

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas**

D. Garrison Hill, Circuit Court Judge

Case No. 2012-CP-23-02379

Frankie Orr, ...Respondent,

v.

Greenville Hospital System, ...Appellant.

RECORD ON APPEAL

Kenneth N. Shaw, SC Bar # 77859
J. Ben Alexander, SC Bar # 15323
HAYNSWORTH SINKLER BOYD, P.A.
ONE North Main, 2nd Floor (29601)
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Greenville, South Carolina 29602
(864) 240-3200
Attorneys for Appellant

Randall Chambers
Chambers Law Firm
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Greenville, SC 29607
(864) 298-0001
Attorney for Respondent

RECEIVED

JUN 02 2014

SC Court of Appeals

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2302379

2013 APR - 1 P 1:32
Frankie Orr

Greenville Hospital
System

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)☐ Statement of Judgment by the Court:

Before the Court is the Defendant's Motion for Summary Judgment.

Under Rule 56 a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. "Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." *McClanahan v. Richland County Council*, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002).

The Defendant argues that the Plaintiff is relying on *res ipsa loquitur*. "[T]he doctrine of *res ipsa loquitur* is not recognized in this State." *Gilland v. Peter's Dry Cleaning Co.*, 195 S.C. 417, 11 S.E.2d 857 (1940). In contrast, the Plaintiff, supported by case law, asserts her negligence claim is not premised on *res ipsa loquitur*. Furthermore, "[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

ENTERED COMPUTER

Having fully reviewed the pleadings, the case law, and the arguments of counsel in a light most favorable to the Plaintiff, this Court is not persuaded at this time that summary judgment is appropriate. Accordingly, the Defendant's Motion for Summary Judgment is respectfully DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

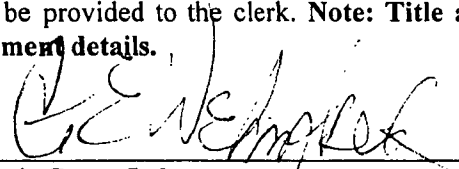
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2137

Judge Code

3/22/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on **4/1/13**, and a copy mailed first class or placed in the appropriate attorney's box on **4/1/13**, to attorneys of record or to parties (when appearing pro se) as follows:

Randall Lee Chambers 804 Laurens Road Greenville, SC
29607

Kenneth N Shaw Haynsworth Sinkler Boyd, P.A. P.O. Box
2048 Greenville, SC 29602



Sarah McMillan Purnell Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

**Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court**

Court Reporter

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2302379

Frankie Orr

Greenville Hospital
System

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)

☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

Hay, Clifton Sinkler Boyd, PA.

Date Rec'd 11/22/13

C/M # 08565.0582

Docketed _____

IDA KNS, AMC

1

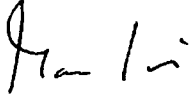
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Frankie Orr	Greenville Hospital System	\$ 40,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

 Circuit Court Judge	D. Garrison Hill Judge Code	2138 Date
		11/18/13

For Clerk of Court Office Use Only

11-19-13

11-19-13

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Randall Lee Chambers 804 Laurens Road Greenville, SC
29607

Kenneth N Shaw Haynsworth Sinkler Boyd, P.A. P O Box
2048 Greenville, SC 29602
Sarah McMillan Purnell Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

**Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court**

Court Reporter Hollie Jenkins

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Frankie Orr,

Plaintiff,

vs.

Greenville Hospital System,

Defendant.

614
C.A. No.: 2011-CP-23-2379

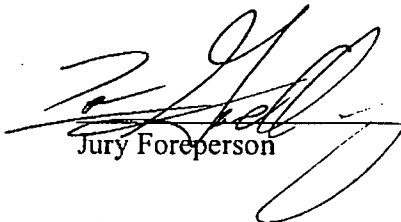
Verdict Form

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENSIMER
2013 NOV 19 PM 1 43

We the jury unanimously find:

_____ for the Defendant Greenville Hospital System.

✓ _____ for the Plaintiff Frankie Orr in the amount of \$ 40,000.00 actual damages.


Jury Foreperson

11/18/13

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Frankie Orr

☐ Plaintiff

v.

Greenville Hospital System

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-23-2379

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Randall L. Chambers, Bar No. 65302
Address:
804 Laurens Road
Greenville, SC 29607
phone: 864-298-0001 fax: 864-335-2393
e-mail: other:

Defendant's Attorney:
Kenneth N. Shaw, Bar No. 77859
Address:
Haynsworth Sinkler Boyd, P.A.
P. O. Box 2048
Greenville, SC 29602
phone: 864-240-4541 fax: 864-240-3300
e-mail: kshaw@hsblawfirm.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Defendant's Motion for Summary Judgment

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: \$25.00**
☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ **MOTION FEE COLLECTED:**

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
2012

Frankie Orr,

C.A. No.: 2012-CP-23-2379

Plaintiff,

vs.

**MOTION FOR AND MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT**

Greenville Hospital System,

Defendant.

MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that Defendant Greenville Hospital System ("GHS") will move this Honorable Court within ten (10) days of service hereof, or as soon thereafter as counsel may be heard, for an Order of Summary Judgment in its favor pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Summary Judgment is appropriate in this case, because Plaintiff has failed to put forth any evidence that GHS breached any duty it may have owed her.

MEMORANDUM IN SUPPORT

Statement of Facts

This case arises out of allegations that Plaintiff was injured on or about April 5, 2010 while visiting her mother who was a patient at GHS's Hillcrest Memorial Hospital. (Compl., ¶ 4.) Plaintiff alleges that a metal framed picture fell off the wall in her mother's hospital room and struck her on the head while she was seated in a chair underneath the picture. (Id.) Plaintiff has no idea what caused the picture to fall off the wall. (Frankie Orr Depo, August 29, 2012, pp. 34:21-22 & 53:6-8, relevant excerpts attached hereto as Exhibit 1.)

Legal Analysis

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Calvert v. House Beautiful Paint and Decorating Ctr., Inc., 313 S.C. 494, 443 S.E.2d 398 (1994). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (quoting George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). A party opposing a motion for summary judgment may not rest on the mere allegations or denials of his pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672, 673 (Ct. App. 1991). The nonmoving party's failure to prove an essential element of a case renders all other facts immaterial. Celotex v. Catrett, 477 U.S. 317, 322 (1986).

A property owner is not an insurer of the safety of an invitee, "but only owes the duty of exercising ordinary care to keep the premises in reasonably safe condition." Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 832 (2001); see also Denton v. Winn-Dixie Greenville, Inc., 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993) (holding that a store has no duty to make the parking lot accident proof because it "is not required to maintain the premises in such a condition that no accident could happen to a patron using them.") In order for a plaintiff "to recover damages for injuries caused by a dangerous or defective condition, the plaintiff must show either (1) that the injury was caused by a specific act of the [defendant] which created the dangerous condition or (2) that the [defendant] had actual or constructive knowledge of the dangerous condition and

failed to remedy it.” Garvin, *supra*. South Carolina does not follow the rule of *res ipsa loquitur*, so the plaintiff must put forth some evidence in support of his or her allegation that the defendant was negligent. See Eickhoff v. Beard-Laney, Inc., 199 S.C. 500; 20 S.E.2d 153 (1942). When a plaintiff cannot establish facts to meet this burden, summary judgment is appropriate. Bessinger v. Bi-Lo, Inc., 329 S.C. 617, 496 S.E.2d 33 (Ct. App. 1997); Calvert v. House Beautiful Paint and Decorating Center, 443 S.E.2d 398, 313 S.C. 494 (1994); Hunter v. Dixie Home Stores, 101 S.E.2d 262, 232 S.C. 139 (1957).

Under the two-part analysis set forth in Garvin, Plaintiff must present evidence to prove that her injuries were caused by a specific act of GHS which created a dangerous condition, or that GHS had knowledge of a dangerous condition and failed to correct it. Specifically, Plaintiff has the burden of proving that GHS either hung the picture in such a manner that it presented an unreasonable risk of falling and hitting someone, or GHS had knowledge that the picture was hung in such a manner and failed to either correct it or adequately warn Plaintiff of it. Plaintiff has put forth no such evidence in this case.

Plaintiff alleges that “GHS failed to secure the picture frame to the wall,” (Compl., ¶ 6(a)), but there is absolutely no evidence to suggest there is any truth to that allegation. In fact, there is no evidence to suggest that the picture was hung improperly or that it in any way amounted to a dangerous condition. But even if that could somehow be inferred, there is no evidence to suggest that a GHS employee was responsible for hanging the picture.

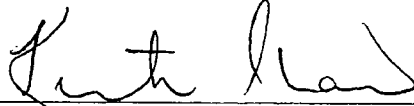
Plaintiff next alleges that GHS failed to “maintain a safe, sanitary, and clean environment in which to conduct its business.” (Id.) While it is unclear how the cleanliness or sanitary condition of the hospital is at all relevant to this case, Plaintiff has

put forth no evidence to suggest GHS breached its duty to maintain a reasonably safe environment.

Simply put, Plaintiff has put forth no evidence to suggest GHS did something that somehow caused the picture to fall off the wall. Neither has Plaintiff put forth any evidence to suggest GHS had or should have had prior knowledge that the picture was going to fall off the wall. The mere fact that the picture fell is not enough to infer negligence on the part of GHS. See Eickhoff, supra. Since Plaintiff has failed to put forth any evidence in support of her allegations, GHS is entitled to summary judgment.

WHEREFORE, GHS respectfully moves the Court for entry of a final order granting summary judgment in its favor as to all issues and dismissing this lawsuit with prejudice pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Respectfully Submitted,



Kenneth N. Shaw, S.C. Bar No. 77859
Sally M. Purnell, S.C. Bar No. 15199
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602
864-240-3200

Attorneys for Defendant
Greenville Hospital System

December 21, 2012
Greenville, SC

Transcript of the Testimony of

Frankie Orr

Date: August 29, 2012

In the Matter of:

Frankie Orr v. Greenville Hospital System

2012-Cp-23-2379

Irveta J. Shouse / GWC
PO Box 9177
Greenville, SC 29604
Phone: 864-233-2341
Email: Irvetaj@aol.com

Frankie Orr
August 29, 2012

Page 34

1 Q: ... or a recliner or ...

2 A: It was one of those, it was blue and green and it
3 was a phewt, phewt, phewt chair, no arms.

4 Q: Okay.

5 A: Oh, wait a minute, it did have arms. It had arms.
6 I think they flip up and lay back, make like a bed.

7 Q: Okay. That's what I was asking. Was it a chair
8 that could recline?

9 A: I guess it could. I don't really know if it could
10 or not. I didn't ...

11 Q: But you did not recline it when you sat down?

12 A: Oh, no.

13 Q: How long after sitting down ...

14 A: I didn't get a chance.

15 Q: How long after sitting down ...

16 A: It was almost instantly. I had just sat down and
17 wham and my world went dark.

18 Q: When you sat down, do you know if the chair hit the
19 wall or anything like that?

20 A: I couldn't tell you.

21 Q: So do you know what caused the picture to fall?

22 A: I certainly don't know.

23 Q: And where did the picture hit you?

24 A: It hit me right here, boom. And I was sitting like
25 this talking to my mother. It didn't hit me in the crown of

Irveta J. Shouse / GWC
(864) 233-2341

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Frankie Orr
August 29, 2012

Page 53

1 speak to him, but does anyone have any Advil?

2 Q: I don't, no. But we shouldn't be keeping you too
3 much longer, so we should be able to wrap this up shortly.
4 After the picture fell, did you speak to anyone or since the
5 picture fell, have you spoken to anyone at the hospital in
6 regards to why the picture fell? Has anyone told you why the
7 picture fell?

8 A: No. I spoke to whatever that man's name was, some
9 kind of administrator or whatever, he called me. Mr. ---
10 From the Legal Department.

11 Q: Okay.

12 A: He called me. Didn't ask me how I was feeling. It
13 was two weeks before they did a follow-up call from the
14 hospital to see how I was doing and a nurse finally called.
15 And then the gentleman, the man that called me asked me a very
16 rude question.

17 Q: What did he ask you?

18 A: Asked me exactly how I sat down in the chair. Did
19 I just flop down? I said, "Excuse me, sir. I don't flop in
20 chairs." "Oh, I didn't mean it that way." I said, "Okay."
21 "By the way, how are you feeling?" I said, "Well, I was
22 feeling pretty good." I said, "I'm still a little nauseous,
23 I'm still dizzy, I'm still having the headaches, I'm still
24 having the tingling and the numbness in the arm and the
25 shoulder." "Well, we need to sit down and see if we can't

Irveta J. Shouse / GWC
(864) 233-2341

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2012-CP-23-02379

FRANKIE ORR,

PLAINTIFF,

vs.

GREENVILLE HOSPITAL SYSTEM,
DEFENDANT.

TRANSCRIPT OF RECORD

ORIGINAL

November 18, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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

RANDALL L. CHAMBERS, ESQ.
Attorney for the Plaintiff

KENNETH N. SHAW, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

(WHEREUPON, Plaintiff's Exhibit No. 1 was marked for identification only.)

P R E - T R I A L M O T I O N S

THE COURT: Anything before we bring the jury panel up?

MR. CHAMBERS: Not from the Plaintiff, Your Honor.

MR. SHAW: Your Honor, I did have a pre-trial brief in which I had kind of a motion in limine in there in regards to some testimony that I anticipate the Plaintiff may --

THE COURT: About the medication?

MR. SHAW: About -- yes, the medication that was, initially, given to her in the ER after this incident occurred.

THE COURT: What about that, Mr. Chambers?

MR. CHAMBERS: Well, Your Honor, my -- in discovery and during her deposition, my client did indicate that they had attempted to give her some medication, and she told them that she was allergic to it. I think that's what he's talking about. I mean, that's part of what happened. It's not hearsay.

THE COURT: Well, how is it relevant, though?

MR. CHAMBERS: Well, it's relevant as to what transpired while she was there being treated. But it's

1 not that big of a deal. So if the Court is inclined to
2 have us not get into that, I'll tell her not to talk about
3 that.

4 THE COURT: Yes. Let's just -- I mean, I don't see
5 how it's advancing anything.

6 MR. SHAW: Your Honor, also, Mr. Chambers just handed
7 to me what I believe he plans to, at some point, introduce
8 as an exhibit, I'm assuming, during Ms. Orr's testimony.
9 And it's a medical specials exhibit.

10 He's listed on that a copy of -- or listed in the
11 exhibit -- and the first thing is Hillcrest Memorial
12 Hospital. And it's medical bills of \$5,529.40. Ms. Orr
13 was never, actually, billed that. That amount was written
14 off by the hospital.

15 I would like to have any evidence of that excluded on
16 the grounds that it -- excluded under Rule 409, which is
17 payment of any sort of medical fees by the Defendant on
18 behalf of the Plaintiff, which is what we would have here.
19 And, obviously, introduction of that into evidence would
20 prejudice my client to the extent that it would tend to
21 tell the jury that my client paid that because they felt
22 they were somehow liable for this incident.

23 MR. CHAMBERS: Your Honor, our position would be,
24 first of all, my client never received anything indicating
25 that that had been written off. I have been told that and

1 believe that to be true. And she, certainly, hasn't
2 received a bill.

3 But, more importantly, we believe it is directly
4 relevant and does not fall under Rule 409 because it goes
5 to the value of the case. It goes to the heart of what
6 the jury has to determine. And that -- they put the value
7 on medical services that were provided. And so we believe
8 that the jury has a right and, actually, needs to hear
9 that so that they can assess what the proper amount of
10 damages would be in this particular case.

11 You know, I would equate it to those cases that
12 involve the military where, obviously, the service member
13 doesn't have to pay anything, but it is still relevant as
14 to what the hospital would have charged somebody who was
15 not in the military for those services. It goes to the
16 value of the case.

17 MR. SHAW: Your Honor, if I may. I mean, the analogy
18 that Mr. Chambers draws is not quite the same as here.
19 This ball is squarely under Rule 409, which it is the
20 Defendant that is paying the medical bill on behalf of the
21 Plaintiff, as opposed to a situation where someone goes
22 into a charitable hospital or something like that and
23 receives treatment free of charge. That's not what we
24 have here.

25 This is an incident where the Defendant wrote off the

1 bill on behalf of the Plaintiff. And if that comes into
2 evidence, Your Honor, it's, certainly, going to prejudice
3 my client. Because the -- it will be viewed by the jury
4 as some sort of admission of liability since they wrote
5 that bill off.

6 MR. CHAMBERS: Well -- and, Your Honor, we're not
7 going to get into that they wrote the bill off. I mean,
8 I've already instructed my client not to make any
9 reference to that. We simply want to introduce this as
10 the charges that were presented by Hillcrest Memorial
11 Hospital.

12 I mean, they're not going to suffer any prejudice.
13 Because we're not going to say anything about them writing
14 it off. It's not going to go to whether there is an
15 admission of liability or anything like that. It simply
16 goes to the value of the case, what the damages should be
17 in this case.

18 THE COURT: Well, the rule, according to the note,
19 strictly prohibits the admission of evidence of offers to
20 pay or payment of medical or other similar expenses.

21 So I guess the issue is you're not seeking to admit
22 evidence that they paid it?

23 MR. CHAMBERS: No, sir.

24 THE COURT: So how does that rule still apply?

25 MR. SHAW: Well, Your Honor, I think if he seeks to

1 admit that there was a bill for \$5,529.40 that was never,
2 actually, billed to her and tries to -- and gets that info
3 evidence so that the jury believes -- you know, if he
4 presents this and the jury sees this, the jury is going to
5 believe that she had a bill for \$5,529. That's just not
6 the case. She did not have a bill for \$5,529.

7 To some degree, it forces me to then question her
8 about whether or not she was, actually, ever billed this
9 amount. And it forces me to violate the rule, Your Honor,
10 which I don't want to do.

11 THE COURT: Well, I think if he puts it in, you can
12 ask her that.

13 MR. SHAW: Well, I understand I could ask her that.
14 But then if I tell -- if I ask her, did you pay this? If
15 I say, you didn't, actually, pay this \$5,529, did you?

16 No, I didn't.

17 Well, again, then I'm doing this very same thing I'm
18 trying to keep him from doing, which is introducing
19 evidence that we wrote off a bill on her behalf.

20 THE COURT: Well, you -- do you have any objection to
21 him doing that, if you put it in?

22 MR. CHAMBERS: No, not at all.

23 MR. SHAW: I'm sure he doesn't because he's getting
24 the \$5,529 in. But I'm saying to get the -- I -- he puts
25 me in the position that I have to make a choice. I either

1 don't say anything about the \$5,529, which she didn't pay
2 for -- she didn't, actually, incur any sort of expense for
3 that. No one did. And, again, it was completely written
4 off.

5 So I either have to introduce that and potentially
6 prejudice my client to do so, or I have to just sit back
7 and let the jury believe she had more damages than she,
8 actually, did.

9 MR. CHAMBERS: Your Honor, it's irrelevant in my mind
10 whether the bills were ever paid or not. Does he intend
11 to ask about Greenville Radiology, and Henry Chiropractic,
12 and Carolina Neurology and whether those bills were paid?

13 I mean, those are her bills. That is the bill that
14 was submitted. That is the value of the services that was
15 submitted by Greenville Hospital System. I didn't make
16 the number up. And I believe that it is something that
17 the jury needs to hear.

18 THE COURT: Well, I mean, how was she notified that
19 she wasn't responsible for the bill?

20 MR. CHAMBERS: She was notified by me. She said she
21 never received anything from the hospital.

22 THE COURT: What did the hospital send her?

23 MR. SHAW: The hospital never sent her a bill, Your
24 Honor.

25 THE COURT: Well, I mean --

1 MR. SHAW: The way the number came out was in
2 discovery when we produced, you know, the entire record.
3 We never sent her a bill, Your Honor, for the \$5,529.

4 I mean, obviously, the hospital for its own
5 accounting purposes keeps a record of what services are
6 given, and so forth, and the value of those services. But
7 then the decision was made to write that off and never
8 bill Ms. Orr for it.

9 THE COURT: Is there an allegation of permanent
10 injury?

11 MR. CHAMBERS: There is, Your Honor.

12 THE COURT: What is it?

13 MR. CHAMBERS: It is Dr. Henry, who is the
14 chiropractor, he has given her -- has said that,
15 basically, she's going to continue to have the sort of
16 problems that she has. There's not an impairment rating,
17 specifically. But he has indicated that she will continue
18 to have the numbness and other complaints for which she
19 was treated to some degree for the rest of her life.

20 That said, I mean, we're not -- we have not asked for
21 and are not seeking any future damages. It's just
22 something that, you know, he's going to testify to. And,
23 as you will hear as the case goes on, she had significant
24 preexisting conditions that, you know, the jury is going
25 to hear about and be able to consider. But we believe

1 that her condition was substantially aggravated by this
2 picture falling on her head at the hospital.

3 THE COURT: I mean, I can see both sides of this
4 issue in terms of Mr. Shaw being put in an awkward
5 position. However, the hospital put Ms. Orr in an awkward
6 position by not billing her in terms of limiting her
7 ability to present evidence.

8 I can -- you know, my instinct after reviewing the
9 rule and my ruling in limine would be that he could put it
10 in. You could question her about -- Mr. Shaw could
11 question her about whether she's received the bill. And
12 I'll be glad to give some kind of limiting instruction
13 that says the failure to bill is not admissible to prove
14 liability. It's just being introduced for purposes of
15 showing her reasonable medical expenses. That's all I
16 know to do.

17 MR. SHAW: Okay.

18 THE COURT: Anything else before we bring the jury
19 panel up?

20 MR. CHAMBERS: Not from the Plaintiff, Your Honor.

21 THE COURT: Does anybody have any voir dire?

22 MR. SHAW: I think we already handed them up.

23 THE COURT: I've got a brief -- oh, yes. Okay.

24 Thank you.

25 Okay. You can bring the panel up.

1 MR. CHAMBERS: Your Honor, if I could, I didn't
2 submit any voir dire. I didn't anticipate anything beyond
3 the standard. But it seemed -- there was, at least, one
4 individual downstairs who stood up and said she worked for
5 the Greenville Hospital System. And it -- and that sort
6 of made a light bulb go off in that I would ask the Court
7 to ask if anybody or their family members is employed by
8 the Greenville Hospital System.

9 THE COURT: Okay. I will.

10 We have Mr. Hamrick, #148, who, as y'all may recall,
11 approached stating that his responsibilities as the owner
12 of Wing Zone restaurant would preclude him from fulfilling
13 his obligations as a citizen. We have enough jurors. I
14 can -- if anybody has strong feelings about it, I can take
15 him off this list. But I'm inclined to leave him on. But
16 if y'all agree he can be taken off, I don't have a problem
17 taking him off.

18 MR. CHAMBERS: I would, actually, like him to be
19 taken off, not out of my concern that Wing Zone will not
20 be able to supply wings to the Greenville community, but
21 that he is going to be so upset about being here that I
22 don't really know how fair and deliberate that he will be.

23 MR. SHAW: I may not agree with Mr. Chambers on a lot
24 of things today, but I'll agree with him on that point.

25 THE COURT: All right. Well, tell Judy just to

1 transfer him to another term when it's not wing season.

2 THE CLERK: Okay.

3 THE COURT: I gave him a pretty clear message that
4 he -- or, at least, I thought I did that they needed to be
5 careful what they asked for.

6 MR. SHAW: It is football season, Your Honor. I
7 mean, he -- it's Monday night --

8 THE COURT: Well, yes. You're right.

9 (Pause.)

10 (WHEREUPON, the jury panel the entered the
11 courtroom.)

