictate how I'm going to rehab you, what I need to
14 do to get you back to your job. Usually that is part --
15 part and parcel of how we treat patients, find out what
16 they do.

17 Q. It could also be important to know what they do
18 because it could be something that could have aggravated
19 or lead to the injury, correct?

20 A. Of course, uh-huh (The witness responds
21 affirmatively).

22 Q. But -- and I will represent to you, I've looked
23 through those records that you have --

24 A. Uh-huh (The witness responds affirmatively).

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1 Q. -- and I don't see any note in there of what her
2 occupation was; is that correct?

3 A. None of these -- because there's -- we also have
4 a clinical intake sheet that the nurses will do usually
5 with -- that information would be provided by the nurses
6 on their sheet.

7 Q. Okay. The injury that was caused to her left
8 shoulder that was causing her some pain when she
9 presented to you on February 11th of '09, two months
10 after this accident --

11 A. Uh-huh (The witness responds affirmatively).

12 Q. -- occurred, that's an injury -- it's an injury
13 you could get, not necessarily from an automobile
14 accident, but it's something that could be caused by
15 lifting an object that's too heavy by repetitive use of
16 the shoulder, correct?

17 A. Yes. I mean, you can get -- I mean, any injury
18 you can get several different ways. I mean, you can
19 present with -- you can give me an injury -- you can
20 have an AC tear -- ACL tear, and you can tell me you
21 tore it by playing football, somebody hit you on the
22 side. Or you can tell me a different method; that you
23 were on your knees and you were on the ladder and you
24 fell and you tore your ACL. So there are many different

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1 ways that you -- paths -- there are many different
2 mechanisms ventured that you can have before you
3 actually get injured, different pathways to a specific
4 injury.

5 Q. Okay. This left shoulder pain that Ms. Beason
6 was complaining of, if her job involved lifting of
7 boxes, lifting of, say, for instance, drink cartons and
8 stocking vending machines, is that something that could
9 cause her to suffer from shoulder pain similar to what
10 she had when she presented to you?

11 A. Usually -- you usually will present with
12 bilateral shoulder pain if you are lifting. Now --
13 especially with boxes because you're doing it with both
14 hands you have bilateral shoulder pain, instead of just
15 unilateral.

16 Q. But that's certainly something that could cause
17 her to suffer similar pain and similar conditions to
18 what you -- when you first saw her, correct?

19 A. If she had an injury at work that was
20 undocumented, but not just from overall -- just gradual
21 use -- she would not have been symptomatic. Again, she
22 could have developed some AC joint arthritis from that
23 type of work, but she was not symptomatic beforehand.

24 Q. Okay. And that's based on your history when you



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1 talked to her?

2 A. Based on the history.

3 Q. Okay. In the two months between the time of the
4 accident and the time that she first saw you, do you
5 know if she continued to work or not during that time?
6 If you know.

7 A. I do not know. I cannot tell you that.

8 Q. Okay.

9 MR. HOOD: Go off the record for just one
10 moment.

11 LEGAL VIDEO SPECIALIST: Off the record.
12 It's 6:01 p.m.

13 (There was a break in the proceedings.)

14 MR. HOOD: Subject to my objection, I'm
15 about to ask him a couple of questions about the issue
16 with the impairment rating just to clear that up. But
17 again, I'm not waiving my objection by doing that.

18 Okay. Thank you. Now go back on.

19 LEGAL VIDEO SPECIALIST: We're back on the
20 record. It's 6:03 p.m.

21 BY MR. HOOD:

22 Q. Dr. Nelson, Mr. Luginbill asked you a couple
23 questions about Ms. Beason's final follow-up treatment
24 with the South Carolina Orthopaedic Institute.



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1 medical certainty that the impairment rating would be
2 higher or lower?

3 A. It would be higher.

4 MR. HOOD: Just note my objection. Go
5 ahead.

6 Q. All right. You were also asked briefly about a
7 60-day delay and whether or not she had done physical
8 therapy. Given what you found intraoperatively, do you
9 believe physical therapy would have -- ultimately have
10 helped her any?

11 A. No. No.

12 Q. So whether or not she did physical therapy before
13 she got to you or not, really doesn't matter, does it?

14 A. No.

15 Q. And --

16 A. I mean, sometimes physical therapy -- physical
17 therapy is timing, and she had two months. So two
18 months of time is a lot of time before you treat someone
19 surgically.

20 Q. If you could, look just before you found
21 Dr. Morrow's letter there in the bottom of that stack,
22 like two or three pages from the bottom. That page
23 right there (indicating). It appears that you gave her
24 some work restrictions following the surgery. If you'll



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1 note on that document, it notes that her position is a
2 route driver. Does that sound consistent with what you
3 remember of this patient?

4 A. Yes.

5 It was a what? Say it again.

6 Q. A route driver.

7 A. Uh-huh. Uh-huh (The witness responds
8 affirmatively).

9 Q. And as counsel had indicated, she stocked vending
10 machines and did that sort of thing. Does that piece of
11 information -- you've indicated that occupation can be
12 important. Having that piece of infor -- of information
13 now, does it in any way change any of the opinions
14 you've given here today?

15 A. It doesn't change it. It doesn't change it. I
16 think that -- I sent her back -- that's my signature. I
17 sent her back to work and that was -- I sent her back to
18 work rather early, but -- I sent her back rather early
19 because, you know, the best place for someone is to
20 work. And I wanted to try her at work and see if she
21 could tolerate it. And obviously, you know, I do not
22 know the outcome whether or not she failed that or not,
23 but it was my attempt to get her back to work as soon as
24 possible.



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1 Q. All right. And again, to reiterate, it is your
2 opinion to a reasonable degree of medical certainty,
3 based on all the facts you have before you that the
4 primary cause of the injuries that you treated her for
5 was in fact the car accident?

6 A. Yes, I do believe that.

7 MR. LUGINBILL: That's all I have.

8 EXAMINATION

9 BY MR. HOOD:

10 Q. Dr. Nelson, Mr. Luginbill asked you about this
11 physical limitation analysis that apparently you filled
12 out it looks like April 7th of '09; is that correct?

13 A. Yes.

14 Q. And I'm looking at this document now. Did she
15 ask you to fill this out, or was this something that you
16 did for her? Or how did that come to pass?

17 A. You know, I -- I -- you know, I cannot recall
18 whether or not -- I mean, usually patients will either
19 bring a form to me or whether -- or sometimes the job
20 can send a form in. So I'm pretty sure she probably
21 brought the slip to me --

22 Q. Okay.

23 A. -- but I'm not sure.

24 Q. And you got her going back to work full duty -



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1 doesn't look like any real limitations - as of
2 April 13th of '09; is that right?