12 THE COURT: Ladies and gentlemen, we're going to
13 select the jury in the case of Frankie Orr v. Greenville
14 Hospital System. I'm going to go through some questions
15 to ensure that the jury can be fair and impartial in this
16 case. I know very little about the case. The lawyers
17 will tell you more about it once we begin the trial with
18 the opening statements.

19 JURY QUALIFICATION

20 THE COURT: The first question is: Is there anyone
21 related by blood or marriage or kin to in any way
22 Ms. Frankie Orr?

23 And, Ms. Orr, if you'll just stand up.

24 (WHEREUPON, there was no response.)

25 THE COURT: Can she stand up and face the jury?

1 MR. CHAMBERS: Oh, I'm sorry, Your Honor.

2 THE COURT: Okay. Thank you, ma'am.

3 Does anyone have any personal, social, or business
4 relationship with Ms. Orr? If so, please, stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Is there anyone who is an employee of or
7 a member of the board or otherwise associated with
8 Greenville Hospital System? If so, please, stand.

9 Yes, ma'am. Tell me your name.

10 JUROR #149, ANGELA STONE: Angela Stone.

11 THE COURT: Okay. What's your connection?

12 JUROR #149, ANGELA STONE: Oh, I work at Greenville
13 Hospital.

14 THE COURT: What do you do for them?

15 JUROR #149, ANGELA STONE: I'm a nurse.

16 THE COURT: Thank you, ma'am.

17 Does anybody have any immediate family members who
18 work at Greenville Hospital System? By "immediate," I
19 mean spouse, child, parent, sibling.

20 Mr. Hill.

21 JUROR #52, DAVID HILL: My mom works at the
22 Greenville Hospital System as a housekeeper.

23 THE COURT: All right. Thank you.

24 JUROR #77, IAN KINLOW: My mother is a nurse at
25 Greenville Hospital System.

1 THE COURT: What's your name again, sir?

2 JUROR #77, IAN KINLOW: Ian Kinlow.

3 THE COURT: All right, Mr. Kinlow.

4 Would that effect your ability to be fair and
5 impartial in this case, Mr. Hill, or, Mr. Kinlow?

6 (WHEREUPON, Juror #52, David Hill, and Juror #77, Ian
7 Kinlow, shook their heads.)

8 THE COURT: You have to say "yes" or "no."

9 JUROR #52, DAVID HILL: No, sir.

10 JUROR #77, IAN KINLOW: No, sir.

11 THE COURT: Do you believe you could decide this case
12 based on the evidence and the law?

13 JUROR #52, DAVID HILL: Yes, sir.

14 JUROR #77, IAN KINLOW: Yes, sir.

15 THE COURT: All right. Yes, ma'am.

16 JUROR #61, APRIL HUGHES: Are inlaw's considered part
17 of the immediate family?

18 THE COURT: That depends on your relationship with
19 them, I guess.

20 JUROR #61, APRIL HUGHES: It's really good.

21 THE COURT: You can go ahead and tell us -- what's
22 your name, ma'am?

23 JUROR #61, APRIL HUGHES: April Hughes.

24 It's my mother-in-law. She works for Greenville
25 Hospital System.

1 THE COURT: What does she do?

2 JUROR #61, APRIL HUGHES: She's in workers
3 compensation, I think.

4 THE COURT: All right. What's her name?

5 JUROR #61, APRIL HUGHES: Ann Hughes.

6 THE COURT: Okay. Would that effect your ability to
7 be fair and impartial in this case, Ms. Hughes?

8 JUROR #61, APRIL HUGHES: No, sir.

9 THE COURT: Could you decide this case based on the
10 evidence and the law?

11 JUROR #61, APRIL HUGHES: Yes, sir.

12 THE COURT: I'm going to ask the lawyers who are
13 going to be involved in the case to introduce themselves
14 and the people at their table.

15 So, yes, sir, Mr. Chambers.

16 MR. CHAMBERS: My name is Randy Chambers. I'm a
17 lawyer here in Greenville. And you've already met my
18 client, Ms. Orr, Frankie Orr.

19 THE COURT: Mr. Shaw.

20 MR. SHAW: My name is Kenneth Shaw. I'm, also, a
21 lawyer here in Greenville with the firm of Haynsworth,
22 Sinkler, Boyd. Ms. Judy Brown is here with the hospital
23 system. And Amy Clark is my paralegal.

24 THE COURT: Okay. Is anyone related by blood or
25 marriage or kin to in any way Mr. Chambers, Mr. Shaw,

1 Ms. Brown, or Ms. Clark? If so, please, stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: Does anyone have any personal, social, or
4 business relationship with any of the individuals I just
5 mentioned? If so, please, stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: Has anyone ever been involved in a
8 dispute where -- or a lawsuit or a transaction where they
9 were represented by Mr. Chambers, or Mr. Shaw, or his
10 firm, Haynsworth, Sinkler, Boyd? If so, please, stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Has anyone been involved in a dispute, or
13 a lawsuit, or a transaction where the other side was
14 represented by one of these lawyers or their firms? If
15 so, please, stand.

16 Yes, ma'am.

17 JUROR #144, AMY WEBBER: I have a question, Your
18 Honor.

19 THE COURT: What's your name?

20 JUROR #144, AMY WEBBER: My name is Amy Webber.

21 THE COURT: Yes, Ms. Webber.

22 JUROR #144, AMY WEBBER: In -- a number of years ago,
23 my father and my stepmother were involved in a lawsuit
24 with the Greenville Hospital System --

25 THE COURT: All right. I'll tell you what we'll do.

1 I'm going to ask about that in just a minute.

2 JUROR #144, AMY WEBBER: Okay. I just --

3 THE COURT: If you'll come up here, we'll talk a
4 little bit more privately up here on the record. But --

5 JUROR #144, AMY WEBBER: Okay.

6 THE COURT: -- thank you for telling me about that,
7 ma'am.

8 And we'll go ahead and ask that question now. Is
9 there anyone who has ever filed a lawsuit against, or had
10 a claim against, or been involved in an incident where
11 injuries were incurred, or any other dispute with the
12 Greenville Hospital System? That's the first question.

13 Has anyone ever filed a lawsuit for personal injuries
14 they've sustained? That's the second question.

15 The third question is: Has anyone ever had injuries
16 as a result of an accident at a business or a commercial
17 location, including hospitals?

18 And, finally, has anyone ever been treated by a
19 chiropractor?

20 So those are the questions. If anybody needs to
21 respond to those, I can talk to you up here. We'll just
22 form a short line right there.

23 Does anybody need to respond, other than Ms. Webber?

24 UNIDENTIFIED JUROR: I've been treated by a
25 chiropractor --

1 THE COURT: We'll do it one by one up here.

2 (WHEREUPON, a sidebar was held with the Court, the
3 attorneys, and potential jurors.)

4 (WHEREUPON, Juror #144, Amy Webber, came forward.)

5 THE COURT: Okay. Yes, ma'am. Go ahead.

6 JUROR #144, AMY WEBBER: My father -- it was a
7 wrongful death suit with the Greenville Hospital System.
8 He went in to have a pin -- I'm not sure how much
9 detail -- but he went in to have surgery to have a pin put
10 in his hip. His blood pressure dropped --

11 THE COURT: If you'll just keep your voice down.

12 JUROR #144, AMY WEBBER: I'm sorry.

13 I was there. We were trying to get the attention of
14 the nurses. We called the doctor on call. He refused to
15 come. He said he didn't need to come. Anyway, he died.
16 My stepmother filed suit. And it was very nasty. And I
17 would be lying if I didn't say I have hard feelings.

18 THE COURT: Okay. We'll excuse you.

19 JUROR #144, AMY WEBBER: I think it was in here.

20 (Pause.)

21 I'm sorry.

22 Thank you.

23 THE COURT: I'm sorry.

24 Thank you for telling me that.

25 MR. SHAW: We appreciate it.

1 (WHEREUPON, Juror #144, Amy Webber, resumed her seat
2 on the jury panel.)

3 THE COURT: Yes, sir.

4 (WHEREUPON, Juror #75, Cornell King, came forward.)

5 THE COURT: Mr. King, how are you doing today?

6 JUROR #75, CORNELL KING: Yes, sir.

7 I was in a truck accident in 1993. And I sustained
8 lower back and upper shoulder injuries. I was treated by
9 a chiropractor.

10 THE COURT: Would anything about those experiences
11 affect your ability to be fair and impartial in this
12 trial?

13 JUROR #75, CORNELL KING: No, sir.

14 THE COURT: Okay. Thank you.

15 (WHEREUPON, Juror #75, Cornell King, resumed his seat
16 on the jury panel.)

17 (WHEREUPON, Juror #147, Reginald Young, came
18 forward.)

19 THE COURT: Yes, sir. How are you doing, Mr. Young?

20 JUROR #147, REGINALD YOUNG: Yes. I have been
21 treated by a chiropractor before. That's it.

22 THE COURT: Would that affect your ability to be fair
23 and impartial in this trial?

24 JUROR #147, REGINALD YOUNG: No.

25 THE COURT: Okay. Thank you.

1 (WHEREUPON, Juror #147, Reginald Young, resumed his
2 seat on the jury panel.)

3 (WHEREUPON, Juror #116, Mittie Rice, came forward.)

4 JUROR #116, MITTIE RICE: I've --

5 THE COURT: Ms. Rice?

6 JUROR #116, MITTIE RICE: Rice, yeah.

7 I've gone for chiropractic treatment. And that's
8 pretty much it.

9 THE COURT: Could you still be fair and impartial in
10 this case? I suspect we'll maybe hear evidence about
11 chiropractic treatment. Would that be --

12 JUROR #116, MITTIE RICE: Sure. That's not a
13 problem.

14 THE COURT: All right. Thank you.

15 (WHEREUPON, Juror #116, Mittie Rice, resumed her seat
16 on the jury panel.)

17 (WHEREUPON, Juror #103, Jeffrey Owens, came
18 forward.)

19 JUROR #103, JEFFREY OWENS: I had a workers comp
20 related case. And that's why I'm going to have surgery
21 Thursday for my back. And it's going to be at Greenville
22 Hospital System. I don't know if that has anything to do
23 with it.

24 THE COURT: That's who you work for?

25 JUROR #103, JEFFREY OWENS: No.

1 THE COURT: That's where you're getting your
2 treatment?

3 JUROR #103, JEFFREY OWENS: That's where I'm going to
4 get my shots and stuff on Thursday.

5 THE COURT: Thank you, Mr. Owens.

6 (WHEREUPON, Juror #75, Jeffrey Owens, resumed his
7 seat on the jury panel.)

8 (WHEREUPON, Juror #66, Clifford Jenkins, came
9 forward.)

10 THE COURT: Good morning.

11 JUROR #66, CLIFFORD JENKINS: My name is Cliff
12 Jenkins.

13 And just several years ago, I was treated by a
14 chiropractor for a couple of months. That was it.

15 THE COURT: I anticipate we'll have evidence about
16 chiropractic treatment in this case. Will you be able to
17 fairly and impartially weigh that kind of testimony?

18 JUROR #66, CLIFFORD JENKINS: Yes, Your Honor.

19 THE COURT: Thank you, sir.

20 (WHEREUPON, Juror #66, Clifford Jenkins, resumed his
21 seat on the jury panel.)

22 (WHEREUPON, Juror #62, Dorothy Hughes, came forward.)

23 THE COURT: Hi.

24 JUROR #62, DOROTHY HUGHES: Hi. I've been treated by
25 a chiropractor before.

1 THE COURT: Ms. Hughes, so there may be testimony
2 about chiropractic treatment. Could you judge that fairly
3 and impartially?

4 JUROR #62, DOROTHY HUGHES: Yes, sir.

5 THE COURT: Thank you, ma'am.

6 (WHEREUPON, Juror #62, Dorothy Hughes, resumed her
7 seat on the jury panel.)

8 (WHEREUPON, Juror #11, Krystal Brown, came forward.)

9 THE COURT: Okay, ma'am.

10 JUROR #11, KRYSTAL BROWN: I've just been treated by
11 a chiropractor.

12 MR. SHAW: Ms. Brown?

13 JUROR #11, KRYSTAL BROWN: Krystal Brown.

14 THE COURT: There may be evidence about chiropractic
15 treatment. Could you judge that fairly and impartially?

16 JUROR #11, KRYSTAL BROWN: I would think so.

17 THE COURT: Thank you.

18 (WHEREUPON, Juror #11, Krystal Brown, resumed her
19 seat on the jury panel.)

20 THE COURT: The lady that works at the hospital --

21 MR. CHAMBERS: Yes. I would ask that she be struck
22 for cause.

23 THE COURT: What's her name?

24 MR. SHAW: Stone.

25 MR. CHAMBERS: Stone.

1 THE COURT: That's Ms. Stone.

2 Okay. Anything else we need to ask?

3 MR. CHAMBERS: I can't think of anything.

4 THE COURT: Does that cover it with you?

5 MR. SHAW: I think so.

6 THE COURT: So we'll be -- Randy, we'll be striking
7 from one through --

8 MR. SHAW: 22.

9 THE COURT: -- 23; right? Hamrick is off.

10 One to 23; is that right?

11 THE CLERK: Yes.

12 THE COURT: And we'll have one alternate, I guess.

13 THE CLERK: Are we going to have an alternate, too?
14 Did you say --

15 THE COURT: Just one.

16 (WHEREUPON, the sidebar was concluded.)

17 THE COURT: Okay. Does anyone know of any reason why
18 they could not be fair and impartial in this case, other
19 than what you may have already told me? If so, please,
20 stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: Is anyone aware of any kind of bias or
23 prejudice they may have concerning anyone involved in the
24 case, or any issue involved in the case? If so, please,
25 stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: All right. We will now move to the
3 actual selection.

4 And, yes, ma'am, Ms. Coker.

5 THE CLERK: We'll strike one through 23. Plaintiff
6 goes first. Four strikes each.

7 MR. CHAMBERS: Did you say one through 23?

8 THE CLERK: One through 23.

9 JURY SELECTION

10 MR. CHAMBERS: The Plaintiff strikes 23.

11 THE CLERK: Plaintiff strikes 23.

12 MR. SHAW: The Defendant strikes 14.

13 THE CLERK: Defendant strikes 14.

14 MR. CHAMBERS: The Plaintiff strikes 12.

15 THE CLERK: Plaintiff strikes 12.

16 MR. SHAW: The Defendant strikes 13.

17 THE CLERK: Defendant strikes 13.

18 MR. CHAMBERS: The Plaintiff strikes nine.

19 THE CLERK: Plaintiff strikes nine.

20 MR. SHAW: The Defendant strikes 21.

21 THE CLERK: Defendant strikes 21.

22 MR. CHAMBERS: The Plaintiff strikes six.

23 THE CLERK: Plaintiff strikes six.

24 MR. SHAW: The Defendant strikes 20.

25 THE CLERK: Defendant strikes 20.

1 Now, our alternate will come from 24, 25, and 26.
2 MR. CHAMBERS: The Plaintiff strikes 26.
3 THE CLERK: Plaintiff strikes 26.
4 MR. SHAW: The Defendant strikes 25.
5 THE CLERK: Defendant strikes 25.
6 Gentlemen, I'll call these back to you.
7 Plaintiff strikes six, nine, 12, 23, and 26.
8 Defendant strikes 13, 14, 20, 21, and 25.
9 Ladies and gentlemen, when I call your name, please,
10 bring your things and have a seat in our jury box.
11 Catherine Dillard.
12 (WHEREUPON, Catherine Dillard, a white female, came
13 forward.)
14 THE CLERK: Zane Gadbury.
15 (WHEREUPON, Zane Gadbury, a white male, came
16 forward.)
17 THE CLERK: Mittie Rice.
18 (WHEREUPON, Mittie Rice, a white female, came
19 forward.)
20 THE CLERK: Rosy Escobar.
21 (WHEREUPON, Rosy Escobar, a Hispanic female, came
22 forward.)
23 THE CLERK: Jeremy Hudson.
24 (WHEREUPON, Jeremy Hudson, a white male, came
25 forward.)

1 THE CLERK: Krystal Brown.
2 (WHEREUPON, Krystal Brown, a white female, came
3 forward.)
4 THE CLERK: Kim Wuerfel.
5 (WHEREUPON, Kim Wuerfel, a white female, came
6 forward.)
7 THE CLERK: Megan Coleman.
8 (WHEREUPON, Megan Coleman, a white female, came
9 forward.)
10 THE CLERK: David Stroup.
11 (WHEREUPON, David Stroup, a white male, came
12 forward.)
13 THE CLERK: Wayne Blake.
14 (WHEREUPON, Wayne Blake, a black male, came forward.)
15 THE CLERK: Dennis Ruf.
16 (WHEREUPON, Dennis Ruf, a white male, came forward.)
17 THE CLERK: Dorothy Hughes.
18 (WHEREUPON, Dorothy Hughes, a white female, came
19 forward.)
20 THE CLERK: John Finnaren.
21 (WHEREUPON, John Finnaren, a white male, came
22 forward.)
23 THE CLERK: And our alternate is Ian Kinlow.
24 (WHEREUPON, Ian Kinlow, a black male, came forward.)
25 THE COURT: Any matters or motions related to the

1 selection process or the composition of the jury?

2 MR. CHAMBERS: Not by the Plaintiff, Your Honor.

3 MR. SHAW: None by the Defendant, Your Honor.

4 THE COURT: All right. I find it complied with all
5 statutory and Constitutional requirements.

6 Ladies and gentlemen, you've been selected to be the
7 jury in the case of Frankie Orr v. Greenville Hospital
8 System. I just ask that you go back to the jury room.
9 Don't talk about the case. And we will begin it
10 momentarily.

11 Thank you.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 11:45 a.m.)

14 THE COURT: Let me ask the lawyers something up here
15 real quick.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: Can you bring the jury back out,
18 Mr. Thompson.

19 THE BAILIFF: Yes, sir.

20 (WHEREUPON, the jury came into open court at
21 approximately 11:48 a.m.)

22 THE COURT: Okay. I made a mistake. I apologize.
23 It was right there in front of me and I forgot to ask
24 about some people who may be testifying in this case
25 who -- just to make sure that nobody has any relationship

1 with them.

2 The potential witnesses, in addition to Ms. Frankie
3 Orr, are Brittany Medlin, Caso Suarez, and Dr. Lucian
4 Henry. Is anyone related by blood or marriage or kin to
5 any of these people? And I'm asking both the people in
6 the jury box and the other members of the jury panel.

7 (WHEREUPON, there was no response.)

8 THE COURT: Does anyone have any personal, social, or
9 business relationship with any of these potential
10 witnesses? If so, please, stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: All right. Thank you.

13 You can just go back to the jury room now. I
14 apologize.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 11:49 a.m.)

17 THE COURT: All right. Those of you who were not
18 chosen, I've got good news and bad news. I like to get
19 the bad news first. The bad news is that's the last case
20 we have on the docket this week. Thanks to everyone being
21 here for jury selection. Many cases resolved themselves.
22 And, therefore, this is the only one we have left to try.

23 And there aren't any other courtrooms running this
24 week in terms of jury's. There are, obviously, other
25 courtrooms going on, but they're all matters that don't

1 require a jury. So that means that your jury service is
2 complete and you're dismissed.

3 So thank you again for your patience and cooperation
4 this morning.

5 You have a three-year exemption from circuit court
6 jury duty. And have a good rest of the day.

7 Thank you.

8 (WHEREUPON, the remaining jury panel members exited
9 the courtroom.)

10 THE COURT: Okay. Anything else before we bring the
11 jury back in?

12 MR. CHAMBERS: No, Your Honor.

13 THE COURT: Are you all ready to go?

14 MR. CHAMBERS: Yes.

15 MR. SHAW: Yes, sir.

16 THE COURT: Bring the jury in.

17 (WHEREUPON, the jury came into open court at
18 approximately 11:54 a.m.)

19 INTRODUCTORY REMARKS

20 THE COURT: I don't want y'all to get too comfortable
21 back there. I apologize for the quick turn around. But
22 we're ready to start the trial now. I'm just going to
23 give you some preliminary instructions before we,
24 actually, get started.

25 Again, thank you for your service this week. You

1 probably know that you were chosen to come down to the
2 courthouse today because you're either registered to vote,
3 or you have a driver's license, or you have an ID card
4 from the highway department. You may be curious as to why
5 you were chosen to sit on this particular jury, and the
6 reason is simple. And that is because both Ms. Orr and
7 the hospital system believe you can be fair and impartial
8 and decide this case without any kind of bias, or
9 prejudice, or preconceived ideas.

10 Now, you've met the lawyers. They've introduced
11 themselves. And I introduced myself this morning
12 downstairs. Again, I'm Gary Hill, one of the circuit
13 judges here in Greenville and Pickens Counties.

14 And there are other people that are instrumental to
15 the trial process that I want to introduce. And they
16 include
17 Ms. Hollie Jenkins, who's the court reporter. Circuit
18 court is a court of record, so she takes down every word.

19 And then to her right is Lyndall Coker. And she's
20 with the Clerk of Court's Office. And, as you saw, she
21 oversaw the jury selection. And she helps things run
22 efficiently and smoothly, and is the main reason why our
23 dockets run so efficiently here in Greenville County.

24 And then the bailiffs in this case are Mr. Donald
25 Ford and

1 Mr. Richard Thompson. And they're here for your
2 assistance while you serve on the jury.

3 Now, everybody I just introduced and, certainly, the
4 lawyers have done this, and I've done it, we've all taken
5 an oath to do our job. And you will take an oath as a
6 juror.

7 So I'm going to ask Ms. Coker to administer that
8 oath. And listen to it very carefully. Because those
9 words have been around a long time in the oath and they
10 have a definite meaning.

11 So, yes, ma'am, Ms. Coker.

12 THE CLERK: Ladies and gentlemen, please, stand and
13 raise your right hand. The response will be "I will."

14 (WHEREUPON, the jury was sworn at approximately
15 11:56 a.m.)

16 THE CLERK: Thank you.

17 Please be seated.

18 THE COURT: Thank you.

19 Now, ladies and gentlemen, any time there's a trial
20 with a jury in circuit court, we always have two judges.
21 There's the judge of the law, which is the role that I
22 fulfill, and there's the judges of the facts, which is the
23 role that you fulfill. Your job is much more difficult
24 than mine. But I'm going to tell you about my job first.
25 Because you can see how it compares in contrast with your

1 job as a judge.

2 As the judge of the law, I have two main duties. The
3 first is to rule on the admissibility of evidence. There
4 may be objections to evidence during this trial. And
5 don't hold it against the lawyers for objecting. They're
6 simply doing their job. They have an ethical duty to
7 object when they think evidence is improper. But if they
8 object, I'll rule on whether or not you can consider it,
9 that is whether the evidence is admissible.

10 If I sustain the objection, that means that the
11 evidence is improper under the law in this particular
12 case, and you can't consider it. If I overrule the
13 objection, that means the evidence is something you can
14 consider and it will, therefore, be part of the record of
15 evidence in this case.

16 Now, the second job I have, as the judge of the law,
17 is that I'm going to instruct you on the law that applies
18 to the facts of this case. And I'll do that at the end of
19 this trial after we've had all the testimony and arguments
20 of the lawyers.

21 Now, before we get to that point, I'm going to tell
22 you what your job is, which is much more difficult than
23 mine, as I've said. You are the judge of the facts. And
24 under our system of justice when it comes to the facts,
25 your badge may as well say judge, instead of juror.

1 Because your decision as to the facts is exclusive and the
2 only decision that matters.

3 I'm not going to infringe on your duty to determine
4 the facts, or tell you what I think the facts are, or what
5 they should be, or what your verdict should be. Because,
6 under our system of justice, you and you alone are the
7 sole judge of what the facts are.

8 So how do you determine what the facts are? You do
9 that by weighing and considering the evidence you hear
10 during the course of this trial. I know very little about
11 this case. But I anticipate we will have witnesses who
12 will come in and will testify, and will stand right here,
13 and who are sworn, and will tell you under oath things
14 that are relevant to this case.

15 Also, we will have, I anticipate, exhibits. Exhibits
16 are simply physical, tangible objects. It might be a
17 piece of paper, or a map, or a photograph, or something of
18 that nature. But you'll know it's an exhibit. And you'll
19 know it's evidence you can consider to determine the facts
20 because it will be back in the jury room with you. And it
21 will have a sticker on it that says exhibit number so and
22 so. Those are the only two things you can use to
23 determine what the facts are, sworn witness testimony and
24 exhibits. Nothing else is evidence. So keep that in mind
25 as we go through this trial.

1 So, as the judge of the facts, you will have to, by
2 necessity, also, consider and gauge the credibility of all
3 the evidence. You're the sole judge of the credibility of
4 each witness who testifies and each exhibit that's
5 introduced during this trial.

6 Now, ladies and gentlemen, how many of y'all have sat
7 on a jury before in a civil case? You can just raise your
8 hand.

9 (WHEREUPON, two jurors raise their hand.)

10 THE COURT: All right. So we have two veterans. And
11 others of you may know a little bit about the structure of
12 a civil trial. But I just want to refresh everyone's
13 memory so you'll know what to expect and, perhaps,
14 demystify the surroundings a little bit for you a little
15 bit more.

16 In just a few moments, we'll have the opening
17 statements. And that is simply the opportunity for the
18 lawyers to give you an outline or a road map of what they
19 think the evidence will show and your -- what the issues
20 will be in the case.

21 The Plaintiff, Ms. Orr, bears the burden of proof, so
22 she will give her opening statement first through
23 Mr. Chambers, her lawyer. Then the Defense, through
24 Mr. Shaw, their lawyer, will give an opening statement, if
25 he chooses to. Then we'll move into the evidence portion

1 of the trial. And, again, the Plaintiff, bearing the
2 burden of proof, will go first. And the Defense can
3 confront that evidence. And then the Defense will have
4 the opportunity to call its witnesses and introduce its
5 own exhibits, if it chooses to, which the Plaintiff may
6 confront.

7 Then we'll have the closing arguments of the lawyers
8 where they will tell you what they think the evidence
9 showed and what your verdict should be. And then I'll
10 give you the instruction on the law at the end of all the
11 evidence. And after you've heard the closing arguments, I
12 will tell you what the law is that applies to the facts of
13 this case. And then the case will be in your hands for a
14 decision. And you'll go back in the jury room and
15 deliberate as to what the facts are. You'll take the law
16 that I gave you and apply it to those facts, and you'll be
17 able to reach a verdict in this case.

18 It's important for you to know up-front what
19 yardstick you should use in terms of deciding this case.
20 And I'll elaborate more about this at the end of the
21 trial. But it's important, I think, for you up front to
22 know that in a civil case, the parties seeking to obtain a
23 verdict bears the burden of proof, as I've already said.

24 But what is that burden of proof? It is simply the
25 greater weight of the evidence. So in order to obtain a

1 verdict, the party seeking a verdict must prove their case
2 by the greater weight of the evidence. And that simply
3 means they must convince all of you that what they're
4 trying to show is more likely true than not true. So that
5 is what you must use as the standard to measure proof.
6 And it's the burden that Ms. Orr bears during this trial
7 in order to obtain a verdict.

8 Now, ladies and gentlemen, the fine lawyers we have
9 in this case are advocates for their clients. And they're
10 going to do everything they can to zealously represent
11 their clients interest. You and I are not advocates or
12 partisans. We are to remain neutral. And your job is to
13 determine the facts and determine whether the Plaintiff
14 has met her burden of proof. Please keep an open mind
15 throughout this trial. We went to a significant amount of
16 trouble this morning to find a jury that could be fair and
17 impartial, and we want to keep you that way.

18 So don't start talking about the case until you've
19 heard all the evidence, and you've heard the closing
20 arguments of the lawyers, and heard the instructions on
21 the law. Because only then will you have the tools you
22 need to do your job.

23 Please don't do any kind of outside investigation.
24 This trial may be relatively short. But, nevertheless, if
25 there's an overnight recess or other recess, don't try to

1 go out and do your own investigation. We're all curious
2 creatures. But it would not be in keeping with your oath
3 to go outside of the record to determine the facts of this
4 case. Because, as I've already told you, you must confine
5 that to the witness testimony and the exhibits.

6 So thank you for your attention to me. And, at this
7 time, we'll have the opening statement.

8 Mr. Chambers.

9 OPENING STATEMENTS

10 MR. CHAMBERS: Thank you, Your Honor.

11 May it please the Court.

12 Mr. Shaw.

13 Ladies and gentlemen, during this trial, we're going
14 to take you back to April 5th, 2010. And that's a day
15 that Frankie Orr, who's seated over there with me -- that
16 afternoon, she was going to Hillcrest Hospital to see her
17 mother, Lucille, who you see seated right there in the
18 wheelchair there on the front row. She had been in
19 Hillcrest Hospital for a while. And Frankie, along with
20 Frankie's daughter, and Frankie's sister, and some other
21 people were taking turns sitting with Lucille at the
22 hospital. And it was Frankie's turn.

23 She went there that afternoon. And she walked into
24 her mom's room and she went to sit down by her bed in a
25 chair just like I probably -- all of us have done at some

1 point gone to visit somebody in a hospital and sat down in
2 a chair that's provided there. And as she was sitting
3 down, she got a surprise, something nobody would expect in
4 a situation like that. A large metal-framed picture that
5 had been placed there by the hospital fell on top of her.
6 It fell on top forcing her head down, glass shattering all
7 over. And she was injured.

8 She immediately began to experience pain. She began
9 to experience a headache. She began to experience nausea.
10 She began to experience blurred vision. She went to the
11 emergency room and she was treated there. They did
12 X-rays. They looked her over. And they released her.

13 You're going to hear that the value of the services
14 that were provided there that day are about -- a little
15 bit in excess of \$5,500. She continued to have problems.
16 And she followed up, eventually, with Dr. Henry, who's a
17 chiropractor in this area.

18 He began to treat her for the things that he could
19 treat, but he had concerns. He had concerns about the
20 fact that she was continuing to have headaches. He had
21 concerns about the fact that she was experiencing some
22 tingling in her extremities. He had concerns about the
23 fact that she was experiencing mental deficits and memory
24 problems.

25 So he referred her to a neurologist. The neurologist

1 examined her, sent her for an MRI, and then referred her
2 back to Dr. Henry. Dr. Henry treated her until he got her
3 as well as he was going to be able to get her. And she's
4 never going to be completely well. And you're going to
5 hear about that when Dr. Henry comes in here. The cost of
6 the medical treatment that she's received up to this point
7 is pretty well in excess of \$15,000. And you're going to
8 get some evidence as to that.

9 Now, ladies and gentlemen, like most people who find
10 themselves in a situation like this, Frankie Orr never
11 thought she would be in this situation. She didn't ask
12 for it when she went to visit her mother there that day,
13 just like countless hundreds of people do everyday. She
14 didn't expect that they were going to have a picture that
15 was going to fall on her head and set these things in
16 motion.

17 She, certainly, never expected that she would then
18 have to follow-up with all this treatment. She didn't
19 expect that she was going to have to be here in a
20 courtroom today. But all of those things have happened.
21 And that's what you're going to hear about as this case
22 unfolds.

23 This is a civil case. It's common pleas is what we
24 call it in South Carolina, which means that the Plaintiff
25 in this case, Ms. Orr, we have to prove to you that

1 Greenville Hospital System breached a duty in this case,
2 that they were somehow negligent in doing the things that
3 they were supposed to do to protect the people that come
4 into that hospital. And we have to prove that the
5 injuries that she received were proximately caused by the
6 negligence of Greenville Hospital System.

7 In other words, but for their negligence, but for
8 their putting this hazard there to -- for her, she would
9 not have been injured. So those are the issues you're
10 going to have to consider in this case.

11 And, as you consider it, you've got to ask yourself,
12 what is the standard? Well, it's preponderance of the
13 evidence, by a preponderance of the evidence. And what
14 that means, folks, is if you -- if we started this scale
15 and we had this metaphorical scale here that you could
16 look at as we put evidence on there, and then the Defense
17 puts its case up, at the end, has Ms. Orr tipped that
18 scale ever so slightly in her favor? Because that's
19 what's required. That's what's required. She has to
20 prove it by that standard, by a preponderance of the
21 evidence.

22 And you're going to hear a lot as you go through this
23 case. You're going to get to know Ms. Orr. And you're
24 going to hear a lot about her. Because, at this point,
25 we've been through what's called the discovery process.

1 And both sides know a lot about each other.

2 Now, when Ms. Orr walked into that hospital that day
3 to visit her mother on a day when she, certainly, didn't
4 expect anything like this to happen to her, she was 60
5 years old. She had been working in what a lot of people
6 would refer to as a man's job. She, certainly, didn't
7 consider it that.

8 For 22 years, she was an industrial electrician, hard
9 work. She, also, raised four girls while she was working
10 as an industrial electrician. She had had problems
11 physically in the past due to the nature of her work. She
12 had neck problems. She had back problems. She had
13 migraines. She suffered from fairly advanced
14 osteoporosis. You're going to hear about those things.

15 But on the day that she walked into that hospital,
16 she was doing okay, probably not as well as she would like
17 to be. But she was able to hunt. She was able to fish.
18 She was able to get out and do things that she wanted to.
19 And she was able to work when she needed to.

20 Now, you're, also, going to hear that she was in the
21 process of getting disability at the time and, in fact,
22 got disability for emphysema. She's a lifelong smoker.
23 She's ashamed to tell you, but she still smokes. And she
24 has emphysema. She had all of those problems. But she
25 did not have the things I just told you about a few

1 minutes ago until that picture fell on her head.

2 Now, you're -- defense counsel likes to say a lot of
3 times these cases are about money. And in a sense that is
4 absolutely right, these cases are about money. The only
5 thing anybody can do at this point -- we can't make that
6 picture not fall on her head. We can't make all of her
7 pain, and her suffering, and her loss of enjoyment of
8 life, and all the things that happened to her go away.
9 The only thing that we can do now is compensate Ms. Orr
10 with money.

11 But, in this situation, folks, money means
12 responsibility. If there's anything in my mind that we
13 stand for as a country -- you know, we pride ourselves on
14 our rugged individualism -- but it is taking
15 responsibility when you do something wrong. It's not
16 meeting your responsibility by showing hostility toward
17 the person that you've harmed. It's not refusing to take
18 responsibility and, in fact, trying to cast blame on the
19 person that you've harmed. That's not what we're talking
20 about in this case.

21 What we're talking about is taking responsibility.
22 You've got to do that. When you operate a business and
23 you invite people into that business, you owe it to them
24 to protect them from harm.

25 Now, I always want to make sure people understand.

1 There are a lot of people that come to see me who say, you
2 know, I walked into Bi-Lo and the floor was wet and I
3 slipped down. And I want to sue Bi-Lo. That's not what
4 we're talking about. You have to be able to show that
5 they knew or should have known that there was a hazard.
6 And you can do that in a couple of ways. One is you can
7 show that they had notice that this problem existed. But
8 the other is if they created the hazard, then they're
9 responsible for it and they have to do something about it.

10 So you need to ask yourself as you hear the evidence
11 in this case about a hanging picture and should it fall.
12 We're going to talk about that a lot more later, but
13 that's going to be the big issue in this case.

14 And then the other is going to be as to her injuries.
15 I don't expect this to be a long case, folks. Ms. Orr is
16 going to testify for me and Dr. Henry is going to testify.
17 And that's probably going to be our case. But I don't
18 want you to think that this is not somehow important.
19 It's a very important case. There is a dispute between
20 these two individuals that would not be settled if you
21 were not here today.

22 Ms. Orr didn't come in here with any expectation that
23 she's going to go home rich. This is not her hitting the
24 lottery. She really doesn't want to be here. But she
25 wants fair compensation for what Greenville Hospital

1 System put her through. That's what she's here to ask you
2 for. I can tell you because she told me sitting over
3 there. She's thankful that you're here. She appreciates
4 you being here. And we look forward to presenting our
5 case to you.

6 Thank you very much.

7 THE COURT: Thank you, Mr. Chambers.

8 Mr. Shaw.

9 MR. SHAW: May it please the Court.

10 Ladies and gentlemen, I appreciate you being here.
11 The truth is accidents sometimes happen and there's really
12 no one to blame. And I think what you're going to hear
13 throughout the course of the day today is that's exactly
14 what we have here. We have an accident that occurred.
15 And there's really not anyone to blame. I'm, certainly,
16 not going to stand up here today and blame Ms. Orr for
17 what happened. But what we do know is that the picture
18 was hanging on the wall prior to her entering into the
19 room. The picture fell when she sat down in the chair.

20 Now, what caused the picture to fall, I don't know.
21 And I think as we go throughout the course of the day
22 today, you're going to be continuously asking that
23 question. In fact, ladies and gentlemen, I think there's
24 going to be a few questions that you're going to have as
25 we go through the day. In fact, there's two that I think

1 are important and that you should be asking yourselves as
2 we go along. And I think that Ms. Orr has the
3 responsibility to answer them fully to your complete
4 satisfaction.

5 The first question is why is GHS -- why is the
6 hospital to blame for this picture falling off the wall?
7 What exactly did GHS do to cause the picture to fall off
8 the wall? That's the first question she's got to answer.
9 The second question that she's got to answer is how
10 exactly did the picture falling off the wall injure her?

11 Now, again, as you've heard from Mr. Chambers,
12 Ms. Orr has a long history of problems with her back,
13 problems with her neck. You'll hear that she, again, was
14 diagnosed with osteoporosis. She was, also, diagnosed
15 with degenerative disc disease. She had been in several
16 accidents -- or a couple of accidents prior to this that
17 caused pain, caused injury to her back and to her neck.

18 The question that I think you should be asking
19 yourself, exactly how did this incident cause her any
20 additional pain? And, again, ladies and gentlemen, she's
21 got to answer both those questions. Answering just one of
22 them is not sufficient. She may be able to answer one and
23 not answer the other. She needs to answer both of them.
24 She's got to answer them to your complete satisfaction.

25 So, again, she's got to tell you why this is GHS's

1 fault. What did GHS do to cause the picture to fall off
2 the wall? And how exactly was she injured as a result of
3 this? If she's unable to answer both of those questions
4 to your complete satisfaction, then I'll ask at the end of
5 the day that you return a verdict on behalf of the
6 hospital.

7 This is not a difficult -- or this is not a
8 complicated case. I'm not going to stand up here and try
9 to make it anymore complicated than what it is. I think
10 Mr. Chambers said that he expects this to be done quickly.
11 And it may very well go very quickly. And, again, I
12 promise you I'll do my best to keep it as simple and as
13 straightforward as possible. But those two questions,
14 keep those in mind and see if those questions are answered
15 here today. And if they're not, again, I'll ask you to
16 return a verdict on behalf of the hospital.

17 Thank you.

18 THE COURT: Thank you, Mr. Shaw.

19 Mr. Chambers, you may call your first witness.

20 MR. CHAMBERS: Your Honor, I call Frankie Orr.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 FRANKIE JEAN ORR,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: State your name, please.

2 THE WITNESS: Frankie Jean Orr.

3 THE CLERK: Thank you.

4 Please be seated.

5 DIRECT EXAMINATION

6 BY MR. CHAMBERS:

7 Q Frankie, I would ask that you keep up -- keep your
8 voice up and speak into that microphone, and make sure
9 everybody over here can hear what you have to say.

10 A Yes, sir.

11 Q Where are you from originally?

12 A I'm from Simpsonville, South Carolina.

13 Q So you've lived in this area all your life?

14 A Yes, I have, except when I traveled for work.

15 Q And as you sit here today, how old are you?

16 A I'm 63.

17 Q And are you married?

18 A I am divorced. I have been for years.

19 Q Do you have children?

20 A I've got two daughters of my own and two that I
21 raised.

22 Q Do you currently work anywhere?

23 A No, I do not. I am on disability.

24 Q And what's the nature of your disability?

25 A Emphysema.

1 Q Do you still smoke?

2 A Yes, I do.

3 Q Why?

4 A I just can't give it up. It's a lifelong habit.
5 I've tried several times, but I go back to smoking.

6 Q How long has it been since you worked anywhere?

7 A 2009 is the last day I officially worked anywhere. I
8 was on unemployment for a period of time, which is the
9 nature of construction.

10 Q What kind of -- when you were working, what kind of
11 work did you do?

12 A I was an industrial electrician.

13 Q And for those who may not know, explain what that
14 means.

15 A I worked in large industrial buildings with high
16 voltage and low voltage power pulling cables, wires,
17 hooking up machinery, doing fiber optics, digging ditches.

18 Q How did you end up getting into that line of work?

19 A I got a divorce and I needed a change in my life.
20 And I saw an ad in the paper. And Flour Daniel was doing
21 training. And the pay was remarkably good. So I went to
22 school. And I really liked it.

23 Q About how old were you when you did that?

24 A I was 27 -- no, excuse me. It was in 1989.

25 Q And is that -- was that physically-demanding work?

1 A Oh, yes.

2 Q And what kind of hours would you work?

3 A 10 hours a day normally, four days a week, unless we
4 worked shut downs. Then it would go to 16 hours a day, 20
5 hours a day.

6 Q And did you, also, have responsibility for your
7 family while you were working?

8 A No. My daughters went to live with their dad while I
9 traveled with my job. Because it was unfair to the
10 children to move them from school to school.

11 Q And how much travel did you have to do?

12 A I traveled for 11 years of that 22.

13 Q Was this physically-demanding work?

14 A Yes. It was very demanding work.

15 Q Did you have any issues physically? Did you get hurt
16 while you were working?

17 A Of course. You work construction, you get hurt.

18 Q What kind of injuries did you have over the years?

19 A Oh, my goodness. I've strained my arm. I broke my
20 hand. I'd only had one broken bone -- two broken bones in
21 22 years. I broke my finger. I put two popsicle sticks
22 and black electrical tape on it and kept right on working.

23 Q Did you have any chronic issues that you knew of,
24 any --

25 A Not at that time, no, not until about 2006, 2007.

1 Q And what were those issues that you found out about?

2 A I developed osteoporosis.

3 Q All right. And what were your symptoms for the
4 osteoporosis?

5 A My back hurt.

6 Q All right. Did you have any neck issues?

7 A Some, but not many.

8 Q Did you have any numbness or tingling?

9 A No.

10 Q Did you have any headaches?

11 A I had had headaches before, but it was before I'd had
12 a hysterectomy. And after that, the headaches went away.

13 Q Were you treated with your doctor or at a hospital
14 somewhere for headaches?

15 A Oh, yes. I would go to the doctor, and they would
16 give me a shot. And it would knock me out for a couple of
17 days, which I didn't like. But when your head hurts to
18 the point where it wants to fall off and roll across the
19 floor, you go to a doctor.

20 Q All right. And you said you found out in 2006 about
21 the osteoporosis?

22 A Yes.

23 Q Did you continue to work?

24 A Oh, yes.

25 Q And what did you do about your back issues that you

1 said you started to have?

2 A I lived with it. I dealt with it.

3 Q When --

4 A The doctors started prescribing me something in 2008.

5 Q Do you remember going to see your mom on April the
6 5th, 2010?

7 A Yes, I do.

8 Q And where was she in the hospital?

9 A She was at Hillcrest Hospital, which is located in
10 our town.

11 Q How long had she been in the hospital the day that
12 you went to see her? Do you know?

13 A She had been there for three days.

14 Q And were you staying with her at times?

15 A No, I had not. We had gone on a vacation to
16 Gatlinburg, my daughter, and my grandson, and myself. We
17 had gone up there for a short vacation. And my sister
18 called me and told me that my mother was in the hospital.

19 Q Had your sister been staying with her?

20 A Yes, she had.

21 Q So when you went over there that day, were you going
22 to be staying with her for a little bit?

23 A Yes. I was spending the day, and that evening, and
24 the night with her.

25 Q And why was she in the hospital?

1 A She had double pneumonia.

2 Q Had you been in that hospital before?

3 A Oh, yes. I had been to Hillcrest several times.

4 Q But you had not been in her room, I guess, since you
5 had been on vacation, this particular room?

6 A Oh, no. This was the first time I had ever been in
7 that room to visit my mother.

8 Q Tell the jury when you walked into the room to see
9 your mom -- just take us from the time that you walked in
10 and tell us what happened.

11 A Well, I walked in and the lady was there giving my
12 mother her bath and cleaning her room. So I told them
13 that I would just walk in the hall until she got through
14 with her bath.

15 When she finished bathing her, I walked back in. I
16 walked over. I kissed my mother on the forehead. I asked
17 her how she was feeling. She said that she was, you know,
18 doing okay. I said, Well, I'm going to sit down and we'll
19 talk.

20 So I walked to the chair at the foot of the bed. I
21 sat down. I hadn't gotten sat down good totally
22 comfortable until the picture fell off the wall and hit me
23 on the head. Glass shattered and went everywhere. It
24 knocked me out on the floor. I'm on my hands and knees.
25 The next thing I know, the nurse is picking me up off of

1 the floor.

2 Q Describe the chair. What kind of chair was it?

3 A It was blue-green. And it was a -- one of the chairs
4 that lets down into a bed like thing, a recliner cot.

5 Q Okay. Did it have wheels, or was it stationary?

6 A I really don't know if it had wheels or not.

7 Q And --

8 A But I know the lady that was bathing my mother,
9 that's what she had her sitting in when she was bathing
10 her. And when I came back in the room, it was over at the
11 foot of the bed. So that's where I sat down.

12 Q It was at the foot of your mother's bed?

13 A It was up against the wall.

14 Q And was it touching the wall, or do you know?

15 A I really don't know if it was touching it or not.

16 Q How did you sit down in the chair?

17 A I sat down in the chair like a lady.

18 Q I mean, did you flop down in the chair?

19 A No, sir. My mother raised me better than that.

20 Q Did you throw yourself into the chair?

21 A No, sir.

22 Q So you end up on your hands and knees and the nurse
23 helping you up. Take us from there.

24 A They put me in a wheelchair and took me straight down
25 to the emergency room.

1 Q And who is "they"?

2 A The nurse and there were a couple of other people.
3 It was kind of hazy. I don't really remember who all
4 else --

5 Q Other than your mother and you, was there anybody
6 else in the room when this picture fell?

7 A No, sir.

8 Q Did you notice the picture before you sat down?

9 A No, not really.

10 Q Did you ever get a good look at, you know, the size,
11 or anything like that?

12 A Oh, yeah. On my hands and knees, I turned around to
13 look to see what hit me. And it was this huge picture.
14 Well, there's not even a light fixture in here as big as
15 that.

16 Q How -- describe how it felt when you got hit.

17 A It felt like a truck hit me in the head.

18 Q Okay. And --

19 A Intense pain.

20 Q And did you continue to have pain from that time?

21 A Oh, yes.

22 Q All right. So you said they put you in a wheelchair.
23 How were you feeling at that time?

24 A I was very disoriented. When I went down on the
25 floor, everything went kind of black. And then, like I

1 say, the next thing I know, the nurse is there picking me
2 up.