3 A. Yeah; that's right.

4 MR. HOOD: Thank you, sir.

5 MR. LUGINBILL: That's it.

6 LEGAL VIDEO SPECIALIST: Off the record.

7 It's 6:09 p.m. This concludes the deposition.

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG) C/A #: 2009-CP-38-2087

Kathy Beason,
Plaintiff,
v.
Chatone Lowden,
Defendant.

COPY

DEPOSITION OF
KATHY BEASON

Thursday, May 27, 2010
1:57 p.m. - 3:09 p.m.

The deposition of KATHY BEASON, taken on behalf of the Defendant at the Dean Law Firm, 146 Centre Street, Orangeburg, South Carolina, on the 27th day of May, 2010 before Suzanne R. Bryant, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and agreement of counsel.

1 Q: Any education past high school?

2 A: No.

3 Q: Okay. Any tech school, trade school?

4 A: No.

5 Q: Okay. Do you hold any type of professional
6 licenses or certifications, certificates of any
7 kind?

8 A: No.

9 Q: Have you ever served in the military?

10 A: No.

11 Q: Are you employed at this time?

12 A: Yes.

13 Q: And where do you work?

14 A: Atlas Food System.

15 Q: How long have you worked there?

16 A: Twelve and a half years.

17 Q: And what do you do for them?

18 A: I'm a route driver.

19 Q: Now, tell me what a route driver does for Atlas
20 Food System.

21 A: I go to different plants, deliver snacks,
22 drinks, food.

23 Q: Where all do you have to drive? Is it all
24 inside Orangeburg County or --

25 A: Orangeburg County.

1 Q: Okay. And have you been a route driver the
2 entire time you've worked for Atlas Food?

3 A: First, I started off as attendant at Koyo.

4 Q: Okay. And how long did you do that for?

5 A: About seven months.

6 Q: Did you move to route driver after that?

7 A: Moved to route driver.

8 Q: Okay. This job as a route driver for Atlas
9 Food Systems, is it a -- you say that you've
10 got to deliver snacks and drinks and food to
11 various plants. Do you like stock vending
12 machines or --

13 A: Uh-huh (affirmative response), vending.

14 Q: Okay. Do you drive a -- what kind of truck do
15 you drive? Is it like a panel truck or a
16 pickup truck or what is?

17 A: Kind of a big truck like -- I don't know what
18 you call the truck. It's like a milk truck
19 like.

20 Q: Okay. I gotcha. You don't have to have a CDL
21 to drive it?

22 A: No, sir.

23 Q: Okay. How do you get the material from inside
24 the truck inside the plants? How do you do
25 that?

- 1 A: I've got a cart, I put everything on.
- 2 Q: Okay. So you load the cart yourself?
- 3 A: Uh-huh.
- 4 Q: Out of the back of your truck?
- 5 A: Yes.
- 6 Q: Is it something you consider a physical job?
- 7 A: Yes, it's physical.
- 8 Q: Okay. Do you have an assistant or somebody
- 9 that works with you on your route?
- 10 A: No. I'm by myself.
- 11 Q: Now, it's my understanding that you missed some
- 12 time from work at Atlas as a result of this
- 13 accident, is that correct?
- 14 A: Yes.
- 15 Q: Okay. At the time that this accident occurred
- 16 back in December of '08, what was your rate of
- 17 pay per hour, if you remember?
- 18 A: I got paid a salary.
- 19 Q: Okay. Well then tell me about that. What was
- 20 your salary back then?
- 21 A: \$100.00 a day.
- 22 Q: Okay. How many hours a day did you usually
- 23 work?
- 24 A: Around ten.
- 25 Q: And was that five days a week or --

1 A: Six days a week.

2 Q: And at the time that this accident occurred,
3 you were a route driver, correct?

4 A: Yes.

5 Q: Okay. How much time, if you recall, did you
6 miss from work as a result of this accident?

7 A: As a result of the accident?

8 Q: That's right. After the accident, the accident
9 happened, you claim, as I understand it, in
10 this action that you suffered some injuries
11 from the accident. How much time did you miss
12 from work due to that?

13 A: It was about six, seven weeks of work.

14 Q: Okay. And that \$100.00 a day, was that paid on
15 any six days a week or was it just however many
16 days a week you worked or how did that work
17 out?

18 A: I got paid on salary so that was -- when that
19 happened I was on commission, but now I've been
20 on a straight salary. But I was drawing
21 commission on that.

22 Q: Explain to me the commission. How did that
23 work at the time of the accident?

24 A: I got paid by the sales and I think it was like
25 three percent of sales.

1 Q: Okay. Now, were you three percent sales plus
2 a salary at the time or were you just three
3 percent sales is how you made your money?

4 A: The way they done it, they done salary. And
5 then when they done commission, they took the
6 salary back out of the commission, then I got
7 what -- that.

8 Q: Okay. But you still had a salary at the time
9 of the accident?

10 A: Uh-huh. Yes, sir.

11 Q: Okay. Did it depend on like which one was
12 more? Like if your commissions exceeded your
13 salary, you got that or was it --

14 A: Well, I got salary and then when -- at the end
15 of the month, the commission went in, they
16 calculated the three percent.

17 Q: Of your sales?

18 A: Yes.

19 Q: Okay. And that was sales from the routes that
20 you went to or the locations that you went to
21 on your route?

22 A: Locate -- all my locations.

23 Q: Gotcha. Okay. How long had you been on
24 commission at the time the accident occurred in
25 December of '08?

- 1 A: Probably about five years.
- 2 Q: Okay. Do you know on average how much you were
- 3 earning in commission every week?
- 4 A: It was by the month.
- 5 Q: Okay. In a month?
- 6 A: Some months it was like \$500.00. Some \$300.00.
- 7 Q: Just kind of fluctuated up and down?
- 8 A: According to what month it was.
- 9 Q: During the time that you were out after this
- 10 accident, that six or seven weeks that you
- 11 missed, did you -- were you able to take
- 12 vacation time or sick time during that or did
- 13 you just get your pay docked?
- 14 A: I didn't get nothing. I didn't get no pay.
- 15 Q: Now, when you came back after the time that you
- 16 were out, did you go back to the same job that
- 17 you had as a route driver?
- 18 A: Same. Yes.
- 19 Q: Okay. Had your rate of pay changed at all?
- 20 A: Not then.
- 21 Q: Okay. What do you mean by not then?
- 22 A: Because it just recently paid -- changed
- 23 probably around February of this year.
- 24 Q: Okay. February of 2010?
- 25 A: Yes.

1 Q: Okay. So when you went back to work after the
2 time that you missed, you went back with the
3 same rate of pay, same commission schedule,
4 everything was the same?