3 Q Did you lose consciousness?

4 A I think so, but I'm not sure. I don't know how much
5 time elapsed..

6 Q So they wheeled you down to the emergency room. Do
7 you remember being wheeled to the emergency room?

8 A I remember being placed in the wheelchair. I
9 remember they brushed glass off of my clothes and out of
10 my hair.

11 Q Now, I want you to walk us through what happened once
12 you got down to the emergency room. I want you to be
13 careful, though, as you go through this. I don't -- you
14 can't say what the doctors or anybody told you. But you
15 can talk about what they did and what happened. So I
16 would like for you to do that.

17 A Okay. When I got there, they put me in a bed. They
18 took my temperature. I believe they checked my blood
19 pressure. I'm not real sure. They said they were going
20 to take me down to get a CAT scan.

21 Q Did you go for X-rays?

22 A Yes. They took me and did a CAT scan, or X-rays,
23 or --

24 Q You just know they did some X-rays?

25 A I know they did some kind of...

1 Q And after you were X-rayed, what did they do with
2 you?

3 A Brought me back to the room and was --

4 Q Back to the room in the emergency room?

5 A Right. My room -- the examining room --

6 Q All right.

7 A -- of the emergency room where they put you.

8 Q Before going to the X-rays, had you seen a doctor
9 yet?

10 A No.

11 Q All right. Who had you seen? Nurses?

12 A I just saw a nurse and then the lab technician -- or
13 not a lab, but X-ray or CT technician came and took me to
14 get the test done.

15 Q So they took you back to the room after the X-rays.
16 Did you see a doctor then?

17 A It was a good while before I saw a doctor.

18 Q But you, eventually, did see one?

19 A Eventually.

20 Q All right. The doctor comes in. What did the doctor
21 do?

22 A He was going to give me some medication.

23 Q Well, did he examine you at all?

24 A Not really.

25 Q Did he look in your eyes?

1 A No.

2 Q Read your chart?

3 A Not that I remember.

4 Q All right. So he came in and he --

5 A Oh, they did allow me to make a phone call to call
6 someone, but I couldn't remember my phone number.

7 Q Were you, eventually, discharged?

8 A Yes.

9 Q How long were you there?

10 A I really couldn't tell you how long I was there.

11 Q Had you driven there to the hospital yourself?

12 A Yes, I did.

13 Q Did you drive home from the hospital?

14 A Yes, I did.

15 Q Okay. How were you able to do that?

16 A They told me I could drive, I could go on.

17 Q How did you feel when you left?

18 A I was foggy. My head hurt. My neck hurt. I went
19 back to my mother's room and let her know what was going
20 on and let her know that I was okay. Because she was
21 really upset. They didn't tell her anything.

22 Q Did you throw up or get sick to your stomach?

23 A I did after I got home.

24 Q And did you -- when you got home, did you start
25 getting better? Did you get worse? How was your

1 condition?

2 A I still had a headache. I did not take the
3 medication that they prescribed.

4 Q Okay.

5 A And I don't like taking drugs of any kind --

6 Q Okay.

7 A -- unless I have to. So I took two Advil. And I
8 went and laid down and went to sleep.

9 Q And then what -- did you have any problems after
10 that, after you woke up? When did you wake up?

11 A I woke up as soon as my daughter got home from work.
12 She came and woke me up and said, You should not have even
13 gone to sleep. How did you get home?

14 Q Well, let's not get into what she told you.

15 A Okay.

16 Q Let's talk about how you felt. That's what I want to
17 talk about.

18 A Well, my head still hurt. My neck ached. My arm and
19 hand was numb and tingling.

20 Q When did you start having that numbness and tingling?

21 A It was almost right away.

22 Q Had you ever suffered from those symptoms before?

23 A Never.

24 Q And how long after the picture falling on your head
25 did you start to have those symptoms?

1 A How long was it before?

2 Q Yes.

3 A Almost instantly.

4 Q Did you seek any follow-up treatment after going into
5 the emergency room?

6 A Yes, I did. I tried for a month and a half to find a
7 neurologist that would see me. And as soon as I told them
8 that it involved the hospital system, they could not see
9 me.

10 Q What about a primary care physician? Did you go see
11 anybody like that?

12 A Yes, I did. I went to my primary care physician, my
13 family doctor.

14 Q Okay.

15 A And he referred me to the chiropractor.

16 Q Dr. Henry?

17 A Dr. Henry. I'm sorry.

18 Q So that's how you ended up going to Dr. Henry was you
19 were referred there by your doctor?

20 A Yes.

21 Q And who was the doctor that referred you to
22 Dr. Henry?

23 A Doctor Roger Mann, Fountain Inn Family Practice.

24 Q And so you went to see Dr. Henry. How long after
25 this picture incident did you go and see Dr. Henry?

1 A It was about three weeks, as well as I can remember.

2 Q And when you went in to see Dr. Henry, did you give
3 what they call a history, in other words, tell about
4 yourself and why you were there?

5 A Yes, I did.

6 Q Do you recall what you told the folks there at
7 Dr. Henry's office about why you were there and about your
8 medical history?

9 A I told them that I was there for the neck pain, and
10 the back pain, and the tingling, and the numbness to see
11 if there was anything that he could do for that.

12 Q And did Dr. Henry examine you that day?

13 A Yes, he did. And he did X-rays.

14 Q All right. So he examined you and he did some
15 X-rays. And then after that, did you go through a course
16 of treatment with him?

17 A Yes, I did.

18 Q And how long did that treatment last?

19 A Months.

20 Q During that treatment, did he refer you to someone
21 else?

22 A Yes, he did. He referred me to the neurologist,
23 Dr. Sikes -- Sinka.

24 Q And did Dr. Sinka have you -- see you in his office?

25 A Yes, he did.

1 Q Did he conduct any kind of examinations, or tests, or
2 anything of you?

3 A Yes, he did.

4 Q And do you recall what those were?

5 A He did a regular normal checkup to see if there was
6 anything that was visible. And then he, also, did a nerve
7 test to see if there was nerve damage.

8 Q Did you continue to treat with Dr. Sinka, or did he
9 send you back to Dr. Henry?

10 A He -- I saw Dr. Sinka a total of three times, I
11 believe. And that's when he was doing the tests that he
12 was doing. Because he didn't do all of them in one day.
13 Then he referred me back to Dr. Henry --

14 Q And at some point --

15 A -- but --

16 Q Oh, I'm sorry, go ahead.

17 A But he did say -- I can't say that, because he's not
18 here.

19 Q Did you -- and so you continued then to treat with
20 Dr. Henry; is that correct?

21 A Yes, I did.

22 Q Did he, eventually, release you?

23 A Yes. He had gone as far as he could. And he
24 prescribed me a tens unit to use at home. And my daughter
25 sat in on our therapy sessions so she could learn how to

1 do the physical therapy part at home.

2 Q When you would go and Dr. Henry would treat you --
3 and I know you don't know what any of this is called.
4 And, again, I don't want you to talk about what he may
5 have told you. But describe as best you can kind of the
6 therapies that you got from Dr. Henry.

7 A Okay. I did the hot towels and compresses. And
8 that's to loosen the muscles, to relax them some. And
9 then he would do massage. And he would use little
10 implements. Because he could not pop my back and stuff
11 like that because of the osteoporosis. And he did align
12 my neck because my neck was totally out of alignment.

13 Q Did you improve under his care? Did your condition
14 get better?

15 A It got somewhat better.

16 Q Have you continued since you've quit treating with
17 him to have problems?

18 A Oh, yes.

19 Q And what are those problems?

20 A I still have the refracted vision. Do you know what
21 a kaleidoscope is? It starts right here and it works its
22 way around my eye from this side. And it comes back to
23 here and then it dissipates. But the whole time, it's
24 like you're looking through a kaleidoscope. It causes
25 your vision to be blurred. And I've had to pull off on

1 the side of the road a good many times because of it.

2 It's not impaired me to the point where I've had to
3 give up my driver's license. I can still drive. Because
4 it gives me warning enough that I can pull off. And then
5 the headache starts.

6 Q Are you aware of the cost of the medical treatment
7 that you've received?

8 A Yes, sir, I am.

9 Q I'm going to show you what's been pre-marked as
10 Plaintiff's Exhibit No. 1 for identification. And I'll
11 ask you if you've seen these documents before?

12 A Yes, I have.

13 Q And is -- the front there, is that a complete listing
14 of the medical costs in your case?

15 A Yes, it is.

16 Q And that is for Greenville Hospital System?

17 A Well --

18 Q Just "yes" or "no."

19 A Yes.

20 Q And, also, for Greenville Radiology, Henry
21 Chiropractic, Carolina Neurology, and Innervision?

22 A Yes.

23 MR. SHAW: Your Honor, before he gets too far down
24 the line, I just want to renew my objection that I placed
25 earlier on the record.

1 THE COURT: Yes, sir, Mr. Shaw. I understand.

2 BY MR. CHAMBERS:

3 Q Well, what's the total cost of the care that's been
4 provided to you up to this day?

5 A \$15,165.40.

6 MR. CHAMBERS: Your Honor, I'd ask to move this into
7 evidence at this time.

8 THE COURT: Subject to the earlier objection and the
9 grounds for which are incorporated right now, it's in
10 evidence.

11 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted into
12 evidence.)

13 BY MR. CHAMBERS:

14 Q The -- we discussed it that prior to this incident,
15 you had some medical issues; correct?

16 A Yes.

17 Q Did you -- what -- how would you describe your life
18 style? Were you active?

19 A Very.

20 Q Even with the osteoporosis and the other problems?

21 A Very.

22 Q What kinds of things did you do?

23 A I hunt. I fished. I camped. I played with my
24 grandson. I played ball with him. He's 12 years old now.
25 He's very active.

1 Q Were you able to do things like that after this
2 incident at the hospital?

3 A Not nearly as much.

4 Q So you were able to do it, but it curtailed your
5 activities some?

6 A Yes, sir --

7 Q And, specifically, how --

8 A -- tremendously.

9 Q Well, if you could -- well, describe that, if you
10 could, how it did that.

11 A Used to, I could go fishing and I could stand and
12 cast fish all day long. I'd rather fish than eat when I'm
13 hungry. I can't cast now because of the muscle in the
14 back. It will tighten up, start hurting. Then it will
15 make my neck start hurting. Then I'll have to give it up
16 and pack it in. I can't play ball with him for the same
17 reason. I can for a very short period of time.

18 Q And prior to this accident, you determined that you
19 had some back issues; is that right?

20 A Yes.

21 Q You determined that you had osteoporosis that you
22 found out about in 2006. Were you aware that you had
23 degenerative disc disease?

24 A Not until 2006.

25 Q Okay. But you did know that you had that?

1 A Yes.

2 Q And did you have any arthritis or anything that you
3 know of as a result of that?

4 A No, sir.

5 Q So these were chronic conditions that you had?

6 A Yeah. They're chronic conditions, but I worked
7 through them.

8 Q All right. And you were able to do these other
9 things that you just talked about?

10 A Yes.

11 Q What -- from a personal standpoint only, what is it
12 that makes you believe that this incident at the hospital
13 with the picture is what really exacerbated your condition
14 and led to you not being able to do these things?

15 A I could do all of that before it hit me in the head
16 and hurt my -- the muscle, and the tendons, and whatever
17 else it hurt in there.

18 Q So that's the dividing line?

19 A Yes. I mean, I cut my own grass. I had a garden.
20 Well, I no longer have a garden because I can't run the
21 tiller. If I do that, I have to pay somebody to do it.
22 And I can't afford that. Well, I just refuse to do that.
23 I'm not going to pay somebody to do something that I feel
24 like I should be able to do myself.

25 Q Do you want the jury to give you money in this case?

1 A I'd just like to fix the problem.

2 MR. CHAMBERS: That's all the questions I have for
3 you. Please answer any that Mr. Shaw has.

4 THE WITNESS: Yes, I will.

5 MR. SHAW: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. SHAW:

8 Q Ms. Orr, I want to make sure I've got it right. You
9 went into the hospital. You went into your mother's room
10 and you sat down in the chair. When you sat down in the
11 chair is when the picture fell off the wall; correct?

12 A That is correct.

13 Q Okay. So is it fair to say then that somehow or
14 another when you sat down in that chair that sitting down
15 in the chair is what caused the picture to fall off the
16 wall?

17 A I don't know what caused the picture to fall off the
18 wall.

19 Q Okay. Well, it was hanging there before you sat
20 down, wasn't it?

21 A Yes. It -- I guess it was. I didn't even pay it any
22 attention that there was a picture there.

23 Q All right. And, I mean, I'm -- you don't think that
24 it fell without something causing it to fall; right?

25 A I don't know what caused it to fall.

1 Q Okay. You suggested that -- or you're here today
2 blaming the hospital for this incident. But, again, you
3 just got through saying you don't know how the picture was
4 hung; correct?

5 A I didn't hang the picture. So, no, I do not know how
6 it was hung.

7 Q Okay. And you don't know how long it had been
8 hanging there prior to it falling; correct?

9 A No, sir. I don't know when y'all installed the
10 picture.

11 Q You don't even know that GHS, actually, put the
12 picture up, do you?

13 A It's in your hospital.

14 Q Okay. But you don't know who hung it; correct?

15 A No, sir. I don't know what subcontractor y'all used
16 to hang the picture.

17 Q Okay. Let's talk a minute about after the picture
18 fell. You don't know whether or not you, actually, lost
19 consciousness; right?

20 A I couldn't tell you 100 percent yes or no.

21 Q Okay.

22 A All I know is when I was on my knees out of the chair
23 in the floor that things were black.

24 Q Okay. But there was a nurse that responded fairly
25 quickly to you; correct?

1 A I don't know how long I had been in the floor.

2 Q Okay. Do you recall going to the bathroom after the
3 picture fell on you?

4 A No, sir.

5 I went to the bathroom?

6 Q I just asked you whether you recalled going to the
7 bathroom or not.

8 A Oh, okay.

9 Q You don't recall whether you did or didn't?

10 A I have no idea.

11 Q Okay. The reality is, Ms. Orr, you don't have a
12 great memory of what took place that day, do you?

13 A Before I got there, I have a great memory of it.

14 Q Okay. Do you recall giving your deposition in this
15 case?

16 A Yes, sir, I do.

17 Q Do you recall telling me on multiple occasions that
18 this took place the day after Mother's Day?

19 A I was under the assumption that it was the day after
20 Mother's Day.

21 Q Okay.

22 A The date may or may not have been the day after
23 Mother's Day.

24 Q Okay. But you're here today saying that this took
25 place on April 5th; correct?

1 A April 5th, that's the day that the hospital papers
2 say that I was there.

3 Q Okay. Mother's Day is, typically, in May; correct?

4 A Yes, it is. It's usually the 10th.

5 Q So this did not take place the day after Mother's
6 Day?

7 A Okay.

8 Q Yet, you told me multiple times in your deposition
9 that it did; correct?

10 A I was thinking that was Mother's Day. Because we had
11 planned our vacation and we had to -- for the weekend of
12 Mother's Day. And we had to change it and we backed it up
13 a week. And we went a week ahead.

14 Q Okay. So the picture falls down. You didn't suffer
15 any sort of cuts, did you?

16 A I don't know. They didn't treat me for any cuts.
17 And I didn't see any lacerations.

18 Q Okay. So, to your knowledge, you had no cuts?

19 A No.

20 Q All right. And you didn't have any bruising?

21 A I don't know. I can't see the back of my head.

22 Q Okay. Did -- has anyone told you that you had
23 bruising?

24 A No.

25 Q Okay. And you were taken down to the emergency room;

1 right?

2 A You asked me if anyone told me I had any bruising?

3 Q Yes, ma'am.

4 A Is a concussion the same thing as bruising?

5 Q No, ma'am.

6 A Okay.

7 Q And you were taken down to the ER?

8 A Yes, I was.

9 Q All right. And you were seen by several medical
10 personnel in the ER; is that correct?

11 A That's correct.

12 Q All right. And they ran a battery of tests on you,
13 didn't they?

14 A I wouldn't consider one X-ray or CAT scan a battery
15 of tests.

16 Q Okay. But they ran an X-ray and they ran a CT scan;
17 correct?

18 A They only did one. They didn't do both --

19 Q Okay. Well --

20 A -- to my knowledge.

21 Q Okay. Do you know which one they ran?

22 A I'm not sure which one it was.

23 Q Okay.

24 A I think it was a CT scan.

25 Q Okay. On your head, neck, and back; correct?

1 A Head.

2 Q And so it's your testimony that they didn't run one
3 on your neck?

4 A I don't know exactly what they took the pictures of.
5 They never showed them to me.

6 Q Okay. Did anyone discuss what the CT scan revealed
7 with you?

8 A The doctor came in and said, You're fine, you can go
9 home.

10 Q Okay. And you did go home; correct?

11 A Yes, I did.

12 Q All right. And you drove yourself home?

13 A Yes. I walked right out of the emergency room and
14 back up to my mother's room to let her know what was going
15 on. I let her know that my head was hurting. I was going
16 home and I was going to go to bed.

17 Q Okay. Since being -- since being dismissed from the
18 hospital and since that day, you've gone to see multiple
19 medical doctors; correct?

20 A I have gone to see my family doctor, the
21 chiropractor, and the neurologist about the neck injury.

22 Q Okay. And other than your chiropractor -- who I
23 understand we'll hear from later. Other than your
24 chiropractor, has anyone told you, specifically, that you
25 were injured as a result of the picture falling off the

1 wall?

2 A The neurologist said I had a concussion when I was
3 released.

4 Q Okay. Do you know when you saw the neurologist? And
5 I believe it's Dr. Sinka; correct?

6 A Dr. Sinka. And he verbally said that. So I didn't
7 know if I was supposed to testify to that or not. I don't
8 know if he ever wrote it down on any paperwork or not.
9 But he said I was sent home with a concussion, that I had
10 had a concussion.

11 Q Okay. When did you see Dr. Sinka?

12 A It was a month and a half after. It took me that
13 long to find somebody. And Dr. Henry had to refer me.

14 Q Okay. So Dr. Sinka -- at the time that you saw
15 Dr. Sinka, you weren't still suffering from a concussion
16 at that time, were you?

17 A I don't believe so.

18 Q Okay. So your understanding then is that Dr. Sinka
19 believed that you had suffered a concussion at the time
20 the picture fell on you; is that correct?

21 A He said that I had had a concussion. And that's the
22 only thing that had happened to me from the time the
23 picture fell on my head until the time I saw him.

24 Q And Dr. Sinka since he had not seen you -- since he
25 was seeing you a month afterwards, Dr. Sinka relied upon

1 what you told him about the incident; correct?

2 A That is correct from the symptoms that I was
3 continuing to have, and what I told him of the events that
4 led up to me being there to see him.

5 Q Do you know if Dr. Sinka spoke to any of the doctors
6 at the hospital that treated you at the time?

7 A I do not have that information.

8 Q Okay. Now, Ms. Orr, I know you've told the jury here
9 today that you've been suffering from, you know, neck and
10 back pain. And I think you kind of pointed up to your
11 shoulder area as a result of this incident. But isn't it
12 true you've had a long history of neck and back pain;
13 correct?

14 A I have had a history of pain, yes.

15 Q Okay. And I think you've already mentioned you were
16 diagnosed with osteoporosis sometime around 2006; correct?

17 A Yes, I was.

18 Q All right. And you, also, were diagnosed around that
19 same time with degenerative disc disease?

20 A At the same time, yes.

21 Q Okay. And both of those conditions can cause a lot
22 of pain, can't they?

23 A Yes. They cause bone pain.

24 Q Okay. And on top of those conditions, you've been
25 involved in a couple different accidents prior to this,

1 haven't you?

2 A Yes, I have.

3 Q You were involved in an accident at a fair in 2004
4 that, ultimately, led to you being taken to the hospital;
5 correct?

6 A Yes.

7 Q And you injured both your neck and back in that
8 incident, didn't you?

9 A That's the parts of my -- that, and my legs, and my
10 hips, and...

11 Q Okay. And then prior to that, I think you said about
12 10 years ago, you were involved in a fairly serious motor
13 vehicle accident in which you hurt your back?

14 A Yes, I was.

15 Q Okay. Now, I think you've said that you -- again,
16 you've got -- between the motor vehicle accident, the fair
17 accident, the osteoporosis, and the degenerative disc
18 disease, you've had fairly -- like I said, a long history
19 of back pain.

20 Now, you've said that you've got some symptoms here
21 that -- today that you did not have previous; correct.

22 A That's correct?

23 Q Okay. And I believe you mentioned one of those
24 symptoms would be numbness; correct?

25 A That is correct.

1 Q All right. Well, isn't it true that in 2007 -- to be
2 exact, actually, it would have been -- I'm sorry, 2008,
3 July 25th of 2008, you met with Dr. Meadows? Do you
4 recall seeing Dr. Meadows?

5 A Yes.

6 Q Okay. And Dr. Meadows has been treating you for the
7 osteoporosis for a number of years; is that correct?

8 A Yes, she has.

9 Q Okay. And, in 2008, you complained to Dr. Meadows of
10 ringing in the ears, numbness, weakness, headaches, falls,
11 depression, anxiety, and sleeping problems; isn't that
12 correct?

13 A That is true.

14 Q And, in fact, I mean, if we went through the history
15 here, starting in 2006 when she diagnosed you with
16 osteoporosis, you've complained on multiple occasions with
17 pain in the back, particularly around the bra line; is
18 that correct?

19 A Yes.

20 Q Okay. You've, also, complained of tenderness in your
21 shoulder?

22 A Yes.

23 Q All right. And, you know, Dr. Meadows expressed
24 concerns about you being able to do your job even in 2006
25 due to these; isn't that correct?

1 A That is correct.

2 Q All right. And then in 2007, February of 2007, you
3 reported difficulty doing many everyday activities and
4 much difficulty participating in sports; isn't that
5 correct?

6 A That is true.

7 Q All right. And in March of 2007, you reported
8 ringing in the ears and weakness?

9 A Yes.

10 Q Okay. You reported that you were still having
11 difficulty with everyday activities and that you could not
12 participate in sports; correct?

13 A That is true.

14 Q All right. And, again, in September of 2007, again,
15 to Dr. Meadows experiencing -- you reported experiencing
16 falls, ringing in the ears, weakness, and headaches;
17 correct?

18 A That is true.

19 Q And, again, you know, going into 2008, November of
20 2008, again, reporting extreme difficulty with everyday
21 activities, thoracic spine pain, hurts to walk, cannot get
22 up [sic] the floor, hurts to sneeze; is that correct?

23 A That's true.

24 Q And then in January of 2009, you saw Dr. Boineau, I
25 believe, at the McCraw Clinic; is that correct,

1 Dr. Boineau?

2 A A nurse practitioner, yes.

3 Q Okay. Do you recall reporting at that time that you
4 had been laid off from work and didn't believe you'd be
5 able to go back to work due to your physical condition?

6 A Due to the emphysema, yes.

7 Q All right. And then, again, in December of 2009, you
8 were still reporting to Dr. Meadows ringing in the ears,
9 weakness, depression, anxiety, osteoporosis,
10 osteoarthritis, and low back pain was worsening?

11 A Yes.

12 Q Okay. And then in December of 2009, Dr. Meadows had
13 noted that you had lost two -- almost two and a quarter
14 inches in height due to the osteoporosis; is that correct?

15 A Yes. That's correct.

16 Q Okay. And Dr. Meadows, also, advised you at one
17 point in time that you should quit smoking because that
18 could contribute to your pain; is that correct?

19 A That's correct.

20 Q Okay. But you have not given up smoking, have you?

21 A I have tried on several occasions, but have not been
22 successful.

23 MR. SHAW: That's all the questions I've got for you,
24 Ms. Orr.

25 THE WITNESS: Okay. Thank you.

1 THE COURT: Thank you, Mr. Shaw.

2 Mr. Chambers.

3 MR. CHAMBERS: No redirect, Your Honor.

4 THE COURT: All right. Ms. Orr, you may step down,
5 ma'am.

6 THE WITNESS: Thank you.

7 THE COURT: Let me ask the lawyers something up here
8 real quick, if I could, please.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: Ladies and gentlemen we're going to go
11 ahead and break for lunch. Just be back in the jury room
12 at 2:30. We're going to start the case up again at 2:30.
13 We've got a witness that will be coming at that time. And
14 I hope you have an enjoyable lunch. Don't talk about the
15 case. Continue to keep an open mind.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 1:00 p.m.)

18 THE COURT: Anything before we break?

19 MR. CHAMBERS: Not from the Plaintiff, Your Honor.

20 MR. SHAW: Not at this time, Your Honor.

21 THE COURT: Okay. We'll see y'all back at 2:30.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: We had the alternate advise Mr. Thompson,
24 the bailiff, that -- I got him to write it out. It says,
25 At home emergency. His grandmother is having heart pains.

1 No one else to take her, I guess. So I excused him. So
2 he's not here anymore.

3 MR. CHAMBERS: I was just going to say, Your Honor,
4 we don't have a problem with that, obviously. I think
5 we're going to finish today.

6 And I would just say, for the record, even if we got
7 to the point where we had to excuse another juror, we
8 would agree to go forward with less than 12, assuming the
9 other side is in agreement with that.

10 MR. SHAW: Your Honor, I mean, obviously, if he's
11 left, we don't have -- you know, there's nothing we can do
12 about that. I don't think we would be in agreement --
13 however, if we were to lose another juror that we'd be in
14 agreement to try the case with less than 12.

15 THE COURT: You would?

16 MR. SHAW: Would not, no, sir.

17 THE COURT: Would not. Okay. Well, we'll see about
18 that. I'm sure it won't come to pass.

19 But thank you.

20 All right. You can bring the jury in.

21 (WHEREUPON, Court's Exhibit No. 1 was marked for
22 identification and admitted into evidence.)

23 (WHEREUPON, the jury came into open court at
24 approximately 2:39 p.m.)

25 THE COURT: Yes, sir, Mr. Chambers. You may call

1 your next witness.

2 MR. CHAMBERS: Your Honor, I call Dr. Lucian Henry.

3 THE COURT: Place your left hand on the Bible and
4 raise your right hand.

5 WHEREUPON,

6 LUCIAN HENRY,

7 after first having been duly sworn, testified as follows:

8 THE CLERK: State your name, please.

9 THE WITNESS: Lucian Henry.

10 THE CLERK: Thank you.

11 Please be seated.

12 DIRECT EXAMINATION

13 BY MR. CHAMBERS:

14 Q Dr. Henry, are -- what is your profession?

15 A I'm a doctor of chiropractic.

16 Q And for those who may not know, what does that mean?

17 A Well, a chiropractor or a chiropractic physician is a
18 doctor who takes care of injuries to the neck and back.

19 Q Where do you work?

20 A I have a private practice at 1314 Pelham Road in
21 Greenville.

22 Q And how long have you been at that location
23 practicing?

24 A We've been at our new location a little over a year.
25 Prior to that, I opened my practice in 2006 at the corner

1 of 14 and Pelham Road in Greenville.

2 Q And did you work as a chiropractor prior to opening
3 your own office?

4 A I did. I worked as a locum tenens, which means that
5 I filled in for other chiropractors that were on vacation
6 or attending a conference. I did that from January of
7 2006, when I was, initially, licensed until opening my
8 practice in September of 2006.

9 Q Where are you licensed to practice as a chiropractic
10 physician?

11 A I'm licensed to practice in South Carolina and North
12 Carolina.

13 Q Is there training that is required in order to be
14 licensed?

15 A Yes, sir. North Carolina has the highest standards
16 in the United States for the licensure to practice
17 chiropractic medicine. So they require a bachelors
18 degree, which must have certain pre-medical subjects,
19 chemistry, organic chemistry, biology, psychology, and so
20 forth, plus completion of the doctor of chiropractic
21 program at a CCE or council on chiropractic
22 education-accredited college.

23 And following graduation, one must pass parts one
24 through four of the National Board of Chiropractic
25 Examiners, along with the physiotherapy examination.

1 South Carolina has similar requirements. And each state,
2 also, requires passing a state board, which consists of
3 ethics and juris prudence prior to licensure.

4 Q Do you have a bachelor's degree?

5 A Yes, sir.

6 Q And where did you obtain your bachelor's degree?

7 A I graduated from Clemson University studying computer
8 engineering with a minor in mathematical science.

9 Q So when you were going through school, did you have
10 any notion that you were going to be a chiropractor?

11 A No, sir. I, actually, received a full scholarship to
12 attend Clemson for academics. And I moved here from
13 Vermont to South Carolina.

14 I studied engineering. I completed the fundamentals
15 of engineering examination, which is a step towards
16 getting licensure as a professional engineer. I started a
17 master's degree in computer systems architecture at
18 Clemson. And I taught electrical engineering laboratory
19 courses as a graduate teaching assistant.

20 So I really didn't have any idea that I wanted to be
21 a chiropractor until I hurt my neck and I went to a
22 chiropractor and had a positive experience, and it helped
23 me to recover from the pain. I had a tremendous positive
24 experience there. Then later on, my wife and I were
25 injured in a car wreck. And chiropractic helped us both

1 to regain our health.

2 So, over a period of time, I made that decision to go
3 back to school and get the other prerequisites that I
4 didn't have, which were organic chemistry I and II and
5 psychology. And then I gave up my graduate fellowship at
6 Clemson and attended Sherman College in Spartanburg.

7 Q Is that where you -- that's where you went to
8 chiropractic school --

9 A Yes, sir.

10 Q -- was at Sherman College in Spartanburg?

11 A Yes, sir.

12 Q When did -- what was the period of time that you
13 attended Sherman?

14 A I enrolled in the fall of 2002. I graduated in
15 December of 2005. It is a 13 quarter or four academic
16 year curriculum.

17 Q And, briefly, if you could, tell us about the
18 curriculum that you were subjected to.

19 A Well, sir, the curriculum in chiropractic college is,
20 essentially, the same as medical school or dental school
21 with the exception that instead of taking courses on
22 pharmaceuticals or surgical procedures, we learn about
23 chiropractic adjustments, manipulation of the joints, and
24 different physiotherapy modalities.

25 So the common core consists of classes in anatomy,

1 neuroanatomy, physiology, all the basic sciences, the same
2 as medical school. And the big difference there would be
3 in the clinical portion.

4 Q All right. And so upon graduation, I guess, is when
5 you went through the licensing procedures you told us
6 about a few minutes ago?

7 A Yes, sir.

8 Q And since graduating and being licensed, you've been
9 engaged, as you told us, in the profession of chiropractic
10 medicine?

11 A Yes, sir.

12 Q Now, if you could, distinguish a chiropractic
13 physician from a medical doctor.

14 A Yes, sir. The South Carolina Attorney General, Henry
15 McMaster, offered the opinion that chiropractic does
16 constitute the practice of medicine, albeit a limited
17 scope of practice. So the difference would be a medical
18 doctor such as a family doctor has an unlimited scope of
19 practice. They treat everything.

20 In my practice, I only treat disorders like skeleton
21 muscles, joints, and nerves such as whiplash, degenerative
22 disc disease, neck and back pain. I don't treat sore
23 throats. I don't treat pneumonia. I don't treat cancer.
24 And the treatment is totally different.

25 So chiropractic has been since its inception a

1 drugless and nonsurgical healing art meaning that I don't
2 prescribe any medication and I don't perform surgery. I
3 mainly treat using manipulation, or adjustments, and
4 different physical therapy procedures.

5 Q So you don't prescribe medication?

6 A No, sir.

7 Q Do you have hospital privileges anywhere?

8 A I have never applied for hospital privileges, so I do
9 not have any. However, some chiropractors do that. And
10 the Department of Veterans Affairs does have chiropractors
11 at the military bases.

12 Q Do you have the need to prescribe medication or to
13 have hospital privileges in your practice?

14 A No, sir, I really don't. Because we have a good
15 working relationship with the patient's regular doctor or
16 physician. So if a patient comes to me, I'm not trying to
17 take the place of their family doctor, their orthopedist,
18 or their neurologist. We have a niche that we fit into.

19 So I don't feel the need to prescribe medicine. And
20 I, also, don't see any benefit to me having hospital
21 privileges, because I don't deal with emergency cases.

22 Q In your practice, do you refer -- sometimes refer
23 patients to medical doctors?

24 A Yes, sir, I do.

25 Q And what would be the occasions that you would need

1 to do that?

2 A Well, for example, in Ms. Orr's case, I referred her
3 to a neurologist for further evaluation because I had
4 findings of a concussion, which is something that I could
5 diagnose but I wouldn't treat. So I often refer patients
6 to neurologists, orthopedists, or pain management
7 physicians because they're the most closely aligned with
8 my practice.

9 I, also, send patients back to their regular doctor,
10 whether it be a family doctor or an internist if they have
11 high blood pressure, which is something that we sometimes
12 run into. So we try to work hand in hand with the
13 patient's other doctors. If I find something that's
14 outside my area of expertise or that might be an
15 emergency -- for example, I recently had a patient that
16 had lower back and leg pain. But when I did an MRI, we
17 found an aneurysm. So I sent him to see a vascular
18 surgeon.

19 Q Do medical doctors sometimes refer patients to you?

20 A Yes, sir. If you go back in history a long ways,
21 there was a lot of animosity between chiropractic and
22 medicine. But that is, basically, a thing of the past.
23 Today, we have a good working relationship. I've had
24 referrals from, at least, 30 different physicians in
25 Greenville County.

1 Q Now, you mentioned Frankie Orr. You have treated
2 Ms. Orr in the past; is that correct?

3 A Yes, sir.

4 Q What is the first date that she presented to you or
5 treated?

6 A The first day that Ms. Orr presented was May 3rd,
7 2010.

8 Q And when she came in to see you -- just, first of
9 all, what were her complaints?

10 A She stated that she was at Hillcrest Hospital and a
11 large framed picture fell from the wall hitting her on the
12 head forcing her neck down. And since then, she had been
13 experiencing headaches, dizziness, visual disturbance,
14 neck pain, pain at the mid to lower back, and pain and
15 tingling down the left arm with grip weakness at the left
16 hand.

17 Q And, given those symptoms, was that something that
18 you believed that you might be able to treat?

19 A Yes, sir, with the exception of the visual change and
20 symptoms that were consistent with a concussion. And
21 that's why I referred her to a neurologist.

22 Q When she came in, did you take a history from her?

23 A Yes, sir.

24 Q Is that something you do whenever a new patient comes
25 to see you?

1 A Yes, sir.

2 Q And for those who may not know, briefly tell us what
3 it means when a physician takes a patient's history.

4 A Well, taking the history consists of looking at the
5 patient's present complaint, whether there's an injury,
6 the mechanism whereby the injury happened, the character
7 of the symptoms, the intensity of the pain, for example,
8 any radiating symptoms, what helps it or what aggravates
9 it, what daily activities are difficult for that patient.

10 So, basically, we go through a complete series of
11 questions. And a lot of the diagnosis is determined just
12 based on the history.

13 So we, also, do the past medical history, any
14 surgery, prior accidents, injuries, major illnesses,
15 hospitalizations, or any complicating factors. Because in
16 Ms. Orr's case, she did have some complications due to
17 preexisting disc degeneration, osteoporosis. So we look
18 at all of those things. We look at the patient's current
19 problem, their past problems, and that is what constitutes
20 the history. So it's me asking a series of questions and
21 then interpreting the answers.

22 Q Did she indicate to you that she had been seen at the
23 emergency room at Hillcrest Hospital?

24 A Yes, sir.

25 Q And did you have an occasion, at some point, to

1 review the records from Hillcrest Hospital?

2 A Yes, I did. I obtained and reviewed the records from
3 Hillcrest Hospital.

4 Q Were her complaints consistent with what she told you
5 when she came to see you?

6 A Yeah.

7 Q That she -- in other words, what she told the people
8 at the -- it was consistent with what she told you?

9 A It was consistent. She, also, mentioned something
10 about an adverse drug reaction, which was outside my area
11 of expertise. But that was something that I had to
12 discuss with Dr. Sinka.

13 So, yes, what she stated to me and what was in the
14 hospital records appeared to be consistent.

15 Q And do you know what the dates of treatment at the
16 emergency room were?

17 A Well, sir, I believe it was on the same date of
18 injury, so April 5th, 2010. And I have quite a few
19 records from Greenville Hospital System. So if you'll
20 give me just a moment.

21 Q That's okay. I mean, that's -- you've answered my
22 question.

23 A Yes, sir.

24 Q All right. In addition to -- and when she -- when
25 the patient gives you a history, would that be described

1 as subjective?

2 A Yes, sir.

3 Q So, in other words, when a patient says that they
4 hurt somewhere or that they have a symptom, would that
5 be -- is that what you would consider subjective?

6 A Yes. What the patient tells me is subjective. What
7 I find when I examine the patient would be called an
8 objective finding.

9 Q And you rely on these subjective matters with what
10 the patient tells you; is that fair to say?

11 A It's fair to say that, yes, I rely on what the
12 patient tells me. And then I correlate that with what I
13 find with the objective findings.

14 Q Now, in addition to taking the history and getting
15 the subjective information and looking at the records from
16 the emergency room, did you, also, do your own physical
17 examination of Ms. Orr?

18 A Yes, sir.

19 Q I want you to just take your time and go through that
20 and step by step tell us what you did as part of your
21 examination, and what your findings were as you went
22 through your examination.

23 A Would you like me to do all of them, sir?

24 Q Please.

25 A Okay. The patient's height and weight, she was five

1 feet tall. She was 136 pounds. Blood pressure, 134 over
2 80. Pulse, 72 beats per minute. The amplitude and
3 regularity were normal. The peripheral vascular system
4 was normal to palpation and inspection. Palpation of the
5 lymph nodes revealed no abnormalities. She ambulated well
6 without assistance.

7 Q Does that mean she could walk?

8 A Yes, sir. That means she walked. She didn't use a
9 cane. She didn't have a wheelchair. She didn't have to
10 have somebody assisting her in order to walk.

11 Active range of motion was reduced at the cervical
12 spine in all movements due to pain. By that, I mean we
13 have six ranges of motion, flexion, extension, lateral
14 flexion left and right, turning left and right. They were
15 all produced.

16 Passive cervical extension was painful. What that
17 means is active motion is the patient recruiting their
18 muscles. So it indicates a muscular injury. Passive
19 motion can be indicative of a ligamentous injury because
20 they're not using the muscles to move.

21 Movement of the left shoulder was painful.
22 Tenderness was present at C2, C5, T3, and L1-L2. And what
23 that means is I'm pressing down the patient's spine and
24 seeing if a pain response is elicited. There was spasm at
25 the suboccipital muscles left SCM, left scalenes, and

1 trapezius.

2 So the muscles on the front, the left side of the
3 neck, and then the shoulder, the trapezius area was spasm.

4 Q And, if you could, I want you to elaborate on that
5 just a little bit. When you note a spasm, what is that
6 and is that indicative of anything that you're looking
7 for?

8 A Yes. A spasm is an involuntary muscle contraction.
9 And it indicates an injury, in this case, a strain injury
10 of the cervical spine.

11 Q Would that be indicative of a chronic condition, or
12 of something that is acute, in other words, something that
13 had happened recently?

14 A A spasm indicates an acute condition.

15 Q Please, proceed.

16 A Yes, sir. The patient had weakness at the left
17 deltoid, left biceps, and left triceps. But I noted this
18 was likely due to pain. So she was in pain. So we can't
19 tell whether the weakness is because of a nerve root being
20 compressed or whether it's hurting her to do the tests.
21 So it was hurting her when I was doing the tests.

22 Q And when you say the "nerve root being compressed,"
23 is that what people refer to as a pinched nerve?

24 A Yes, sir.

25 Q Okay. Go ahead and proceed.

1 A Valsalva maneuver produced increased pain at the
2 cervical spine and left shoulder. Valsalva maneuver
3 consists of the patient taking a breath, tightening its
4 stomach muscles, and coughing. And that indicates nerve
5 root compression or irritation in the spine because it
6 increases the pressure on the discs and nerves.

7 Cervical foraminal compression test was positive.
8 What that means is I pushed down on the top of her head.
9 It produced pain at the neck and the left shoulder. There
10 again, another test indicating that the cervical nerve
11 roots are irritated. Cervical distraction was positive.
12 That means I lifted up on her head, it felt better to her.
13 Because it's taking pressure off from those nerves.

14 There was diminished sensation at the left upper
15 extremity C5 to T1 dermatomes. What that means, I took a
16 pin wheel, a sharp instrument, run it along the skin.
17 There are different areas of the skin that get their nerve
18 supply from different levels of the spine.

19 So that finding by itself doesn't really indicate a
20 particular nerve root being affected versus what we call
21 sclerotogenous or referred pain. So the muscles are
22 injured and the whole -- her whole arm had some numbness
23 from here down to here. Straight leg raise was negative.
24 That's a test for sciatica. She did not have any
25 indication of sciatica or pain down the leg.

1 The patient was normally oriented with appropriate
2 mood and effect. So she knew her name. She knew who the
3 president of the United States was. She knew the time of
4 day and so forth. And that was assessing for a concussion
5 or a brain injury. She was able to do those things okay.

6 And then cranial nerves two through 12 were grossly
7 intact. The cranial nerves do different functions. We
8 didn't test smell. That's the first cranial nerve. But
9 we looked at her eye movements, shrugging the shoulders,
10 smiling, so forth to see if there was any kind of a brain
11 injury that would affect those things. And all of those
12 things looked okay, which is usually the case, unless
13 there's something severe like a compressive brain tumor or
14 major head trauma. In fact, I've never seen an abnormal
15 cranial nerve from an injury before.

16 That's the end of the examination findings.

17 I, also, did a radiographic exam.

18 Would you like me to do that, sir?

19 Q When you say "radiographic," are those X-rays?

20 A X-rays.

21 Q Now, before we do that, I want to ask you, were you
22 aware that at the emergency room that the emergency room
23 doctor ordered a CT of the head and the cervical spine?

24 A I believe that I was. And I think that we were doing
25 additional views.

1 Q Is there -- so in doing your own X-rays, you felt
2 like there was a need for that?

3 A Yes, sir. The research shows that a lot of injuries
4 can be missed in the emergency room. And I did a couple
5 of different things. So the CT is helpful. But a CT is
6 not done in a weight-bearing posture.

7 So for me to look at the alignment of the patient's
8 spine, I have to do it weight bearing. That's why we did
9 that. I, also, did flexion extension views, which were --
10 with Ms. Orr moving her neck forward and backward, which
11 can demonstrate abnormal motion in the spinal joints.

12 Q And is that something that is taught for a
13 chiropractor physician that you -- that when you take your
14 X-rays, you want somebody in a weight-bearing position?

15 A Yes, sir. That is a standard chiropractic procedure.

16 Q And does that mean standing up?

17 A It means standing up, yes, sir.

18 Q As opposed to X-rays that are, typically, taken where
19 a person is supine, in other words, lying down to have the
20 X-ray taken?

21 A Yes, sir. That's correct. Because in chiropractic,
22 we're concerned with the biomechanics of the patient.

23 Q So you ordered your own X-rays in addition to these
24 tests that you've already described to us; is that
25 correct?

1 A Yes, sir.

2 Q What were your findings from the X-rays that you had
3 done?

4 A Well, we didn't see any fracture, which I didn't
5 expect to see since she had already had some imaging done.
6 I did see that there -- the bone density was decreased.
7 So Ms. Orr told me she had osteoporosis. I wanted to get
8 some idea how bad it was before I did any kind of
9 chiropractic adjustments on her.

10 There was no instability. That's what we're looking
11 at, also, in the flexion extension views. So that would
12 be a contraindication to some chiropractic treatment. So
13 I had to assess her for that.

14 I did find a mild left convex scoliosis meaning the
15 spine curved to the left. Some moderate disc degeneration
16 at C4, C5, and C5-C6. And I took imaging of the thoracic
17 spine. There was nothing abnormal in terms of fracture or
18 dislocation. The bone density was diminished at thoracic
19 spine, also.

20 Q So what were your objective findings based on the
21 tests that you described for us and the X-rays that you
22 took?

23 A The objective findings were the standardized
24 orthopedic tests that I did, which are done by
25 chiropractors, neurologists, orthopedists. They're just a

1 general medical examination procedure that would include
2 valsalva test, cervical compression tests, and distraction
3 tests, which were positive. I found muscle spasms and
4 restrictive motion at the cervical spine.

5 Q Were your objective findings consistent with -- in
6 other words, did they support the subjective complaints
7 that she had given you?

8 A Yes, sir. The objective findings supported the
9 subjective complaints.

10 Q Were you able to make a diagnosis?

11 A Yes, sir.

12 Q Were you able to establish a course of treatment for
13 Ms. Orr?

14 A Yes, sir.

15 Q What was your diagnosis, and what was your course of
16 treatment?

17 A Okay. The diagnosis was cervical and thoracic
18 segmental dysfunction. It means a biomechanical lesion.
19 The spine wasn't moving right, secondary to a strained
20 sprain at the cervical and thoracic spine, so the neck and
21 the mid back, accompanied by myofascitis, thoracic spine
22 pain, and cephalalgia. And I noted that the patient was
23 predisposed to injury by preexisting osteoporosis and
24 cervical disc degeneration.

25 Q That's what's, also, known as degenerative disc

1 disease?

2 A Yes, sir. They're the same thing.

3 Q You were aware through your tests and, also, from
4 what she had told you that she had those things; is that
5 correct?

6 A Yes, sir.

7 Q In setting out your course of treatment, is that
8 something you had to take into consideration?

9 A Yes, sir. That is something we had to consider. So,
10 number one, I wanted to make sure that it was safe for me
11 to provide chiropractic care for this patient. I did
12 treat her a little bit differently than I might treat
13 somebody who's 18 and doesn't have any of these problems.
14 In other words, I did a gentler manipulation when I
15 treated her.

16 And because she had some preexisting problems, that
17 made it easier for her to get hurt. It, also, made it
18 take longer to get her better. And we were able to help
19 her, but we were not able to get her all the way better.
20 If she had been 18 and had no prior problems, it might
21 have been a different story. But I had to treat the
22 patient that was in front of me. And it did complicate
23 her treatment quite a bit.

24 Q Did -- how long did you treat her?

25 A Well, I did -- I, actually, treated her again in

1 2012. So I've been treating her for sometime.

2 But the initial course of treatment, is that your
3 question?

4 Q That's it. Yes, the initial course of treatment.

5 A Okay. I treated her from May 3rd, 2010, through
6 August the 6th of 2010. At that last visit, we pretty
7 much determined that she was as good as we were going to
8 be able to get her for the time being. And she was
9 dispensed a tens unit, which is a home electrical
10 stimulator to be used for pain relief at home, and given
11 home care instructions to apply moist heat.

12 And then I didn't treat her, but I did speak with her
13 on occasions after that. Then she came back in with an
14 exacerbation or a worsening of her condition in 2012.

15 Q How many visits during that initial course of
16 treatment? Do you know?

17 A If you'll give me just a moment.

18 We did 26 visits from the first visit through June
19 the 8th. And then we discontinued the treatment. And
20 then she came back in and got the tens unit at the one
21 visit on August 6th, 2010.

22 Q And these visits when she would come in, on average,
23 how long would she be treated -- be there in your office
24 being treated?

25 A How long would the entire treatment take? 30 to 45

1 minutes.