5 A: Yes.

6 Q: Okay. And you went back to the same job?

7 A: Yes.

8 Q: Prior to Atlas Food Systems, how were you
9 employed?

10 A: Stone Manufacturing in North.

11 Q: What did you do there?

12 A: I was a seamstress.

13 Q: How long did you work there?

14 A: Twenty-three years.

15 Q: Long time. The next questions I'm going to ask
16 you, Ms. Beason, are not meant to offend you in
17 any way. Like I told you before I got started
18 here today, all these questions I'm asking you
19 now are the same questions I ask every person
20 I have ever deposed, okay? Have you ever been
21 accused or convicted of a crime?

22 A: No.

23 Q: Have you ever been treated for drug or alcohol
24 abuse?

25 A: No.

1 numbness or tingling in your hands when this
2 accident occurred in December of '08?

3 A: No.

4 Q: All right. Ms. Beason, let's talk about the
5 accident we're here about today. As I told you
6 when we began, it's my understanding it
7 occurred on December 13th of '08. Does that
8 sound about right to you?

9 A: Yes.

10 Q: Okay. Do you remember about what time of day
11 it was when this accident occurred, if you
12 remember?

13 A: I'd say around 12:00, 12:30.

14 Q: Middle of the day?

15 A: Yes.

16 Q: What were the weather conditions like on the
17 day of the accident?

18 A: I really don't remember, but it was kind of
19 clear, I think.

20 Q: Were the roads wet at all that you recall? Had
21 it been raining at all that day?

22 A: I don't recall. I don't think it was.

23 Q: Okay. What road were you traveling on at the
24 time this accident occurred?

25 A: Broughton.

1 Q: Okay. How many lanes wide is Broughton is the
2 area where this accident occurred?

3 A: How wide?

4 Q: How many lanes wide -- one lane, two lanes,
5 four lanes?

6 A: Oh. It's two lanes.

7 Q: Okay. One in each direction?

8 A: Yes.

9 Q: What was traffic like on Broughton Street in
10 the area where this accident occurred at the
11 time of the accident? Was it heavy, light,
12 medium?

13 A: It was light.

14 Q: Okay. And what type of vehicle were you
15 driving at the time of the accident?

16 A: 2007 Explorer.

17 Q: Was that your vehicle?

18 A: Yes.

19 Q: Was that the vehicle you usually drove?

20 A: Yes.

21 Q: Was there anyone else in the vehicle with you?

22 A: No.

23 Q: Did you have your seatbelt on?

24 A: Yes.

25 Q: And I assume no airbags deployed in this

1 accident, correct?

2 A: No, they didn't deploy.

3 Q: Okay. That Ford Explorer, was it in good
4 mechanical working order at the time of the
5 accident?

6 A: Yes.

7 Q: All the brake lights, taillights functioning on
8 the car?

9 A: Yes.

10 Q: Headlights working?

11 A: Yes.

12 Q: Blinkers functioning?

13 A: Yes.

14 Q: Brakes working properly?

15 A: Yes.

16 Q: Did the vehicle have any body damage on it
17 before this accident occurred?

18 A: No.

19 Q: Where had you been that day immediately before
20 this accident occurred? Where were you coming
21 from?

22 A: I had just left work and I was going to
23 Walmart.

24 Q: Okay. Were you in any kind of rush to get to
25 Walmart that day?

1 A: Not a rush.

2 Q: Do you remember what day of the week it was
3 when this accident occurred?

4 A: Saturday.

5 Q: I take it you weren't working that Saturday.

6 A: I had worked. Just went by the plant and I was
7 leaving it going --

8 Q: You weren't doing deliveries at the time of
9 this accident?

10 A: No. I was in my own personal --

11 Q: Okay.

12 A: -- that day because I didn't have but one stop
13 and I just had it stuck in mine and took it to
14 the location.

15 Q: Okay. You didn't drive the company truck then
16 that day?

17 A: No.

18 Q: Okay. So you dropped the one set of stuff off
19 and you were done for the day at the time this
20 accident occurred?

21 A: Yes.

22 Q: You weren't still on the job?

23 A: No.

24 Q: All right.

25 **MR. HOOD:** Sorry, Dan. Just trying to help you out

1 there, man.

2 A: I'm sorry.

3 **MR. LUGINBILL:** I'm okay on this one. I don't need
4 that complication.

5 Q: Did this -- where this accident happened on
6 Broughton Street, did it happen at an
7 intersecting road; was there another road
8 crossing it where this accident took place?

9 A: Right by T&D.

10 Q: Okay. (

11 A: They've got a one-way street.

12 Q: Do you know the name of it?

13 A: I don't know the name of that one.

14 Q: Okay. Is that intersection there, is that
15 controlled by a traffic light or a stop sign?

16 A: No, it's just a one-way street to your right.

17 Q: Okay. So you've got a stop sign there for the
18 traffic on that?

19 A: Yes.

20 Q: No?

21 A: Yes.

22 Q: There's no traffic lights or stop signs on
23 Broughton in that area?

24 A: On back down, 301, that way?

25 Q: I'm just talking about right where this

1 accident happened.

2 A: No.

3 Q: Okay. All right, Ms. Beason, if you could,
4 tell me what happened in this accident.

5 A: The truck in front of me was driving down and
6 he put his signal light on to turn to the
7 right, began to slow down. I slowed down to
8 the point I got kind of -- get close to him.
9 I had to complete stop because he turned slowly
10 to the right so I had to complete stop. And
11 then he turned. I was going to go and -- when
12 she hit.

13 Q: Are you talking about Ms. Lowden --

14 A: Yes.

15 Q: -- when she hit you? Okay. Let me ask you a
16 couple of questions about things you just told
17 me there. You said there was a truck in front
18 of you.

19 A: Uh-huh (affirmative response).

20 Q: Is that a yes?

21 A: Yes.

22 Q: Okay. And that truck started to slow down?

23 A: He was -- he had his signal light on to turn to
24 the right. I was slowing down because I seen
25 he was turning. And then he was -- turned slow

1 to the right so I had to come to a complete
2 stop for -- until he made his right turn. And
3 then that's when she hit.

4 Q: Had that truck finished his right turn before
5 you got hit? Was he out of the way?

6 A: Yes.

7 Q: Okay. And you said that you were about to
8 start heading forward again at that time?

9 A: Yes.

10 Q: Had you gotten your foot back to the gas before
11 you got hit?

12 A: No.

13 Q: Was your foot on the brake when you got struck?

14 A: Yes..

15 Q: All right. Were you still at a complete stop
16 when you were hit?

17 A: As far as I can remember.

18 Q: How long had you been stopped before you got
19 hit?

20 A: A couple of seconds.

21 Q: When you stopped, was it a -- did you have to
22 make a quick stop or an abrupt stop or were you
23 able to make a slow stop?