2 Q And, generally, what would occur during those visits?

3 A Well, generally, we do a chiropractic adjustment,
4 which doesn't take very long at all. It just takes a few
5 minutes. But then we, also, do some different
6 physiotherapy procedures.

7 So, in her case, we were applying electrical
8 stimulation to the neck and back. And that is a therapy
9 to reduce inflammation. It helps get rid of pain. It
10 decreases muscle spasms. And we did that for half an
11 hour, along with a hot pack. And we did do some myofacial
12 release or deep tissue massage. We didn't do a whole lot
13 of that. We, also, did some mechanical traction.

14 So the mechanical traction takes 15 minutes, the
15 electrical stimulation takes 15 minutes up to about half
16 an hour.

17 Q Did -- during the course of your treatment, did you
18 refer her to a neurologist?

19 A Yes, sir, I did.

20 Q And to whom did you refer her?

21 A I referred her to Dr. Eric Sinka at Carolina
22 Neurology.

23 Q And did you consult with him and review his records?

24 A Yes, sir.

25 Q All right. Tell us about the referral that you made,

1 and the follow-ups that you had, and what the records have
2 indicated.

3 A Well, Dr. Sinka, essentially, confirmed the diagnosis
4 of a concussion. And he tested Ms. Orr to see if she had
5 any abnormal electrical tests, in other words, nerve
6 conduction velocity and electromyography, which consists
7 of sticking needles in the arm, running electricity
8 through it, seeing how the nerve is working. And those
9 tests came back okay. So that rules out a neuropathy or a
10 pinched nerve going down the arm. And I believe we had
11 a -- some imaging, too.

12 Q Did she have an MRI?

13 A Yes, sir. One of the things that I was concerned
14 about were the visual changes, which, I think, were from
15 the concussion.

16 Q And when you say "visual changes," what are you
17 talking about?

18 A Ms. Orr reported what she called refracted vision.
19 So her vision was blurry. And that is a symptom of mild
20 traumatic brain injury or a concussion.

21 Q Had she reported any other mental deficits to you?

22 A Headaches, I think, were the other one. And
23 headaches are difficult to determine whether it's coming
24 from a muscular tension injury at the neck or from a brain
25 injury. It could be either one. It's very hard to

1 differentiate between those.

2 Q And after conducting these tests, did Dr. Sinka send
3 her back to you? Was he able to treat her? What happened
4 with Dr. Sinka?

5 A Well, we continued treating her at the same time. So
6 we both treated her. She was doing well. She was showing
7 improvement with her chiropractic care. So we continued
8 that. And then he, also, provided her with neurology
9 care.

10 Q And you said that you, eventually, released her. And
11 I think you said you had gotten her about as well as you
12 could get her?

13 A That's correct.

14 Q And what -- how would you describe her condition at
15 the time that you released her?

16 A She was still unable to go back to work. I think
17 that was the biggest thing. Because her job was physical
18 as an industrial electrician. And she was still
19 experiencing persistent mid-back pain, tingling at the
20 left upper extremity or down the left arm and hand, neck
21 pain, lower back pain, headaches. And she was still
22 having the visual changes. I found that there was
23 restriction in asymmetry at the spine when I examined her
24 by feeling of her back and neck.

25 And I, also, found trigger points, which are painful

1 knots that form in muscles after they've been hurt. And
2 so we sort of expected her to continue to have some
3 chronic pain. But we took steps to try to keep it to a
4 minimum. That's why we did the home tens unit, which is
5 similar to what we had been doing for her in the office.
6 It helped her, but the pain kept coming back. So this was
7 something that she could use at home every day. It's less
8 costly. It's more efficient for her to be able to do it
9 for herself.

10 I, also, spoke with her daughter, who's a CNA. We
11 talked about doing some self-massage stuff like that at
12 home to help with the pain and apply moist heat.

13 So I discharged her because I had done all I could do
14 for her. I expected her to continue to have chronic pain
15 as a result of this injury, but there wasn't anything more
16 that I could do to help, unless she had a flare-up. So
17 we were just trying to manage her condition at this
18 point.

19 Q Was it your opinion, at that time, that she was going
20 to have permanent deficits of some sort physically?

21 A Yes, sir.

22 Q And had you ever treated her prior to her coming in
23 following this incident at the hospital?

24 A No, sir.

25 Q But you were aware of her significant prior history

1 of the osteoporosis, the degenerative disc disease, and
2 those things?

3 A Yes, sir. I was aware of that. I believe she
4 treated with Dr. Meadows, a rheumatologist. She had a
5 history of back pain. So I think that predisposed her to
6 having further injury. Had she been young and -- younger
7 and in great shape and had no preexisting problems, maybe
8 the injury would not have had the same effects.

9 Q Based on your training and experience and your
10 treatment of Ms. Orr, do you believe that the problems she
11 has now are problems that she would have had had this
12 picture never fallen on her head?

13 A No, sir. I think that if she hadn't had this injury
14 she'd probably be in a lot better shape.

15 Q And on what do you base that opinion? Why -- how can
16 you say that now?

17 A Based on the objective findings when I examined her.

18 MR. CHAMBERS: Dr. Henry, that's all the questions I
19 have for you. Please answer any that opposing counsel
20 has.

21 THE WITNESS: Yes, sir.

22 THE COURT: Cross-examination.

23 MR. SHAW: May it please the Court.

24 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were
25 marked for identification only.)

CROSS-EXAMINATION

1
2 BY MR. SHAW:

3 Q Dr. Henry, I'm going to hand you what has been marked
4 as Defendant's Exhibit No. 1, and ask you if you recognize
5 what I've handed up to you?

6 A Yes, sir. It appears that you have printed out a
7 portion of my website.

8 Q I'll hand you what has been marked as Defendant's
9 Exhibit No. 2, and ask you if you recognize that document?

10 A Yes, sir, same thing.

11 Q Okay. So is it fair to say then that what's been
12 marked as Defendant's Exhibit No. 2 is the -- would that
13 be the first page or the front page of your web page -- of
14 your website?

15 A Yes, sir.

16 Q Okay. And then what has been marked as Defendant's
17 Exhibit No. 1, is that your bio page under your website?

18 A It appears to be, yes, sir.

19 Q Okay. And, Dr. Henry, I wanted to follow-up. Now,
20 again, you -- just to be clear. You're a doctor of
21 chiropractic; is that correct?

22 A Yes, sir.

23 Q You're not a medical doctor; correct?

24 A No, sir. I'm not a medical doctor. I'm a doctor of
25 chiropractic.

1 Q Okay. You did not go to medical school; correct?

2 A No, sir. I went to chiropractic school --

3 Q Okay --

4 A -- which like dental school or podiatry school is
5 separate from medical school.

6 Q Okay. And you went to Sherman College; correct?

7 A Yes, sir.

8 Q And you talked a little bit about the qualifications
9 to be a chiropractor in North Carolina, and you said that
10 South Carolina was similar. One distinct difference
11 between South Carolina and North Carolina would be South
12 Carolina does not require an undergraduate degree to be a
13 chiropractor; isn't that correct?

14 A Yes, sir. That is correct. South Carolina requires
15 90 semester hours or three years of undergraduate
16 education before you can be a chiropractor. They do not
17 require a bachelors degree in South Carolina, they do in
18 North Carolina.

19 Q Okay. And Sherman College, therefore, does not
20 require that you have graduated from undergraduate to go
21 to Sherman College; is that correct?

22 A That is correct, which is consistent with other
23 graduate-level health care professions. You don't have to
24 have a bachelors degree to go to medical school, dental
25 school, optometry school. Most people do, but you don't

1 have to have one, so that is correct, sir.

2 Q Okay. What medical school in South Carolina allows
3 admittance without an undergraduate degree?

4 A I couldn't answer that, sir. I've never applied to a
5 medical school. I was only interested in being a
6 chiropractor after I had a positive experience with one.

7 Q Okay. Can you name any medical school that allows
8 admittance without an undergraduate degree?

9 A There again, I'm not familiar with the admission
10 requirements of any particular medical schools. But I
11 know that students that have good academics can often get
12 in early.

13 Q Okay.

14 A Same thing with law school, sir. I don't think that
15 they require a bachelors degree at all graduate schools
16 for outstanding applicants.

17 Q I wish it was that easy.

18 All right. Do you know how many chiropractic schools
19 there are in the United States?

20 A Sir, I couldn't answer that exactly. I want to say
21 there are about 18. There have been some newer ones that
22 have opened recently. The D'Youville College has added a
23 chiropractic school. There are, also, some newer colleges
24 in Florida that have opened. So I'm going to say it's
25 approximately 18 to 20.

1 Q Okay. Do you know where Sherman chiropractic -- or
2 Sherman College ranks among the chiropractic schools in
3 the country?

4 A Well, sir, I couldn't answer that, because I don't
5 know what ranking you're referring to. But in terms of
6 national board scores, Sherman has consistently performed
7 very well compared with other chiropractic colleges. And
8 they post that information on their website.

9 Q Okay. Would it surprise you that the chiropractic
10 forum ranks Sherman College dead last among the
11 chiropractic schools in the country?

12 A Sir, could you repeat that one more time?

13 Q Yeah. I said, would it surprise you to know that the
14 chiropractic forum ranks Sherman College dead last among
15 the schools in the country?

16 A I've never heard of the chiropractic forum, sir.

17 Q So you're saying it would surprise you then?

18 A It would surprise me because I'm not familiar with
19 the publication you're referring to.

20 Q Okay.

21 A But Sherman College is accredited by the Southern
22 Association of Colleges and Schools, as well as the U.S.
23 Department of Education.

24 Q And you said that you diagnosed Ms. Orr with a
25 concussion. What qualifies you to diagnose Ms. Orr with a

1 concussion?

2 A My education, experience, and training, sir.

3 Q Oak. What part of your education is focused towards
4 concussions?

5 A Well, sir, as I stated earlier, chiropractic college
6 has a broad medical curriculum, including a lot of classes
7 in neuroanatomy, neurophysiology, diagnosis. And that is
8 part of our education and training. I've, also, taken
9 some postgraduate or continuing education classes towards
10 concussion. I took some with the Spine Research Institute
11 of San Diego.

12 Also, I've been to Harvard Medical School to attend a
13 conference there consisting of concussion, sports and
14 spine injury. This past weekend, I went to a conference
15 at Myrtle Beach on sports chiropractic. We discussed
16 concussion in the context of football.

17 So I would say that I have received training on the
18 diagnosis of concussion.

19 Q Okay. When did you attend the -- what did you say --
20 the conference at Harvard Medical School? When did you
21 attend that?

22 A I believe that was 2009, sir. It might have been
23 2010.

24 Q Okay. Where was that conference, actually,
25 conducted?

1 A Right outside Fenway Park. They had some of the top
2 experts in the world teaching about concussion.

3 Q And this was a one-day conference; am I correct?

4 A That's correct. It was one day.

5 Q All right. Any qualifications for attending the
6 conference?

7 A I don't think so, sir. I think everybody is welcome,
8 athletic trainers, physical therapists, physicians,
9 chiropractors. So this was something that anybody who had
10 an interest in going to could go to, which is the case
11 with most seminars and post-graduate courses.

12 Q And, just to be clear, it was a course that was put
13 on by the Harvard Medical School Continuing Education
14 Department; isn't that correct?

15 A Yes, sir. That is absolutely correct.

16 Q And it wasn't, actually, taught at Harvard Medical
17 School, was it?

18 A No, sir. It was a continuing education program. And
19 they had it over by the baseball stadium so we could take
20 a tour afterwards.

21 Q Okay. How was the tour? Any good?

22 A Yes, sir. It was enjoyable.

23 Thank you.

24 Q That, actually, sounded kind of cool.

25 The large part of your business is -- involves

1 working with Plaintiff's attorneys and people that have
2 been injured in some sort of personal injury suit; is that
3 correct.

4 A I would say that about 10 percent, maybe 15 percent
5 of my practice is personal injury related, mostly motor
6 vehicle collisions. The other 85 to 90 percent is not.

7 Q Okay. And let me go back. I think you had said that
8 you agreed that this -- Defendant's Exhibit Nos. 1 and 2
9 were copies of your website?

10 A Yes, sir.

11 MR. SHAW: I'd move to admit this into evidence, Your
12 Honor.

13 MR. CHAMBERS: No objection.

14 THE COURT: It's in evidence.

15 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were
16 admitted into evidence.)

17 MR. SHAW: Publish it to the jury?

18 THE COURT: Yes, sir.

19 BY MR. SHAW:

20 Q All right. Let's --

21 A Sir, could I add one thing to the last question?

22 Q Yes, sir.

23 A A lot of our patients that do come in attribute their
24 pain to a prior injury. So what I'm saying is studies
25 have estimated that 45 percent of the chronic neck pain in

1 the United States is due to a past motor vehicle
2 collision.

3 So we treat people with neck and back pain. Injury
4 cases are a fairly small percentage of the practice. But
5 most people that come in to see me have had some kind of
6 accidents or injuries in the past. And that's how they
7 end up with neck and back problems.

8 Q Okay. Let's talk a little bit about Ms. Orr then and
9 her problems.

10 A Yes, sir.

11 Q You're aware of the fact that Ms. Orr, prior to the
12 incident that we're here on today, had had a couple of
13 accidents prior to this that caused pain to her neck and
14 back?

15 A Yes, sir.

16 Q Okay. Did you take those into account as to whether
17 they might have been causing the problems that she was
18 having at the time that you saw her?

19 A Yes, sir. I did take that into account. And I don't
20 think that they caused the problems she had when she came
21 in to see me. I think that they predisposed her to
22 additional injury.

23 Q Okay. Now, when -- I'm not referring to the
24 osteoporosis or the degenerative back disease at the
25 moment. I'm referring to the fact that she was injured on

1 a fair ride -- or a ride at the fair and that she was
2 injured in an automobile accident. Did you take into
3 account those injuries prior to -- or as part of your
4 analysis?

5 A Yes, sir. When Ms. Orr came in, she told me about
6 the past auto accident. And then I saw in correspondence
7 with Dr. Sinka that she had an injury on an amusement
8 ride, which I believe affected her neck. So I did take
9 that into account.

10 Q Okay. Is it possible that those accidents were the
11 stem -- or the root cause of the problems that she was
12 having when she saw you?

13 A No, sir.

14 Q And why not?

15 A Because the findings when Ms. Orr came in to see me
16 were indicative of an acute injury, rather than a chronic,
17 long-standing injury.

18 Q Well, wouldn't the injury that she sustained as a --
19 on the fair ride and the injury that she sustained in the
20 car wreck, would those not have been acute injuries?

21 A An acute injury is something new, so three months
22 duration or less. If you sprain your ankle, for example,
23 it's acute. If you sprain your neck, it's acute. If you
24 have a chronic problem, it's something that's been there
25 for years developing over time.

1 So, no, I don't believe that the past injuries that
2 she had could have caused the spasms and the other
3 findings when she came in to see me.

4 Q And just so I'm clear on this. You're saying that
5 because you don't believe that those injuries could have
6 lasted a number of years; is that right?

7 A No, sir. I don't doubt that they could have lasted
8 for years. But we don't normally find spasm with a
9 chronic condition. We might find tight muscles, but
10 they're not going to be spastic. It feels different when
11 I'm palpating or examining the patient by touch. The
12 findings are usually going to be a little different.
13 There's more swelling. There's more spasm with an acute
14 injury versus a chronic condition.

15 Q Let's talk about that a little bit. Now, you're
16 aware of the fact that she had had a multiple -- a couple
17 CT scans done in the hospital the day of the incident;
18 correct?

19 A Yes, sir.

20 Q And did you review those CT scans?

21 A Yes, sir.

22 Q And what were the results of those CT scans?

23 A Well, I believe that the head was negative. If
24 you'll give me just a moment, sir.

25 Typically, the reason that they would do a CT on the

1 head would be to look for intercranial hemorrhage. If
2 somebody gets hit in the head, we want to know if it's
3 bleeding inside their skull because that could kill them.
4 They, also, want to look for fracture or dislocation.

5 So I know that the imaging was negative for all of
6 those things, which would constitute a medical emergency.

7 Q Would you expect -- as you were talking about that a
8 little bit -- and keep looking. But as you -- would you
9 expect that the CT scan, if she had suffered a concussion,
10 that there would be some sort of swelling and so forth
11 that would have shown up on the CT scan?

12 A No, sir. All the patients I've ever treated, I've
13 only had one that had an imaging finding with a
14 concussion. And that patient died. She had a traumatic
15 brain injury that was fairly severe. She had a diffuse
16 axonal injury, which does show up on an MRI. But every
17 other patient that I personally have ever treated that had
18 a concussion has had no imaging findings.

19 Q Okay. What causes a concussion?

20 A Well, a blow to the head, or it can be from a sheer
21 force like a sudden acceleration and deceleration on the
22 brain.

23 Q Okay. When you say a "blow to the head," by a blow
24 to the head -- what do you mean by a "blow to the head"?

25 A If someone gets hit in the head, that can injure the

1 brain. It can cause -- the old thought was that the brain
2 moves around inside the skull and hits the skull, and that
3 causes the injury. The newer scientific evidence is that
4 sheer force and rotation on the brain causes injury.

5 So sheer force can occur even without hitting the
6 head. It's a little bit different mechanism of injury.
7 It's the same kind of thing. So if the brain spins or if
8 the brain has this type of motion on the tissue, the
9 tissue can get damaged. And that is a mild traumatic
10 brain injury or a concussion.

11 Q Okay. The CT scans that were done -- that were taken
12 in the hospital, none of those -- or they did not reveal
13 any sort of acute injury, did they?

14 A No, sir. I believe that they just showed
15 degenerative changes. So --

16 Q And you said earlier that you had taken some
17 radiographic exams, and I'm assuming you mean X-rays by
18 that?

19 A Yes, sir.

20 Q You had taken some X-rays. And your X-rays, also,
21 turned up negative for acute injury; is that correct?

22 A Well, it turned up negative for a fracture or a
23 dislocation. We did see some indication that the spine
24 was not moving the way it should.

25 So I had Ms. Orr take a neutral lateral holding the

1 head still, bringing the chin down, and brining the head
2 back. There was no instability. And by instability, I
3 mean three millimeters of more of shifting of the bones.
4 If that's there, I'm probably not going to work on this
5 patient. I'm going to send her to see a surgeon, because
6 it may not be safe for me to work on them, or I would do a
7 very conservative treatment.

8 So we did not see any instability. We did see a loss
9 of motion or restriction.

10 Q Let me make sure I understand that. You're taking an
11 X-ray, which is a still picture; correct?

12 A Uh-huh.

13 Q How are you seeing whether there is or is not
14 movement in a still picture?

15 A If we look at the patient with her head straight
16 versus chin down to the chest or the head back, there
17 should be a certain amount of movement at each vertebra.
18 And if there isn't, it indicates that there's a loss of
19 motion. And that was present on Ms. Orr's imaging.

20 And that's something that we're taught as part of our
21 standard chiropractic radiographic procedures. You can
22 look at an X-ray and you can look for pathology or broken
23 bones, dislocation, severe findings. You can, also, look
24 for subtle things, misalignments, or segments that are not
25 moving the way that they should.

1 Q Okay. But, again -- and you say "moving," are you
2 feeling this with your hands or are you, actually, seeing
3 this on an X-ray?

4 A Both.

5 Q Okay. And I'm sorry. I'm not understanding what
6 you're seeing on the X-ray. You're saying that a still --
7 that it's not moving. How can you tell that it's not
8 moving when the picture itself is not moving?

9 A Comparing the neutral, the flexion, and the extension
10 positions.

11 Q Okay. So when you take pictures at multiple angles
12 of her neck, are you -- is it your testimony then that her
13 neck is at -- not at an angle that you're saying it should
14 be?

15 A Yes, sir. That's, basically, correct. I'm saying
16 that there was a loss of motion at the C5 vertebra. If I
17 look at bending the neck forward versus bending it
18 backward, which I can, also, feel with my hand.

19 So I -- it's two things. One is examining the
20 patient by touch. I'm feeling of the neck. I'm feeling
21 of the back. I'm finding where there's spasms, asymmetry,
22 the things that I discussed previously with the
23 examination. And then I compare that with the X-rays.
24 And that's how I determine the appropriate course of
25 treatment for the patient.

1 Q The degenerative disc disease that Ms. Orr suffers
2 from, though, that would cause some issues with the
3 mobility in her vertebra, would it not?

4 A You're correct, yes, sir.

5 Q Okay. So, again, whether there was or was not any
6 sort of lack of mobility in her vertebra, how are you
7 attributing that to -- as an acute injury, as opposed to
8 the degenerative back -- or the degenerative disc disease
9 or the osteoporosis?

10 A Well, sir, I treat a lot of patients that have both.
11 I treat a lot of people that have chronic conditions,
12 degenerative disc disease, facet syndrome, and so forth.
13 And then I treat people that have acute injuries like
14 sprains, sports injuries, car wrecks. And mainly the
15 palpation or feeling with my hands is what I rely upon.

16 And I can determine whether it is something that has
17 a lot of swelling, a lot of spasms. That indicates to me
18 more that it is a new or a recent injury versus what I
19 find if I have somebody that has a longstanding or a
20 chronic condition, which would be more stiffness,
21 tightness, but not the spasms and the swelling.

22 Q So is it fair to say that much of your diagnosis is
23 based upon what you feel with your hands? Is that
24 correct?

25 A Yes, sir. That is true..

1 Q Okay. More so than what you, actually -- in this
2 case, more so than what you, actually, saw on any sort of
3 diagnostic exam?

4 A Well, sir, I think that's always true. So we can
5 look at diagnostic imaging and it is an aid to treatment
6 of the patient, but we can, also, use a physical
7 examination. And the chiropractic guidelines allow for
8 both.

9 So you can look at an X-ray and you can determine
10 where something is out of alignment. But you really have
11 to examine the patient to find where the problem is. So
12 we always do both.

13 Q Okay. And I believe, in this case, your diagnosis of
14 Ms. Orr -- you diagnosed her with a vertebral subluxation.
15 Or what was the other term that you used for that?

16 A I used the term segmental dysfunction.

17 Q They're one in the same, though, aren't they?

18 A They're, basically, the same thing, yes, sir.

19 Q Okay. And that, as I understand it, is, basically, a
20 misalignment of the vertebra; is that correct?

21 A Yes, sir. That is true. It is a medical term for
22 motion segment in the spine that has lost its normal
23 alignment or movement integrity in such a way that it
24 interferes with normal nerve function. And that is in the
25 international classification of diseases. That is a

1 diagnosis that I used on Ms. Orr.

2 And that is the type of lesion or joint dysfunction
3 that would be appropriate to treat with chiropractic
4 adjustments or manipulation.

5 Q Okay. And when you say "manipulation," because of
6 the fact that she has osteoporosis in this case, you were
7 using low force manipulation; correct?

8 A Yes, sir.

9 Q All right. And the low force manipulation, the goal
10 of that would be to get the vertebra back in line;
11 correct?

12 A Yes, sir. And restore the normal movement to the
13 motion segment and free up any irritated nerves.

14 Q Okay. When she came in to see you, I think you
15 said -- what was the date that she came in to see you the
16 first time? Was it May the 5th or 3rd, or -- May 3rd, I
17 think?

18 A Yes, sir. May 3rd, 2010 was the date of Ms. Orr's
19 first visit.

20 Q Okay. Did you perform any low force manipulation on
21 her at that time?

22 A I don't think we did the first visit. Let me just
23 take a look.

24 No, sir. The first visit, what we did is the
25 examination, the X-rays. I dispensed her some Biofreeze,

1 which is a topical pain relieving gel, to put on at home.
2 And then we didn't do a manipulation until the second
3 visit, which was on May the 5th, 2010.

4 Q And -- okay. So when you treated her the second
5 time, a couple of days later, you were able -- you were
6 successfully able to get her -- the alignment back in
7 align with low-force manipulation; is that correct?

8 A Yes. That's correct.

9 Q Okay. But, yet, even though you were able to get the
10 spine back in align, you still needed to treat her 24 more
11 times after that; is that correct?

12 A That is correct. So when the spine goes out of
13 alignment, the surrounding soft tissues, the muscles, the
14 ligaments, the fascia, they get injured or stretched.
15 And, normally, with any chiropractic care plan, it takes
16 more than one visit to correct the problem. The worse the
17 problem, the more treatment is needed.

18 So if I had somebody -- for example, a child, if my
19 daughter falls down -- she's four years old. I might
20 adjust her one time and never need to do it again. When I
21 have somebody who is, you know, advancing in age and has
22 some other conditions and the more severe injury, of
23 course, it's going to take a lot more work. And there are
24 chiropractic guidelines for how many visits is appropriate
25 for a patient considering their diagnosis.

1 Q The -- this -- you've mentioned it a couple of times,
2 this myofascia injury. And I think you might have said
3 something about a soft tissue injury. Did this -- did --
4 the myofascia injury or the soft tissue injury that you're
5 talking about, did any of that show up on any sort of
6 diagnostic exam?

7 A Yes. My examination, my physical examination, but
8 not on any imaging studies, if that's what your question
9 is, sir. So we cannot see a muscle spasm on an MRI, or on
10 an X-ray, or on a CT. It does not show up.

11 Q How do you know it's there?

12 A By feeling.

13 Q Okay. So it's your testimony then that you can feel
14 something that does not show up on an MRI, or a CT scan,
15 or something to that --

16 A Yes, sir. That is my testimony. I do it all day
17 every day.

18 Q Okay. And why does it not show up on the MRI or the
19 CT scan?

20 A CT is mainly for assessing bones. So it's like a
21 better X-ray. It's computerized tomography. So it takes
22 an X-ray at different angles. It's very good for looking
23 for fractures. You can use it to look for some head
24 trauma. It can be used to look at the lungs. It is not
25 sensitive for soft tissues. MRI is much better. But MRI

1 still has limitations. It is only good down to about a
2 three-millimeter resolution.

3 So you can't see a spasm on an MRI. You can see the
4 disks. You can see the joints. It's very helpful, a very
5 useful diagnostic tool. But we can't use that to assess
6 for anything wrong with the muscles and fascia, unless it
7 was a radical problem like a complete tear of a tendon, or
8 something like that. Then we would be able to see it, but
9 it would have to be huge.

10 Q Okay. But you -- now, just so we're clear. You talk
11 about the spasm. But you earlier stated that the spasm is
12 a symptom of an actual injury. The spasm is not the
13 injury; correct?

14 A Well, sir, I would not call a spasm a symptom. It
15 would be an objective finding, something that I can
16 observe or I can feel, whereas a symptom is something that
17 the patient tells me about.

18 Q Okay. So it's an objective finding that is based
19 upon what, I believe, you stated earlier was an acute
20 injury; correct?

21 A Yes, sir.

22 Q All right. So there has to be an injury before
23 there's a spasm is what I'm getting to?

24 A Yes, sir.

25 Q So the injury, however, what you're saying is I

1 understand that the spasm itself may not show up on the
2 MRI. But you're, also, stating that the injury itself
3 will not show up on the MRI?

4 A Could you clarify that one, please, sir?

5 Q I'm asking you -- let me rephrase it then. Was there
6 an injury that showed up on any sort of diagnostic imaging
7 as it related to Ms. Orr?

8 A No.

9 Q Okay.

10 A And that's often the case with an injury like this.

11 Q Okay. And, again, we've said it many times, but
12 Ms. Orr has degenerative disc disease and she has
13 osteoporosis, both of those are capable of producing
14 fairly extensive pain, aren't they?

15 A Yes, sir. That's correct.

16 Q Okay. And I think, again, you've said that she --
17 that it's your belief that she suffered a soft tissue
18 injury. And, generally, soft tissue injuries can be
19 treated by people such as yourself; isn't that correct?

20 A Yes, sir. That is the majority of my practice would
21 be treating soft tissue injuries.

22 Q And, in most cases, you're able to cure whatever the
23 injury was; is that correct?

24 A I wouldn't say that, sir. The soft tissues of the
25 body don't heal perfectly. So if you break a bone, a bone

1 can heal good as new in six weeks. If your liver is
2 damaged, the liver has a tremendous capacity to
3 regenerate. When the soft tissues, the muscles, the
4 fascia, the ligaments get damaged, they do not heal with
5 the same elastic properties of the original tissue. They
6 tend to have some scar tissue forming.

7 And so, no, they usually do not heal properly, unless
8 it's a very young patient. So we help people. I would
9 not use the word "cure" patients.

10 Q Okay.

11 A So many soft tissue problems do become a chronic
12 problem.

13 Q When you say "many," I'm saying -- my question to you
14 was -- okay -- in most cases, are you able to cure a soft
15 tissue injury?

16 A That's a difficult one to answer. So we're able to
17 almost always get improvement for our patients --

18 Q So --

19 A -- when it comes to a point that a resolution of
20 symptom or as good as we can get them and whether or not
21 we can resolve most patients problems, I think the answer
22 is no. I think we can help them. We can get them better.
23 And then they may end up with some chronicity with an
24 injury to the muscles and fascia.

25 It really depends on the extent of the injury. And

1 to clarify, if you have a sprained ankle and it's a very
2 minor sprain, in three or four days, it's probably good as
3 new after you ice and maybe stretch it, and exercise it.
4 But if you have a bad sprain, it may never be the same.
5 Just like if a car gets in a wreck, it's never going to
6 drive the same, even after it's been to the mechanic.

7 Q But if a car gets in a wreck, you're going to be able
8 to see the physical damage to the car, aren't you?

9 A Yes, sir. That is true.

10 Q All right. And if you have a severe injury to some
11 sort of joint, ligament, to anything else, you're going to
12 be able to see that injury, aren't you?

13 A When you say "severe," it really depends on the
14 extent, so not always, no. You can have a soft tissue
15 injury that stretches out the muscles, the ligaments, the
16 fascia, and imaging doesn't show anything. It's still
17 there.

18 Q And that injury never heals?

19 A That's true.

20 Q Okay. Regardless of what you do to it?

21 A It really depends on the patient. Every patient is
22 an individual. If I have a kid 18 years old and they get
23 in a very minor accident, I may be able to get them good
24 as new. They may never need to come back. If I have
25 somebody that's older that gets hurt or they have a worse

1 injury, I may not be able to get them all the way better.

2 So we do the best we can. But it's kind of like
3 Humpty Dumpty. When he fell off the wall, we may not be
4 able to put him back together again. That often happens
5 with trauma.

6 Q Let's go back a minute and ask you again about the
7 concussion. Again, the first time you saw Ms. Orr was
8 nearly a month after the incident; correct?

9 A Yes, sir.

10 Q Okay. At the time that you saw her, she was not
11 still suffering from a concussion, was she?

12 A Yes.

13 Q Yes, she was?

14 A Yes.

15 Q Okay. And --

16 A A concussion can be long-standing, also. So it can
17 be something that's minor that goes away quickly, or it
18 can last a lifetime.

19 So, now, we're finding with football players, they
20 can get chronic traumatic encephalopathy, which is
21 degenerative disease of the brain. It's a lot like
22 Alzheimer's. So if they have repeated head trauma, that
23 can cause a permanent injury to the brain. And concussion
24 is a broad term. It can be very minor. It can last a few
25 seconds, or it can last forever.

1 Q Did anyone diagnose her with a concussion in the
2 emergency room on the date of her visit?

3 A I don't know the answer to that, sir. I could take a
4 look.

5 Q Okay. If I told you that they didn't --

6 A I'll take your word for it, sir.

7 Q Okay. And so the first time that she was ever
8 diagnosed with a concussion was when she came to see you
9 and, again, when she saw Dr. Sinka a couple days after she
10 saw you; is that correct?

11 A Yes, sir. That's correct.

12 Q So, again, a month afterwards?

13 A Yes, sir.

14 Q And that diagnosis was based purely upon what she
15 described to you, her subjective description of her
16 symptoms; correct?

17 A For the concussion?

18 Q Yes..

19 A Yes.

20 Q There was no objective tests to the concussion?

21 A There were no objective tests that I could do to
22 demonstrate a concussion. That is true.

23 Q Okay. And Dr. Sinka ran some nerve conduction
24 studies on her. Those all came back negative; correct?

25 A I believe so, yes, sir.

1 Q Okay.

2 A And a lot of times, the nerve conduction will come
3 back negative if it's the spine. So if it's carpal tunnel
4 syndrome, nerve problems, something like that, it will
5 show up. If it's the cervical spine nerve roots, it may
6 not show up. So it's not -- it was a normal finding in
7 this case.

8 Q Okay.

9 A Yes, sir.

10 Q And, again, I think you treated Ms. Orr in 2010 26
11 times, I think, is what you testified to?

12 A Yes, sir.

13 Q Then you did not treat her at all in 2011; is that
14 correct?

15 A I did not treat her at all. I did speak with her in
16 the context of treating her grandson. So she came in with
17 him. And I gave her some home care instructions, the same
18 thing that we've already talked about, keep using the tens
19 unit, put moist heat on it, Biofreeze, do massage at home.

20 So one of the goals is I don't want patients to be
21 dependent on having to come in and see me. I try to give
22 them things that they can do on their own to help
23 themselves. And then if the pain becomes unbearable,
24 then, of course, they're welcome to come back in. But I
25 really didn't feel like I could do her anymore good at

1 that point. So I just gave her some home care advice.

2 Q Okay. And you saw her again -- I think you testified
3 you saw her again in late 2012?

4 A Yes, sir. That's correct.

5 Q What was the date of that treatment?

6 A I believe it was October 12th through November 14th,
7 2012.

8 Q But it was a good two years after you had seen her
9 previously in 2010; correct?

10 A Yes, sir. That is correct.

11 Q All right. And I think you said that she had -- I
12 believe what you testified on direct examination was that
13 she had an exacerbation in 2012. It's not your testimony
14 that this exacerbation in 2012 was somehow caused by the
15 acute injury that she had suffered in 2010, is it?

16 A Are you asking me am I attributing the pain in 2012
17 to the injury in 2010?

18 Q Well, you called it an exacerbation --

19 A Yeah. Yeah, I am. That's what an exacerbation is.
20 It means that something caused her symptoms to flare up.
21 I believe it was cutting grass.

22 So cutting grass is something that she did normally
23 that -- you know, normally, in a healthy person, it
24 wouldn't cause a problem. But because she had this
25 chronic pain that had been at a manageable level using the

1 home care, the tens unit, the heat, the massage, the
2 analgesic, it became unbearable prompting her to come back
3 in for further treatment.

4 Q All right. And we're talking the chronic pain.
5 Again, she has chronic pain related to osteoporosis,
6 related to degenerative disc disease; correct?

7 A I think you're right. Yes, sir, she does.

8 Q Okay. And neither one of those issues were caused by
9 this picture falling on her head, were they?

10 A Neither of those issue were. But they predisposed
11 her to getting hurt worse.

12 Q But she already had pain prior to that; correct?

13 A She already had back pain. I'm not sure about the
14 neck --

15 Q Well, you testified earlier that she had had neck
16 pain as a result of the accident at the fair.

17 A She did, but I think it resolved. So what I think I
18 have here is that it was back pain that Dr. Meadows was
19 treating her for.

20 Q Okay.

21 A So I think that the pain from the fair ride went
22 away, to the best of my knowledge.

23 Q Okay. So, again, you saw her a total of 26 times
24 over the course of 2010; correct?

25 A Yes, sir.

1 Q And when you got done seeing her, she was still
2 having pain in her neck and back; is that right?

3 A Yes, sir. That's correct.

4 Q And she still had degenerative disc disease and she
5 still had osteoporosis, didn't she?

6 A Yes, sir, she did.

7 MR. SHAW: Okay. I have no more questions for you.

8 THE COURT: Redirect?

9 MR. CHAMBERS: No redirect, Your Honor.

10 THE COURT: Thank you, sir.

11 You can step down.

12 All right. Ladies and gentlemen, we'll take a brief
13 recess. Don't talk about the case. And continue to keep
14 an open mind.

15 If you would, select somebody to be the Foreperson.
16 And just write their name down and give it to the bailiff,
17 if you would.

18 Thank you.

19 MR. CHAMBERS: Your Honor, I would ask if Dr. Henry
20 could be excused.

21 THE COURT: Any objection?

22 MR. SHAW: I have no objection.

23 THE COURT: All right. Thank you.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 3:52 p.m.)

1 THE COURT: Are you going to have any more witnesses,
2 Mr. Chambers?

3 MR. CHAMBERS: No, Your Honor. We rest.

4 THE COURT: Any motions?

5 MOTIONS

6 MR. SHAW: Yes, sir, Your Honor.

7 We'll move for a directed verdict. I do have --
8 we're going to move on the exact same grounds as what we
9 moved for summary judgment earlier. I don't know if you
10 have a copy of my summary judgment motion.

11 THE COURT: Yes, sir.

12 MR. SHAW: If you don't, I'll be glad to hand it up
13 to you.

14 THE COURT: No. I read it in here.

15 MR. SHAW: Okay. I'd be happy to argue it, but I'm
16 sure you're aware of all the arguments that were made
17 in there. So you just let me know if you have any
18 questions.

19 THE COURT: What about the res ipsa, Mr. Chambers?

20 MR. CHAMBERS: Your Honor, this is not -- we're not
21 raising res ipsa. I would rely on Cook v. Food Lion. And
22 I've supplied this to opposing counsel and cited this as
23 well when we argued the summary judgment motion. And the
24 Court said in that decision that to prove negligence, the
25 Plaintiff must show either that the Defendant or the

1 Defendant's employee created the condition, or that the
2 Defendant had notice of it.

3 In this particular case, Food Lion's employee created
4 the allegedly dangerous condition by placing these mats by
5 the exit doors. That's directly on point with what
6 happened here. The picture was placed there either by
7 Hillcrest Hospital or by agents employed by Hillcrest
8 Hospital. So they created the condition.

9 MR. SHAW: Your Honor, if I may.

10 THE COURT: Mr. Shaw.

11 MR. SHAW: I think the Cook case is completely
12 distinguishable from the case at hand, Your Honor, in that
13 in the Cook case, there was evidence that Food Lion had
14 notice that these mats would wrinkle up. And it was a
15 long standing kind of condition that they would wrinkle
16 up. I would compare it very similarly to the Gumball Tree
17 case that gets brought up quite often in that there was
18 some notice to the facility that there was a problem, that
19 it did present a dangerous condition.

20 Here, we had no notice whatsoever that this picture,
21 which had been hanging on the wall for -- it's not in
22 evidence, but for a long period of time -- that there was
23 anything defective about the way this picture was hung.
24 Until Ms. Orr knocked the picture off the wall, it was not
25 a problem.

1 And there's no evidence whatsoever, as we sit here
2 today, Your Honor -- first off, Your Honor, there's no
3 evidence that the hospital, actually, hung the picture.
4 Ms. Orr testified that she didn't know who hung the
5 picture. We don't know that an employee of the hospital,
6 actually, hung it. But, certainly, again, we don't know
7 how it was hung. We don't know that -- by any means that
8 it was hung improperly. Again, it appeared to be hung
9 properly, because it was hanging there for years.

10 So the only thing that we know for certain, Your
11 Honor, is that when Ms. Orr sat down, she must have hit
12 the picture in such a way to knock it off the wall. And
13 that's the only thing that we know.

14 MR. CHAMBERS: Your Honor, first of all, there's
15 absolutely no evidence that she knocked it off the wall.
16 They're, essentially, asking you to make an assumption
17 that that's true.

18 Secondly, they put the picture there. It's probably
19 the most ludicrous argument I've ever heard to say, we
20 don't know that Hillcrest Hospital hung that picture. Who
21 cares? It's their hospital. They put it there. To show
22 that kind of disdain for the public is incredible to me.
23 And by the fact that it fell off the wall, we know that it
24 was not hung properly.

25 All you've got to do -- have you ever been to a

1 public place anywhere where a picture was not secured on
2 the wall? These pictures in the hallway have been hanging
3 there since 1996. I've never seen a one of them fall off
4 the wall. Why? Because they're secured to the wall.
5 They're secured to the wall with safety locks that you can
6 buy from Home Depot or Lowe's for \$1 apiece.

7 They created this. . Nobody told them they had to hang
8 a picture up to begin with, but they did. It is incumbent
9 upon them to make sure that it is safe. They created the
10 hazard. To say otherwise, we're, basically, at the
11 hospital's mercy when we walk in. And then they say,
12 well, you know, you can't prove it. You can't prove that
13 we did something wrong. Well, they did something wrong
14 because it fell off the wall.

15 THE COURT: All right. Well, we don't have res ipsa
16 here, but we do have circumstantial evidence. And I think
17 the Chaney case and others -- at this stage, viewing the
18 light most favorable to Ms. Orr, which I'm required to do,
19 and without weighing the evidence, I would respectfully
20 deny the motion for directed verdict.

21 All right. Is there any request to charge that
22 anybody, specifically, has?

23 Do you --

24 MR. SHAW: What's that?

25 THE COURT: Are you intending to call any witnesses,

1 Mr. Shaw?

2 MR. SHAW: I don't think we're going to, Your Honor.

3 THE COURT: All right. Any request to charge from
4 anybody?

5 MR. CHAMBERS: No, Your Honor.

6 I assume you're going to charge that, obviously, the
7 applicable law is premises liability.

8 MR. SHAW: I do have some -- I think I have some
9 suggested jury charges, Your Honor, that -- you know, you
10 can go through them and pick out which ones of these you
11 like or don't like. I mean, I --

12 THE COURT: All right, sir.

13 MR. SHAW: -- had come up with several that...

14 THE COURT: Thank you for the verdict form, by the
15 way.

16 MR. SHAW: You're welcome. It was your work, not
17 mine.

18 THE COURT: All right. We're going to take about a
19 10-minute break.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Anything else before we bring the jury
22 in?

23 MR. CHAMBERS: Not from the Plaintiff, Your Honor.

24 MR. SHAW: Nothing from the Defendant, Your Honor.

25 THE COURT: Okay. Bring the jury in.

1 (WHEREUPON, the jury came into open court at
2 approximately 4:12 p.m.)

3 THE COURT: Mr. Gadbury, you'll be the Foreperson of
4 the jury.

5 JUROR #38, ZANE GADBURY: Yes, sir.

6 THE COURT: Just bear in mind that if you or anybody
7 else on the jury needs to communicate with me, I can only
8 do so in writing by way of a note that will be made part
9 of the record, or out here on the record. But the note is
10 the best way.

11 JUROR #38, ZANE GADBURY: Yes, sir.

12 THE COURT: You've heard all the evidence -- well,
13 you've heard all the evidence you're going to hear in this
14 case. And now it's time for the closing arguments of the
15 lawyers.

16 So, yes, sir, Mr. Chambers.

17 CLOSING ARGUMENTS

18 MR. CHAMBERS: May it please the Court, Your Honor.

19 Mr. Shaw.

20 Ladies and gentlemen, as I told you at the beginning,
21 through this trial, we're going to take you back to April
22 5th, 2010. And, as you've heard from the evidence, as you
23 did in my opening statement, that was the day that Frankie
24 Orr went to the hospital that afternoon to see her mother,
25 who was in there with pneumonia. She was going to go sit

1 with her through the afternoon and overnight, as her
2 sister had been doing before her. And as she walked in
3 after allowing the nurses to finish up with what they were
4 doing, she went over and sat at the foot of her mother's
5 bed in a chair the hospital had provided.

6 And, as she sat down in the chair, something that
7 we've all done at some point in our lives, this very large
8 picture fell on her hitting her at the top of the head,
9 forcing her head forward, and resulting in all the things
10 that she told you about. She doesn't know whether she
11 blacked out or not. She did become nauseated. She said
12 once she got home, she threw up. She immediately began to
13 have neck pain, headaches, disorientation, all the
14 problems that you heard about.

15 There was, apparently, a nurse or somebody that
16 worked at the hospital who was nice enough to get her into
17 a wheelchair, and take her down to the emergency room.
18 She told you she was down there for a while. They ran a
19 few tests. And then they said, See you later. And they
20 sent her home.

21 You heard from her, as she told you, because she's --
22 you know, she's a very -- I think if you took nothing else
23 away from her testimony, her demeanor, she is a person who
24 is plain spoken. My grandmother used to say plain talk is
25 easily understood. She's one of those people. She's

1 easily understood. And you can tell when she talks to you
2 that she's sincere. She's not somebody that's making
3 things up. She's not somebody who's gilding the lily
4 trying to make it sound worse than it is.

5 She told the doctors at the emergency room, she told
6 Dr. Henry, and she told you that prior to this incident
7 happening at the hospital, she had been diagnosed with
8 osteoporosis back in 2006. She had degenerative disc
9 disease. She had been in a car accident several years
10 before. She had to be -- there was an injury that
11 occurred when she was on a carnival ride several years
12 ago.

13 Her base line -- her physical base line was not as
14 great probably as some of you who are sitting here. I see
15 we've got some young folks on the jury. It is natural
16 that as we get older, we start to break down a little bit,
17 some people worse than others. That was her situation.

18 But when she walked into that hospital that day not
19 expecting anything in the world to happen to her, she was
20 doing okay. She was doing okay. She was able to do the
21 things that she needed to do. She was able to have a
22 productive and happy life. She was able to play with her
23 grandchildren. She was able to hunt. She was able to sit
24 and fish all day.

25 And she wasn't working at that point because, as she

1 told you, she had emphysema. She was going through the
2 disability process. But she was able to do things for
3 herself. And she's a person who liked to do things.
4 She's a person that was used to working. She's a person
5 that was used to doing outdoor things. And, all of the
6 sudden, she couldn't do those things.

7 After she left the emergency room, she told you she
8 followed up with her primary care physician. She tried to
9 go see a neurologist, but none of them would see her. And
10 she was referred by her doctor to Dr. Henry. And you
11 heard from Dr. Henry. And he told you not only about what
12 she told you subjectively, but what he found objectively
13 in muscle spasms, the things that he was able to do upon
14 doing his physical examination, the things that
15 corroborated everything that she told him subjectively
16 about her complaints. It was corroborated by his
17 examination.

18 And I want you to realize that there is no evidence
19 whatsoever that has been presented to you that is in any
20 way contrary to what you heard from Dr. Henry, nothing.
21 Okay. Nothing. His testimony is unchallenged in that
22 regard. Okay. He was very precise in his findings and
23 why he believed that her injuries following this incident
24 were caused by that incident, that it was an acute injury,
25 and that she has physical deficits as a result of it.

1 Yes, she had these preexisting conditions. But, as
2 Dr. Henry told you, that made her more predisposed to
3 being injured. And when somebody causes injury to
4 somebody, they've got to take their victim as they find
5 them. If somebody is more predisposed to injury and you
6 injure them, that's just too bad for you. You caused the
7 injury. Your negligence caused the injury. And she
8 explained all of that to you, and how it has affected her
9 life. And you now have to put a dollar figure on that.

10 And there are things that you can consider. It's
11 really a hard job. You know, if I came in here and I had
12 a property damage case, it would be very easy for me to
13 prove to you what the property damage is. But when you
14 look at how somebody's life has been adversely affected by
15 their pain, by their suffering, by their loss of enjoyment
16 of life, by just the sheer aggravation that they've had to
17 go through based on something that they didn't do, that
18 they didn't cause, how do you put a dollar figure on that?
19 But you get to do that.