24 A: No, it was a slow stop.

25 Q: So you didn't have to hit the brakes to slow

1 down to keep from hitting the guy in front of
2 you?

3 A: No.

4 Q: And did you have any warning that this accident
5 was going to occur when you were hit?

6 A: No.

7 Q: Did you ever see Ms. Lowden's truck before this
8 accident occurred?

9 A: No.

10 Q: Did you hear any brakes squealing or tires
11 screeching before the impact?

12 A: I just remember hearing a loud noise and that's
13 when I realized I'd been hit.

14 Q: Did you hear any horns honking before the
15 impact?

16 A: No.

17 Q: The loud noise that you heard, was that when
18 you were actually hit?

19 A: Uh-huh (affirmative response).

20 Q: Is that a yes?

21 A: Yes.

22 Q: After this or when this impact occurred, was
23 your vehicle moved at all as a result of the
24 impact? Was it pushed forward or to the side
25 at all?

1 A: I don't remember for sure.

2 Q: After the impact, was your foot still on the
3 brake?

4 A: Yes.

5 Q: Was your vehicle still on Broughton Street in
6 your lane of travel after the accident
7 occurred?

8 A: Yes.

9 Q: Other than your vehicle and Ms. Lowden's
10 vehicle, were any other cars involved in this
11 accident?

12 A: No.

13 Q: Okay. After this accident occurred, did you
14 get out of your car at the scene?

15 A: No.

16 Q: Did you stay in your vehicle the entire time at
17 the scene?

18 A: Yes.

19 Q: Did you ever speak to Ms. Lowden at the scene,
20 my client?

21 A: Not until we -- the cop got there. We pulled
22 over into that one-way street. I just asked
23 were you all right.

24 Q: After the police officer arrived and you pulled
25 off the road, did you get out of your vehicle

1 then?

2 A: No.

3 Q: Okay. Stayed in your vehicle at that time as
4 well?

5 A: Yes. I did get out at one point and kind of
6 done my arm. (Witness indicating)

7 Q: You're describing your left arm, pushing it up
8 and down?

9 A: Yes.

10 Q: Is that yes?

11 A: Yes.

12 Q: Was that after the police officer arrived or
13 before?

14 A: After.

15 Q: Did you get back in your car after you kind of
16 stretched your left arm?

17 A: Yes.

18 Q: Did you ever speak to Ms. Lowden at the scene
19 after the police officer arrived?

20 A: I think we spoke.

21 Q: Okay. Just checked on -- what was the
22 conversations you had, outside I think you said
23 earlier about just asking if each other was
24 okay?

25 A: I think we just -- I think we just said, you

1 okay.

2 Q: Any other conversation you remember having with
3 Ms. Lowden at the scene of the accident?

4 A: I think that was about all.

5 Q: Do you remember her making any other statements
6 to you at the scene of the accident?

7 A: She asked if I was all right.

8 Q: Okay. Anything else that you recall her
9 saying?

10 A: I think I said I was all right.

11 Q: Okay. When you got out of your car, did you
12 look to see if there was any damage to your car
13 from this accident?

14 A: Yes.

15 Q: And was there damage to your car from this
16 accident?

17 A: Yes.

18 Q: And where was that damage?

19 A: On the left side, back.

20 Q: What kind of damage was done to your car? I'll
21 tell you what. Actually, hold on, I'll show
22 you some pictures.

23 A: Yes.

24 Q: Let me see if these are the pictures of your
25 vehicle.

1 A: Something on it.

2 Q: These are just the black and whites. You can
3 take this off the record.

4 (Off the Record)

5 Q: All right. Well, Ms. Beason, if you would --
6 they took some close-up photos -- take a look
7 at those pictures and tell me if you can
8 identify the car shown in those photographs.

9 A: This is mine.

10 Q: Okay.

11 A: And this is mine.

12 Q: All right.

13 MR. HOOD: You want me to keep going, Dan?

14 MR. LUGINBILL: Go ahead.

15 Q: Okay. All right. The pictures that you just
16 looked at, there's three of them there, do
17 those pictures show the area on your car that
18 was damaged from this accident?

19 A: Yes.

20 Q: Okay. Do they show the damage from this
21 accident if you take all three of them
22 together?

23 A: I guess in color it would probably be more.

24 Q: I know. And we'll get some colors.

25 A: There was scratches there, scratches there.

1 Q: All right. You pointed to each of the three
2 photographs and noted there was some scratches
3 to the left rear side of your car on each of
4 those, is that right?

5 A: Yes.

6 Q: Okay. I'll tell you what, since we talked
7 about them, let's mark these as Defendant's
8 One, Two and Three.

9 (Defendant's Exhibits Number One, Two and Three were
10 marked for identification purposes).

11 MR. LUGINBILL: Do you want me to make copies?

12 MR. HOOD: Yeah, if you don't mind.

13 (Off the Record)

14 Q: Okay. Ms. Beason, we have marked as
15 Defendant's Exhibits One, Two and Three, the
16 photographs that we just talked about showing
17 the rear of your car, okay?

18 A: Yes.

19 Q: All right. There you go. Was there any other
20 damage to your car, and I know they're not
21 color, it would be nice if they were, but any
22 other damage to your car other than what is
23 shown in these three photographs that you can
24 tell me about, taking all three together?

25 A: Just when they did fix it, the liner of the

1 here, the top kept falling down. I had to go
2 back a couple times.

3 Q: Are you talking about inside the car?

4 A: Inside.

5 Q: Okay. When the police officer arrived at the
6 scene, did he ask you if you wanted an
7 ambulance to come to the scene?

8 A: I don't believe -- I don't remember him asking.

9 Q: Okay. Did you ask for an ambulance to come to
10 the scene?

11 A: No. I called -- I called the 911.

12 Q: Okay. And that was how the police officer
13 wound up there?

14 A: Yes.

15 Q: Did you drive your car from the scene?

16 A: Yes.

17 Q: And do you know if any traffic tickets were
18 issued as a result of this accident?

19 A: I think he wrote the ticket up.

20 Q: You talking about the police officer?

21 A: Yes.

22 Q: Do you know if he gave a ticket to Ms. Lowden
23 for this accident?

24 A: Gave us both a ticket, you know, a copy.

25 Q: He gave you a copy of a green form?

1 A: Yes.

2 Q: Do you know if he gave her an actual ticket
3 though, a traffic ticket for this accident, if
4 you know?

5 A: I know he gave both of us a ticket. I don't
6 know on that ticket it had her charged.

7 Q: Okay. Have you ever had to testify in traffic
8 court about this accident?

9 A: No.

10 Q: Okay. Do you know of any witnesses who saw
11 this accident occur, outside of the two of you?

12 A: No.

13 Q: When this accident occurred, did your body
14 strike any part of the interior of your vehicle
15 as a result of this accident.

16 A: Interior. Just kind of on the back seat.

17 Q: Okay. Your body went back into your seat?

18 A: Kind of jerked. (Witness indicating)

19 Q: Okay. Just so I can describe what you're
20 doing, you're kinda of showing me that you went
21 backwards.

22 A: The steering wheel; I was holding the steering,
23 then when she hit. (Witness indicating)

24 Q: You went backwards and to the side in your
25 seat?

1 A: Uh-huh (affirmative response).

2 Q: Okay. Did any part of your body hit the
3 dashboard inside of your Explorer?

4 A: No.

5 Q: Did your body hit the driver's door of your
6 car?

7 A: No.

8 Q: Did your body hit the center console in your
9 car?

10 A: No.

11 Q: Okay. Did your seatbelt tighten up when this
12 accident occurred?

13 A: Yes.

14 Q: Were you cut or bleeding anywhere after this
15 accident occurred?

16 A: No.

17 Q: Any bruising on your body after this accident
18 occurred?

19 A: I don't know about a bruise, but the seatbelt,
20 I had a big knot right here to come up.
21 (Witness indicating)

22 Q: You're talking about kinda just below your left
23 shoulder?

24 A: Yes.

25 Q: Okay. Did you -- any other bruising or knots

1 anywhere on your body other than there just
2 below your left shoulder, that you can
3 remember?

4 A: No.

5 Q: While you were at the scene that day, did you
6 start experiencing any pain anywhere in your
7 body?

8 A: My arm.

9 Q: Your left arm?

10 A: Yes.

11 Q: Anywhere else other than your left arm?

12 A: No.

13 Q: How long after this accident occurred did that
14 pain come on in your left arm?

15 A: It was kind of hurting when I was talking to
16 the police officer. Kind of hurting.

17 Q: How long was that after the accident occurred
18 before that officer arrived?

19 A: Ten minutes.

20 Q: And your arm didn't hit anything inside the
21 car, your left arm I mean?

22 A: No. Not that I -- no, just -- on that back
23 seat just that shoulder kind of.

24 Q: Were you holding the steering wheel when the
25 accident happened?

1 A: Uh-huh (affirmative response).

2 Q: With both hands?

3 A: Uh-huh (affirmative response).

4 Q: Is that a yes?

5 A: Yes.

6 Q: Okay. Did you ever tell anyone that you were
7 having that problem with your left arm, the
8 pain you were having in your left arm? Did you
9 tell the police officer --

10 A: Police officer, yes.

11 Q: Did you ever tell Ms. Lowden that?

12 A: I can't remember. I may have, just don't --

13 Q: Do you remember telling her -- or do you
14 remember telling the police officer that you
15 were having those problems or pain in your left
16 arm while Ms. Lowden was standing around there?

17 A: She was still in her truck. No.

18 Q: Okay. Did you overhear any conversations that
19 the investigating officer had with Ms. Lowden
20 about this accident?

21 A: No.

22 Q: When you left the scene of the accident in your
23 car, where did you go?

24 A: Emergency room.

25 Q: Did you go straight there from the scene?

1 A: Yes.

2 Q: What emergency room did you go to?

3 A: Orangeburg.

4 Q: What type of problems were you having when you
5 got to the emergency room?

6 A: That's when my arm was hurting.

7 Q: Your left arm?

8 A: Yes.

9 Q: And you kind of described -- you've been
10 rubbing your arm. Was it all the way up and
11 down or is it one part of your arm?

12 A: Down here.

13 Q: Okay. So from kind of like the middle of the
14 upper part of your arm down through your wrist?

15 A: Uh-huh (affirmative response).

16 Q: Is that a yes?

17 A: Yes.

18 Q: Were you having pain anywhere else in your body
19 when you got to the emergency room?

20 A: No.

21 Q: Any problems with pain in your left shoulder at
22 all?

23 A: No. Just my arm right like that.

24 Q: Okay.

25 A: Like I said.

1 Q: From your upper arm on down?

2 A: Yes.

3 Q: Okay. And no other pain in any other part of
4 your body -- your neck, your back, your head,
5 your legs, anything else?

6 A: Not that I can recall. I was kind of shook up.

7 Q: What did they do for you at the emergency room
8 in terms of treatment when you got there?

9 A: They x-rayed me. And I told them --

10 Q: What part of your --

11 A: My shoulder.

12 Q: Your left shoulder?

13 A: My arm.

14 Q: That's your left side?

15 A: Yes.

16 Q: Okay. The reason I'm asking --

17 A: I keep pointing, I'm sorry.

18 Q: -- the court reporter can't pick up what you're
19 pointing to so that's why I want to make sure
20 we're talking about your left. Okay. They x-
21 rayed your left shoulder and your left arm.
22 What else did they do for you at the emergency
23 room?

24 A: Took my blood pressure. It was high. Blood
25 pressure, fever.

1 Q: Did they do anything else for you in terms of
2 treatment while you were there? Do anything
3 else to help you out?

4 A: X-rays. I think that was it. They x-rayed my
5 shoulder and my arm and said wasn't nothing
6 broken. I had a contusion -- I can't pronounce
7 that -- a contusion of the arm and shoulder.

8 Q: Did you -- were you released from the hospital
9 that same day from the emergency room?

10 A: Yes.

11 Q: Did you drive yourself home from the emergency
12 room?

13 A: Yes.

14 Q: Did they give you any prescriptions to have
15 filled at the emergency room?

16 A: Yes.

17 Q: Did you go get those filled?

18 A: Yes.

19 Q: Where did you have them filled at? What drug
20 store?

21 A: I think it was CVS.

22 Q: Which one?

23 A: On 301.

24 Q: Is that the drug store you usually have your
25 prescriptions filled at?

1 A: Yes.

2 Q: Who was the next doctor you went to see after
3 going to the emergency room the day of the
4 accident?

5 A: The day?

6 Q: I know you said you went to the emergency room
7 the day of the accident. After that, who did
8 you go see?

9 A: Dale Padgett.

10 Q: How long was it after the accident before you
11 went to go see Dr. Padgett?

12 A: I scheduled an appointment a week and a half
13 and she couldn't see me until toward the end of
14 January.

15 Q: I was looking back at the bill your attorney
16 gave me. It looks like January 23rd.

17 A: That sounds about right.

18 Q: Okay. So that was about five, five and a half
19 weeks after the accident occurred?

20 A: Yes. I made one; she couldn't see me then.

21 Q: What problems were you having when you went to
22 see Dr. Padgett's office on January 23rd of
23 2009?

24 A: My arm was hurting worser. A lot of pain.
25 After I finished taking the pain pills, my arm

1 was really hurting real bad. So I called her,
2 make an appointment to see her.

3 Q: What did they do for you at Dr. Padgett's
4 office when you went to see them?

5 A: She checked me and I explained to her I was in
6 an accident a couple weeks back and they gave
7 me some pain pills. Then after the pain pills,
8 finished the pain pills, I told her the pain
9 was getting worser, so she ordered me to do an
10 MRI.

11 Q: Okay. And you said the pain was in your left
12 arm at that time?

13 A: Yes.

14 Q: Show me where.

15 A: About right around here. (Witness indicating)

16 Q: Okay. Same -- same kind of area of pain from
17 your upper arm all the way on down?

18 A: Yes.

19 Q: Had you ever experienced pain in your arm like
20 that before this accident occurred?

21 A: No.

22 Q: Did you go get that MRI scan done of your left
23 arm, left shoulder area?

24 A: Yes.

25 Q: Okay. And as I understand, that was done at

1 Advanced Diagnostic Imaging I think. Is that
2 right?

3 A: I guess that's the name.

4 Q: They sent you some other place to do it. They
5 didn't do it at Dr. Padgett's office.

6 A: Yes. It's at Grove Park.

7 Q: Right. Uh-huh. And did Dr. Padgett or anyone
8 else discuss what those MRI scans showed with
9 you?

10 A: She did. Gloria.

11 Q: And that's -- is that like his nurse
12 practitioner or his physician's assistant or
13 something in his office, is that right?

14 A: Well, they got two of them. One in Bamberg and
15 Gloria runs one in Orangeburg.

16 Q: Okay. I gotcha.

17 A: Okay.

18 Q: So what did she tell you about what those scans
19 showed?

20 A: She come back and told me that I had a lot of
21 arthritis.

22 Q: Okay. Did she tell you anything else about
23 what those scans showed?

24 A: And she told me, she's going to refer me to Dr.
25 Nelson. So she called Dr. Nelson and scheduled

1 me an appointment.

2 Q: Okay. And did you go see Dr. Nelson?

3 A: I went to see Dr. Nelson and he looked at the
4 record and he recommended surgery to release
5 the pain.

6 Q: Did he recommend surgery that first time you
7 went to see him?

8 A: Yes.

9 Q: Okay. Did he look over those scans that you
10 had done?

11 A: Yes.

12 Q: The MRI scans?

13 A: Yes.

14 Q: Okay. Did he discuss those scans with you,
15 what he thought they showed?

16 A: Yes.

17 Q: What did he tell you, if it was anything
18 different than what you heard before?

19 A: They showed that -- he discussed that it was
20 arthritis. I was finished.

21 Q: And he recommended surgery then?

22 A: Yeah. I told him I was in an accident too,
23 about that.

24 Q: Okay. Where was the -- did he do the surgery?

25 A: Yes.

1 Q: And where was that surgery done?

2 A: Orangeburg.

3 Q: All right. Just so I've got my time line
4 right. I looked over your bills and it looks
5 like, like I said, January 23rd is when you had
6 that visit with Dr. Padgett. A few days later
7 you had your MRIs on the 26th and 27th of
8 January.

9 A: Yes.

10 Q: Does that sound about right to you?

11 A: Yes.

12 Q: And then it looks like you saw Dr. Nelson
13 February 11th, about two weeks after you had
14 those scans done. Does that sound about right?

15 A: Yeah. I think she had to schedule an
16 appointment for me to come in. Sounds about
17 right, yes.

18 Q: Okay. As I understand, that surgery was done
19 at the Regional Medical Center on March 5th.
20 Does that sound about right to you?

21 A: Yes.

22 Q: Okay. So about a little over a year ago now?

23 A: Sir?

24 Q: A little over a year ago now.

25 A: Yes.

1 Q: Okay. And after that surgery, was that surgery
2 -- let's do it this way. What part of your
3 body was operated on?

4 A: Here. (Witness indicating)

5 Q: Okay. You're pointing to your left shoulder
6 and the left rear side of your arm?

7 A: To the left shoulder, right in there. (Witness
8 indicating)

9 Q: Okay. You're talking about the underside of
10 your left shoulder and then over the top as
11 well?

12 A: When they went in surgery, I just had a little
13 hole here, here, here and here. (Witness
14 indicating)

15 Q: You had four little holes?

16 A: Yes.

17 Q: Okay. How did you do after the surgery? How
18 was the pain after the surgery was done?

19 A: It was hurting. I couldn't move my arm hardly.
20 Couldn't lift it up over my head. I had to go
21 to therapy. I couldn't go back to work because
22 I couldn't do no lifting. I couldn't lift my
23 arm up.

24 Q: Okay. Now, where did you do your therapy at?

25 A: At Orangeburg Selaplex (ph).

1 Q: Healthplex?

2 A: Healthplex.

3 Q: Okay. When you went to that therapy, what did
4 they do for you there while you were at
5 therapy?

6 A: They done exercises on my arm and she explained
7 to me about my shoulder, how my shoulder
8 worked, things like that. And then when
9 there's an injury done to it, it kind of close
10 it up, cause it not to breath. That's what
11 cause pain go down my arm. And she done some
12 therapy or a heat pad on it, lifting it each
13 day, twice a day to lift it up so I could -- so
14 it won't freeze up, do therapy on it. And I
15 done some lifting of a leather object. It has
16 on there, leather, beads so my arm get back
17 strong.

18 Q: Okay. Did the therapy help with the pain you
19 were having in your left shoulder?

20 A: Yes.

21 Q: Okay. And it looks like you kept following up
22 with Dr. Nelson during that time, is that
23 right?

24 A: I think after the fourth visit went back to Dr.
25 Nelson.

1 Q: Okay. Around your fourth physical therapy
2 visit? Is that what you're talking about?

3 A: Yes.

4 Q: Okay. And how were you doing at that time when
5 you went back to see him towards the -- at your
6 fourth physical therapy visit? How were you
7 feeling?

8 A: I was doing good.

9 Q: Were you still having any pain in your shoulder
10 at that time?

11 A: Some. Yes.

12 Q: Did he prescribe any medication for you to take
13 during that time?

14 A: Yes.

15 Q: Did you get those prescriptions filled?

16 A: Yes.

17 Q: Did you take the prescriptions?

18 A: Yes.

19 Q: All right. According to the bills I've got, it
20 looks like you went to five physical therapy
21 sessions from March 18th to April 3rd of last
22 year. Does that sound right to you?

23 A: That sound about right.

24 Q: Okay. It looks like you went a couple of times
25 of week for a few weeks.

1 A: Twice a week.

2 Q: Okay. I see two follow up visits with Dr.
3 Nelson after your surgery and then there's a
4 visit -- the last one I see is with a Dr. James
5 Marro. Do you remember going to see him?

6 A: Nelson left, so I had to go back to see Dr.
7 Marro.

8 Q: Okay. And when you went to see him, was he the
9 last doctor you saw --

10 A: Yes.

11 Q: -- for your shoulder? And do you remember him
12 talking to you about a permanent impairment
13 rating?

14 A: He didn't discuss the permanent rating with me.

15 Q: You don't know -- personally, you don't know
16 about that?

17 A: He didn't tell me the permanent damage, the
18 rating of it. I had to get one to take back to
19 my job.

20 Q: Okay. How many times did you go see Dr. Marro?

21 A: One.

22 Q: And, according to this, I see a visit July 6th
23 of '09. Have you seen him at all since then,
24 since this time?

25 A: July 6th. No.

1 Q: Do you have any appointments now to go back and
2 see Dr. Marro or anyone in his office about
3 this accident?

4 A: No.

5 Q: All right. Do you have any appointments at
6 this time to see any other doctors for any
7 condition you relate to this accident?

8 A: No.

9 Q: Do you have any plans to go back and seek any
10 additional medical treatment for this accident?

11 A: No, sir, except for arthritis.

12 Q: No what?

13 A: No, sir.

14 Q: Okay.

15 A: For arthritis.

16 Q: Have we talked about all the doctors that have
17 treated you for this accident?

18 A: Yes.

19 Q: Okay. Anyone we left out?

20 A: Sir?

21 Q: Any doctors we left out?

22 A: No.

23 Q: Okay. At this time, are you still experiencing
24 any pain in your left shoulder or in your left
25 arm that you relate to this accident?

1 A: Some.

2 Q: Tell me about that. How often do you have pain
3 in your left shoulder and your left arm from
4 this accident?

5 A: About twice a month or something. Sometimes
6 cold weather hit it.

7 Q: Just about every other week or so, or something
8 like that?

9 A: Twice a week. Every couple weeks.

10 Q: Are you prevented from doing anything now at
11 this time, any of your daily activities, things
12 you would normally have done before this
13 accident occurred, that you can't do now
14 because of any injuries you suffered in this
15 accident?

16 A: No.

17 Q: Okay. You're back to doing -- everything that
18 you could do at work before this accident,
19 you're back to doing now?

20 A: Yes.

21 Q: Okay. After you returned to work after your
22 surgery, did you go back to full duty when you
23 went back to work?

24 A: Yes.

25 Q: Okay. Was there any time after this accident

1 occurred that you were on what they call light
2 duty or restricted duty at work?

3 A: No.

4 Q: Now, you did work some after this accident
5 occurred, is that right?

6 A: Yes.

7 Q: Okay. Now, this accident occurred on December
8 13th of 2008, which you said was a Saturday.
9 That following Monday, which I guess would have
10 been the 15th of December of 2008, did you go
11 back to work that day?

12 A: Yes.

13 Q: And did you work a full day that day?

14 A: Yes.

15 Q: Did you do all the same things you normally do,
16 stocking machines and doing your route that
17 day?

18 A: Yes.

19 Q: Okay.

20 A: Like I said, I was taking the pain pills so it
21 knocked a lot of the pain off.

22 Q: When was the first time that you missed a full
23 day of work after this accident occurred?

24 A: I worked all the way up to my surgery.

25 Q: Okay. Didn't miss any time from work up until

1 the time of your surgery?

2 A: No.

3 Q: Is that correct? What I said, was that
4 correct?

5 A: Yes.

6 Q: Okay. So, after your surgery is when you
7 started missing time from work?

8 A: Yes.

9 Q: And you said I think you were out six or seven
10 weeks?

11 A: Yes.

12 Q: Was that immediately after the surgery, those
13 six or seven weeks right after the surgery?

14 A: Yes, sir.

15 Q: Ms. Beason, I know you got a fair amount of
16 medical bills after this accident, a lot of
17 which from that surgery. Have those medical
18 bills been paid?

19 A: No.

20 Q: Okay. Had you ever been to the -- to see Dr.
21 Nelson's office at all at any time before this
22 accident occurred? Had you ever treated there
23 before?

24 A: No.

25 Q: Okay. Had you ever been to see an orthopedist

1 at any time before this accident occurred?

2 A: No.

3 Q: Okay. One question I forgot to ask you. Have
4 you ever suffered any broken bones before this
5 accident occurred?

6 A: None but that.

7 Q: Nothing but the finger?

8 A: No.

9 Q: Okay. All right, Ms. Beason. That's all the
10 questions I have for you. Please answer any
11 questions your attorneys may have.

12 MR. LUGINBILL: Nothing from us.

13 Q: All right. Well, we're done.

14 (There being no further questions, the deposition was
15 concluded at 3:09 p.m.)

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) C/A #: 2009-CP-38-2087

Kathy Beason,
Plaintiff,
v.
Chatone Lowden,
Defendant.

COPY

DEPOSITION OF
CHATONE LOWDEN

Thursday, May 27, 2010
3:10 p.m. - 3:41 p.m.

The deposition of CHATONE LOWDEN, taken on behalf of the Plaintiff at the Dean Law Firm, 146 Centre Street, Orangeburg, South Carolina, on the 27th day of May, 2010 before Suzanne R. Bryant, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and agreement of counsel.

1 trial -- slip and fall, workers comp, anything
2 at all?

3 A: No.

4 Q: Other than your Glover Street accident, have
5 you ever been involved in any sort of court
6 litigation?

7 A: No.

8 Q: Have you ever had any DSS involvement?

9 A: No.

10 Q: Ever had your driver's license suspended or
11 revoked for any reason?

12 A: No.

13 Q: At the time of this accident, did you currently
14 have any points against your driver's license
15 for speeding or anything like that?

16 A: At the time of the accident with Ms. Beason?

17 Q: Yes, ma'am.

18 A: No.

19 Q: Do you have now?

20 A: No. Well, no, no points was taken.

21 Q: And I just thought about that. You did receive
22 a ticket as a result of this, correct?

23 A: Yes.

24 Q: And what was -- originally, the ticket was
25 written for failure to yield or too fast for

1 conditions or something like that?

2 A: I think it was traveling too closely.

3 Q: Okay. Following too closely. And was that
4 subsequently reduced down to just careless
5 operation?

6 A: Yes.

7 Q: Okay. And do you agree with that that you
8 were, in fact, carelessly operating your
9 vehicle that day?

10 A: Yes.

11 Q: And because you agree with that, did you pay
12 the fine?

13 A: Yes.

14 Q: All right. In your own words, tell me how the
15 wreck happened.

16 A: I was, like I said, traveling on Broughton
17 Street to take my daughter to meet her father.
18 And Ms. Beason stopped all of a sudden, so I
19 stopped but I had to swerve because I was
20 trying to avoid it her, but an oncoming car was
21 coming. So I ended up bumping Ms. Beason in
22 the back.

23 Q: All right. I'm going to show you some
24 photographs that were taken, I assume by an
25 insurance adjuster. And they have been marked

1 as Plaintiff's Exhibits One through Five. Look
2 at those and tell me if you recognize those as
3 being your vehicle, first of all.

4 A: Yes, sir, it is.

5 Q: All right. And this is how your vehicle looked
6 after the wreck, correct?

7 A: Yes, sir.

8 Q: If I'm looking at these correctly, all the
9 damage seems to be centered around the left
10 front of your vehicle, is that accurate?

11 A: Yes.

12 Q: The drivers side front?

13 A: Yes.

14 **MR. HOOD:** Dan, I don't meant to correct you, but go
15 off the record.

16 (Off the Record)

17 Q: Just to clarify on the record, we're looking at
18 the passenger's side front, is that accurate?

19 A: Yes, I'm sorry.

20 Q: And did you hit the passenger's side front
21 because you were trying to swerve around her?

22 A: Yes.

23 Q: Okay. If I'm looking at this correctly, it
24 busted the grill and knocked out the light and
25 did some damage to your bumper, correct?

1 A: Yes.

2 Q: Did you ever have that repaired?

3 A: Just the light.

4 Q: All right. Was the vehicle operable after the
5 fact?

6 A: Yes.

7 Q: You were able to drive it? Okay. Is that a
8 yes?

9 A: Yes. I said yes. I did.

10 **MR. LUGINBILL:** She actually did.

11 **MR. HOOD:** Oh, okay. I'm sorry. I didn't hear her.

12 Q: I'll let your lawyer wrongfully correct you.

13 **MR. HOOD:** I didn't hear it. I must be going deaf.

14 Q: Were you wearing a seatbelt at the time?

15 A: Yes.

16 Q: All right. Did you have any kind of bruise on
17 your shoulder from the seatbelt --

18 A: No.

19 Q: -- anything like that?

20 A: No, sir.

21 Q: Did your truck have an airbag?

22 A: No.

23 Q: All right. Obviously, if you don't have one,
24 none came out. Did you hit the steering wheel,
25 anything like that?

1 A: No.

2 Q: Did you have any injuries whatsoever?

3 A: No.

4 Q: No aching, sore, anything like that?

5 A: No.

6 Q: Okay. Have you made any claims in this
7 lawsuit?

8 A: No.

9 Q: After you hit Ms. Beason and y'all were still
10 there in the roadway, tell me what happened
11 next.

12 A: While we were sitting in the road, we was
13 waiting on the police officer.

14 Q: Okay. Do you remember about how long that
15 took?

16 A: Probably about 10 minutes.

17 Q: All right. And then what did the police
18 officer have you do?

19 A: He directed us to the side of the street. I
20 don't remember the name of it.

21 Q: But it's that little one way that goes to the
22 right --

23 A: Yes.

24 Q: -- just after you clear the T&D?

25 A: Yes.

1 Q: Okay. And at that point what did you do?

2 A: The officer went and talked to Ms. Beason, I
3 believe, first. I asked her was she all right;
4 she said, yes. And then I stepped back over to
5 my vehicle with my kids. I called my sister.
6 She came over. And after he finished with her,
7 the officer came and talked to me.

8 Q: What time did your sister get there? How long
9 did it take her?

10 A: Probably five minutes. She came before the
11 police officer.

12 Q: Okay. What is her name?

13 A: Yuwanda Lowden.

14 Q: Spell that first name for me.

15 A: Y-U-W-A-N-D-A.

16 Q: Easy enough. All right. To your knowledge,
17 did Ms. Yuwanda Lowden, your sister, did she
18 have any conversations with Ms. Beason?

19 A: No.

20 Q: Did she have any conversations with the police
21 officer?

22 A: Yes. Not about the accident.

23 Q: Okay. What did she speak to the officer about?

24 A: How he was doing and --

25 Q: Did she know him personally?

1 A: No.

2 Q: Was he just cute or --

3 A: No. That's just Wanda.

4 Q: Okay.

5 A: You just got to know my sister; she's a people
6 person.

7 Q: Okay. Was this a Highway Patrol Officer or
8 City of Orangeburg?

9 A: City of Orangeburg.

10 Q: All right. Did you personally have any
11 conversations, other than you mentioned you
12 said you checked on her to say, are you all
13 right, other than that, did you have any
14 conversations with Ms. Beason?

15 A: No.

16 Q: Did you overhear any conversations between Ms.
17 Beason and the police officer?

18 A: No. We was in two separate areas.

19 Q: All right.. So, as far as what they said, you
20 can't say one way or the other?

21 A: No.

22 Q: You have no, other than the initial, are you
23 okay, that's the only contact the two of you
24 had?

25 A: Yes.

1 Q: All right. Do you intend to offer at trial any
2 opinions about whether or not Ms. Beason was
3 actually injured at the scene?

4 **MR. HOOD:** Object to the form. Answer the question,
5 if you can.

6 A: Repeat it again.

7 Q: Do you intend to offer your opinion, based on
8 what you saw, of whether Ms. Beason was
9 actually injured at the scene of the accident?

10 **MR. HOOD:** Same objection.

11 A: If asked, I guess I have to or I would.

12 Q: Well, what is your opinion?

13 A: Of her being injured?

14 Q: Yes.

15 A: I can't, I mean, personally, my opinion, this
16 is my personal opinion, I didn't know she was
17 that seriously injured because I thought she
18 was -- said she didn't need an ambulance. She
19 didn't need an ambulance -- she didn't ask for
20 an ambulance, let me say that, because I don't
21 know what she said. So it just was surprising.

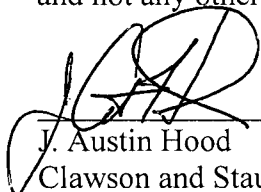
22 Q: Let me go back to your -- the accident that you
23 had in 2000.

24 A: Right.

25 Q: Were you hurt? What were your injuries in an

CERTIFICATE OF COUNSEL

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2009-CP-38-2087

Kathy Beason,.....Respondent,

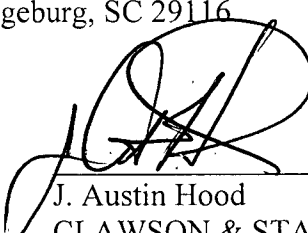
v.

Chatone Lowden,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Respondent Beason by depositing a copy of it in the United States Mail, postage prepaid, on October 28, 2013, addressed to her attorneys of record, Daniel W. Luginbill, P.O. Box 1150, Bamberg, SC 29003 and Clyde C. Dean, Jr., P.O. Box 1405, Orangeburg, SC 29116

October 28, 2013



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Attorney for Appellant

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OCT 30 2013

SC Court of Appeals