20 Now, one starting point is the cost of the medical
21 services in this case. And you have this. You probably
22 haven't had a lot of time to look at it. You can look at
23 it some more. It's \$15,165.40. But then you get to
24 supply a figure that, also, compensates for the other
25 things, the things that you can't put a dollar figure on.

1 And nobody gets to substitute your judgment. You folks
2 back there, as a deliberating body, get to decide that.

3 Now, one of the things you can consider as you go
4 back there and deliberate is just what this lady has been
5 through. It's very important in this case.

6 Now, we told you at the outset we have to prove a
7 couple of things. One is we have to prove that they were
8 negligent, that the hospital breached a duty that it has.
9 When you invite somebody in, you don't have to protect
10 them from any safeguard that just might ever occur.
11 Because, as we pointed out, there's the Bi-Lo incident.
12 If somebody walked in and spilled a drink on the floor in
13 Bi-Lo and they didn't know anything about it and somebody
14 came along and slipped, that's not Bi-Lo's fault. It
15 wouldn't be fair to blame Bi-Lo.

16 On the other hand, if they had placed, say, a rug in
17 the floor, they put it there, and it then bunches up in a
18 way that causes somebody to trip, they created that
19 hazard. And, folks, that's exactly what happened in this
20 particular case. They hung the picture.

21 Now, here is where things, to me, become sort of -- I
22 don't know -- bizarre. Just the sheer arrogance that has
23 been displayed by the Greenville Hospital System
24 throughout this entire episode that she's been involved
25 in, and even on display in this courtroom is eye opening

1 to me.

2 Now, they decided to hang a picture. . Somebody didn't
3 just sneak in there and hang it up there without them
4 knowing about it. I was, you know, a little bit shocked
5 when I hear questioning by opposing counsel to the effect
6 of talking to Frankie, You don't even know who hung that
7 picture, do you? You don't know that Greenville Hospital
8 System put that up there. You don't know. He even went
9 so far as to accuse her of knocking it off the wall.
10 Well, you knocked it with a chair. You knocked it off.

11 Here is what I know, folks, either they or somebody
12 that they hired hung that picture. There's nothing that
13 said they had to hang a picture up on the wall. Somebody
14 made the decision to do it there. It wasn't Frankie. She
15 didn't put it there. She didn't even know it was there
16 until it fell on her head. She had no idea.

17 If you're going to do that, common sense says make
18 sure it doesn't fall. You've got nurses in there all the
19 time. You've got visitors in there all the time. Common
20 sense tells you that you don't expect something to fall on
21 your head in that situation. And if it does, take
22 responsibility for it.

23 Have you ever seen a public building of any kind
24 where they didn't go to the trouble of going down to
25 Lowe's or Home Depot --

1 MR. SHAW: Your Honor, I'm going to object to this.
2 There's no evidence whatsoever about -- if he's heading
3 towards pictures that hang in public buildings, we didn't
4 take judicial notice of that.

5 MR. CHAMBERS: We don't have to take judicial notice,
6 Your Honor.

7 THE COURT: All right. Overruled.

8 MR. CHAMBERS: Go and spend a dollar on a security
9 anchor to hang a picture up. I would wager that you
10 couldn't even check into a room at the Motel 6 where they
11 wouldn't have the picture secured to the wall.

12 But what do they do in their arrogance? Blame her,
13 blame her, blame the victim. I don't normally get upset
14 about these things, I really don't. But that -- I am
15 incredulous that I sat here in this courtroom and I heard
16 this woman, who didn't ask to be here, who didn't ask for
17 any of this stuff to happen to her, be blamed for a
18 picture falling on her head and her being injured. That's
19 what I heard.

20 Folks, common sense tells you it wasn't her fault.
21 Common sense and common decency tells you they should take
22 responsibility for it, at least, walk in here and say, you
23 know what, we're sorry. We shouldn't have let that
24 happen. We're sorry.

25 But not only did you not hear that, what you heard

1 was, what did you do to cause it? What did you do,
2 Ms. Orr, to cause it? Did you hit it with your chair?
3 Even if she had hit it with her chair -- and she said, I
4 don't know -- should it have fallen off on her head? No,
5 absolutely not. Take responsibility for it. Take
6 responsibility. That's what we're asking them to do.
7 And, folks, that's what you can have them do is take
8 responsibility. That's what you're here for.

9 And then the next thing they say is, well, if it was
10 our fault, you weren't injured. Well, the medical
11 evidence says she was. The medical evidence says that, in
12 fact, she had objective provable injuries that resulted.

13 Now, when they took her down to the emergency room,
14 the X-rays didn't show any fractures, or anything else.
15 What she had was a soft tissue injury. She had, in all
16 likelihood, a concussion. And that's not just Dr. Henry
17 saying that, that was the neurologist saying that,
18 Dr. Sinka.

19 And what do they say that based on? They say that
20 based on what she said her symptoms were, the symptoms
21 being a headache, nausea, disorientation. She didn't make
22 up those symptoms. Those symptoms were presented to the
23 emergency room doctor. And there was testimony to that
24 effect.

25 Dr. Henry said, I reviewed those records. That's

1 what she told them. And based on what he said and what
2 Dr. Sinka told him, all of which is in evidence for you,
3 that is consistent with a concussion. And when you think
4 about a large picture -- and you've got to figure that she
5 was close to the wall.

6 So, in all likelihood, the frame is probably what hit
7 her, a metal frame. So she took the full brunt of that
8 thing falling off. You would expect that is consistent
9 with what they said that there was a concussion. Okay.
10 The fact that they didn't find it at Hillcrest Hospital
11 doesn't mean anything. I'm still amazed that they cut her
12 loose and let her drive home. But that's what happened.
13 That's what happened in this case.

14 And she got home and she continued to have problems.
15 And she sought help. And I'm not going to stand up here
16 at this late hour and belabor all of that and go over it.
17 You know what it is. You heard the testimony. You know
18 what the evidence is as far as the medicals go. You know
19 what the cost of that medical treatment was.

20 Now, what did they do in response? We already know
21 they didn't take responsibility for what they did in this
22 case. And then they try to convince you, well, any injury
23 she had happened before she came in there. Well, that's
24 not what Dr. Henry said. Dr. Henry said that her
25 injury -- her preexisting conditions were exacerbated.

1 And they have not answered to that in any capacity.

2 They have a hospital system full of doctors they
3 could have brought in here. They didn't bring a one,
4 which would lead you to believe that they probably don't
5 have anybody that would refute what Dr. Henry said.
6 Otherwise, they would have done it. It wouldn't have cost
7 them a penny to bring one of their doctors in here to do
8 that. They didn't even bring the emergency room doctor
9 that is in their employ. I bring a doctor in here and
10 I've got to pay him. Because doctors don't do anything
11 for free.

12 But what do they do? Well, they attack chiropractors
13 in general and Dr. Henry, specifically. Basically, the
14 Defendant says chiropractors are quacks. You can't rely
15 on them. And then they put into evidence he has a web
16 page. He wants people to come in and hire him. He wants
17 people to let him treat them for money. And somehow
18 you're supposed to -- that's supposed to discredit him.
19 It discredits them. It shows their arrogance. I know the
20 man is trying to make a living. That's fine. We're all
21 trying to make a living.

22 Guess what? Greenville Hospital System is trying to
23 make a living -- or I'm sorry. They're Greenville Health
24 System now. They changed it because it's more reflective
25 of what they do for our community. I know this how? I

1 know this because of numerous commercials that they run on
2 TV inviting you to use their services. I know this
3 because of all the billboards they put up telling me what
4 a wonderful hospital they have, and what wonderful doctors
5 they have working for them.

6 Their competitor, Bon Secours Health System, even
7 paid over a million dollars to put their name on what used
8 to be the Bi-Lo Center. They are advertising. This man
9 has a website, don't believe him, discredit him. That is
10 the act of desperation. That is the act of arrogance.
11 That is the act of cynicism.

12 They have not taken responsibility, because they
13 don't believe you'll make them be responsible. And if you
14 don't hold them responsible, their arrogance will only be
15 heightened. It will only be embolden. And they'll leave
16 here believing that anything can happen to anybody and
17 they bear no responsibility for it. And there's only one
18 way to make that happen. And that is to come back with a
19 substantial verdict in this case.

20 Now, I'm not -- again, she didn't come in here to get
21 rich. She doesn't want to be here. She wants to be
22 compensated fairly for the damages that she suffered in
23 this case. And you get to figure that out. But you,
24 also, get to send a message to them, take responsibility.

25 I would suggest to you that if you go back there and

1 after considering this, you come back, let's say, with
2 \$100,000, that gets their attention. Then they start
3 taking care of the public. That would give her redress
4 for the injuries that she's had, the things that she's
5 gone through, the trouble she's had to endure. Folks,
6 it's pretty clear in this case, it's about responsibility.

7 Thank you very much.

8 THE COURT: Thank you, Mr. Chambers.

9 Mr. Shaw.

10 MR. SHAW: May it please the Court.

11 Mr. Chambers.

12 Ms. Orr.

13 Ladies and gentlemen, I told you at the beginning
14 that sometimes accidents happen and no one is to blame.
15 And I, specifically, did say no one is to blame. Contrary
16 to what Mr. Chambers just told you, I never, actually,
17 blamed Ms. Orr for the picture falling off the wall. I
18 just simply asked whether or not she hit the picture with
19 the back of her chair. I'm not blaming her for hitting
20 the picture with the back of the chair.

21 But the fact is this, ladies and gentlemen, that
22 picture was hanging on the wall. It had been hanging
23 there for God knows how long. Because that's one of those
24 questions that didn't get answered here today.

25 And, again, I point back to what I said in the

1 beginning. Ms. Orr is the Plaintiff in this case. She
2 has the burden of proof. She has the burden of answering
3 your questions. I'm sure you're sitting here right now
4 with lots of questions. You're probably wondering exactly
5 how was the picture hung, you know? What caused the
6 picture to fall off the wall, you know? Was -- you know,
7 would -- you know, was it hung correctly? And all those
8 kind of things.

9 All right. Well, Ms. Orr was the one who is
10 responsible for answering those questions for you. And I
11 didn't hear the answer to any of those questions today. I
12 didn't hear any evidence whatsoever as to how this picture
13 was hung on the wall, none. All right. So -- but she
14 wants you to believe that the picture was hung incorrectly
15 because it fell off when she may or may not have hit it
16 with her chair. All right. We don't know. That's the
17 point. We do not know what happened here. All right.

18 But, again, it's her responsibility to tell you what
19 happened. Again, I'm not blaming her for what happened at
20 all, you know. I do sympathize with her. But, then
21 again, when -- she had plenty of opportunity leading up to
22 this to investigate this to find out, to talk to people at
23 the hospital, to find out how the pictures are hung at the
24 hospital.

25 Did you hear any evidence to that whatsoever? No,

1 you didn't, none. It's not like the hospital wasn't
2 available. You can come in and talk to us and ask all
3 those kinds of questions. Did she ever ask any of those
4 questions? No. Did she ever ask -- did she ever answer
5 any of those questions for you today? No, she did not.
6 None of those questions were answered. She had an
7 obligation to do that. It's not my obligation to do that.
8 I'm not up here answering those questions. It's her
9 obligation to do that.

10 Now, again, we don't know how the picture was hung.
11 We don't know who hung the picture. And, again, I mean,
12 as Mr. Chambers said, it must have been the hospital that
13 hung the picture. Well, again, I'm not sitting here
14 telling you the hospital didn't hang the picture. Quite
15 frankly, I don't really know who hung the picture. But
16 I'm not going to argue with his assumption that, yes, it's
17 in our hospital, we probably had something to do with
18 that.

19 But there's, certainly, no evidence that that picture
20 was hung incorrectly. We have all the reason to
21 believe -- all the reason in the world to believe that it
22 was hung correctly. Again, it was hanging there when she
23 walked in the room. It had been hanging there for God
24 knows how long.

25 Now, Ms. Orr had this picture fall on her. And she's

1 claiming that, you know, as a result of the picture
2 falling on her, she has sustained a number of injuries.
3 Well, you have heard that Ms. Orr has a long, long history
4 of having neck and back pain. And the question that I
5 never quite got the answer to was how is that neck and
6 back pain different today than what it was prior to this
7 picture falling on her? How did the picture falling on
8 her cause some new neck and back pain? I never quite got
9 the answer to that.

10 Now, they brought in here Dr. Henry to testify on her
11 behalf, and to testify that she has suffered an objective
12 injury. And, again, he told you, as he talked to you,
13 that the injury that he was able to diagnose did not show
14 up on any sort of imaging exam. It did not show up on an
15 X-ray. It did not show up on any CT scan, or any sort of
16 MRI. She had all of those done. No injury was revealed
17 on any of those -- well, I should say no acute injury.
18 Now, she has, again, her degenerative disc disease. That
19 sort of thing would show up on some of those images. But
20 no acute injury caused by this incident showed up on any
21 of those exams.

22 But what he says is that he could feel. Using his
23 fingers, he could feel what would not show up on an exam.
24 Now, that may very well be true. Okay. But what I find
25 interesting is that Ms. Orr was seen by a number of

1 doctors, not just the doctors that she saw at Hillcrest
2 Hospital the day of the incident. But she was seen by --
3 she's been seen by Dr. Meadows. She's been seen by
4 Dr. Sinka. She's been seen by a number of doctors. None
5 of them are here today. Okay.

6 And when I say "doctors," I'm referring to actual
7 medical doctors. Again, I understand he's a doctor of
8 chiropractic. But I'm going to give a little more
9 deference to medical doctors, not to slight the
10 chiropractic profession. But I am going to give a little
11 more deference to a medical doctor.

12 There is no medical doctor here today to testify on
13 her behalf that she suffered an injury. The only one who
14 has said that she suffered an injury would be Dr. Henry,
15 who says that he -- she suffered an injury that only he
16 could feel with his hands. Again, when I asked him how
17 this injury was different than what she had previously
18 sustained in other accidents, he said that the injuries
19 that she had sustained in those other accidents would not
20 still be bothering her today. Yet, somehow or another,
21 this accident is still bothering her today.

22 Yet again, I go back and I look, she was involved in
23 a major motor vehicle accident. She was involved in an
24 accident at the fair that she described as being
25 traumatic, again, that led to her going to the hospital.

1 Those incidents began being very traumatic. But, yet, she
2 suffered injuries as a result of that, but those -- he
3 dismissed those completely as being the source of her
4 problems.

5 And, yet, he says when she came back to see him at
6 the end of 2012, two years after treating her, that the
7 injury -- what he was treating her for then was still the
8 same problem and the same injury that she had as a result
9 of this incident in 2010. And, again, take into
10 consideration now, Ms. Orr had this happen on April 5th,
11 2010. She was seen by a number of people in the ER,
12 multiple tests were run. They sent her off. She drove
13 home. She drove herself home. She was, clearly, good
14 enough to get behind the wheel of a car and drive home.
15 She then doesn't see anyone else. She doesn't see any
16 doctor until nearly a month later.

17 So we have a month go by of supposedly -- according
18 to her, having refracted vision and having all kinds of
19 issues. But, yet, she let's a month go by. She doesn't
20 go back to the hospital. I mean, don't you think most
21 people may have gone back to the hospital had they been
22 suffering from these -- what they're saying are conditions
23 as a result? Would you go back to try to get treatment?
24 She didn't do that.

25 She even said she waits about a month and goes and

1 sees her family doctor and goes from her family doctor to
2 see the chiropractor. And then the chiropractor, who saw
3 her 26 times, but, yet, apparently, did nothing for her
4 since he claims that she kept coming back and her
5 condition really hasn't improved, sent her to see a
6 neurologist. And, again, the neurologist ran tests on
7 her. They came back with that -- those tests were all
8 negative.

9 So, again, I ask the question of what injury did she
10 sustain? You know, again, I'm not saying that when the
11 picture fell off the wall it didn't shock her, she wasn't
12 surprised by it. It may have caused her some discomfort.
13 It may have even hurt a little bit. I'm not saying none
14 of that's not true. But to be sitting here today saying
15 that this has totally ruined her life and that she can't
16 do any of the things that she was able to do before seems
17 to be a little bit overdramatic to me, especially when you
18 take into consideration that many of the things that she's
19 saying that she can't do, she was saying she couldn't do
20 before.

21 She told Dr. Meadows the same things. She told
22 Dr. Meadows that she couldn't participate in sports. She
23 told Dr. Meadows that she was having trouble with just
24 everyday activities. This is long before -- this is
25 several years before this incident took place and went on

1 for several years. You heard me ask her about each of the
2 dates. And she admitted, yes, I told Dr. Meadows that, I
3 told Dr. Meadows that. This is not anything new.

4 She's having the same issues that she's been having
5 for years, the same issues that have been caused by her
6 osteoporosis and her degenerative disc disease. She told
7 you she has led a very physically demanding life. She had
8 a physically demanding job. I give her credit for that.
9 She worked hard. She worked very hard. But it's taken a
10 toll on her. It's taken a toll on her body. There's no
11 question about that. And it's that toll that's causing
12 these issues here today. There's no evidence that it's
13 the picture falling off a wall that has caused the
14 problems that she's having here today.

15 So, again, ladies and gentlemen, I go back to what I
16 said at the very beginning, this is a fairly simple case.
17 It comes down to two questions, what did the hospital do
18 wrong? I still don't know the answer to that question. I
19 don't know what the hospital did wrong.

20 And then, secondly, how was she injured? I'm not
21 really sure I know the answer to that one either. And,
22 again, as I said to you guys before, if you guys don't
23 know the answer to those questions, if you can't answer
24 those question definitively, if they weren't answered to
25 the best of your -- or if they weren't answered to your

1 satisfaction, then you should -- you're obligated --
2 you'll hear it from the Judge on what the law is as it
3 relates to this. But I think that's the simple way of
4 looking at it. You're obligated, in that case, to find --
5 return a verdict on behalf of the Defendant. And I ask
6 that you guys do that today.

7 Thank you.

8 THE COURT: Mr. Chambers.

9 MR. CHAMBERS: Ladies and gentlemen, I get to talk to
10 you again briefly. And I agree that this is a simple
11 case. And I agree that there are two issues that you have
12 to determine. But our position would be -- and I believe
13 that the evidence and, frankly, common sense bears this
14 out. There are no lingering questions, none. All right.

15 Again, while opposing counsel wants to stand up here
16 and say we're not blaming her, that's exactly what he's
17 doing. And it's absurd to say, you can't prove that we
18 hung that picture wrong. She didn't even know that
19 picture existed until it fell on her head. She has no
20 idea how it was hung. We know that it wasn't hung
21 properly. Guess why? It fell off.

22 And, again -- and I admire the fact that he was able
23 to do it with a straight face. But to stand up and again
24 say, We don't really know who hung that picture. It was
25 probably the hospital. Come on, folks. I mean, do you

1 not just shake your head when you hear something like
2 that? You have to.

3 They created the hazard. They are, clearly, at
4 fault. To say otherwise, basically, let's them completely
5 off the hook and puts anybody that walks into that
6 hospital in danger. Because, folks, that could happen to
7 anybody, what happened to her.

8 And let's assume for the sake of argument that she
9 bumped it with her chair. There's nothing to prove that's
10 what happened, but let's say she did. Still, they're at
11 fault. That picture shouldn't have fallen. I'm not going
12 to go on anymore about that. That is clear. That is
13 common sense.

14 Then we talk about the injuries. To say that there
15 is no evidence that her condition following this incident
16 was not worse than it was before, again, is asking you to
17 ignore the uncontroverted testimony of Dr. Henry, who
18 reviewed all of the records in this case and talked to you
19 about the records. It is, by the way, untrue and contrary
20 to the evidence that she went a month without seeing
21 anybody. She told you she went to her family doctor. She
22 told you she tried to see other doctors and they refused
23 to treat her. Her family doctor referred her to
24 Dr. Henry.

25 And they say they're not trying to discredit

1 chiropractors in general with Dr. Henry. But I ask you --
2 I mean, somehow it is supposed to be discredited that he
3 wants people to come hire him and he has a website. But,
4 again, I'm not going to go on about it like I did earlier.

5 They advertise. They want people to come hire them.
6 That's how it is. It's the free market system. We're all
7 trying to make a living. And it's not true that the
8 question of what -- how was her life afterwards any
9 different than it was before. She never said, by the way,
10 that her life has been completely -- she said it has been
11 adversely affected. She said that she still does some of
12 the things she used to do. She just can't do them as
13 much. And she can't do them for as long. And I'm not
14 going to belabor that point either.

15 They want to talk about the prior accidents. She was
16 up front. She told every doctor that treated her about
17 them, and she told you about them. Okay. But she was
18 better. She had healed before when those things happened.

19 Since this happened -- and, listen, nobody ever said
20 that she got treated 26 times and she didn't get any
21 better. She testified and Dr. Henry testified that she
22 had improved, but she never got completely better. And
23 she never will get completely better.

24 And is that in large part attributable to the
25 preexisting conditions? Yes, Dr. Henry told you that.

1 She told you that. But it was a catalyst to make those
2 conditions much worse. And they have continued to plague
3 her. And Dr. Henry said that that is true. He talked
4 about somebody getting a severely sprained ankle. It may
5 get better. It may get better to the point that you can
6 walk and run on it. But you will probably always have
7 some trouble from a severely sprained ankle. Some people
8 develop arthritis and things like that, as he said. You
9 can consider those things, folks.

10 Listen, I have all the confidence in the world that
11 y'all are going to do the right thing in this case. So
12 I'm not going to stand up here and take a whole lot more
13 of your time. When you get back there and you start
14 deliberating, you have a jury -- a verdict form that
15 you're going to get to see.

16 And there's a couple of things that you can decide.
17 One, you can say that you find for the Defendant,
18 Greenville Hospital System. And, frankly, if you do that,
19 then their behavior, as you've seen here with this
20 arrogance and this indifference for public safety, is
21 going to continue and it's not going to get any better.
22 And if somebody has the audacity to try and hold them
23 responsible, they're going to come in here with the same
24 cynicism, and the same arrogance, and they're going to
25 treat them exactly the same way.

1 Or you can find for Frankie Orr, the Plaintiff. And
2 you can write a substantial dollar figure in there that
3 gets their attention and tells them, no, you don't treat
4 people that way. You take responsibility for what you do.

5 Folks, we're just asking you to be fair in this case.
6 We really appreciate you being here. We look forward to
7 your decision in this case.

8 CHARGE ON THE LAW

9 THE COURT: Thank you, Mr. Chambers.

10 Ladies and gentlemen, you've heard all the evidence
11 you're going to hear in this case. And you've heard the
12 closing arguments. And it's now my instruction -- it's
13 now my obligation to instruct you on the law that applies
14 to the facts of this case.

15 It's your duty to find the facts from the evidence in
16 this case. And to those facts, you must apply the law as
17 I give it to you. And you must not be concerned with what
18 the law should be, but with what it is. And you must not
19 be influenced by any personal likes or dislikes, or bias
20 or prejudice, or undue sympathy in this case. And that
21 means you must decide this case solely on the evidence and
22 according to the law. And you will recall you took an
23 oath to do just that at the beginning of this trial this
24 morning.

25 Now, please, do not read into these instructions or

1 into anything I may have said or done during the course of
2 this trial as to what I think your verdict should be, or
3 what I think the facts are. As I told you at the
4 beginning, I'm not going to infringe on your
5 Constitutional right to determine the facts, just as I
6 know you're not going to intrude or infringe on my
7 prerogative to tell you what the law is.

8 You, and you alone, are the judges of what the facts
9 are. And you decide what the facts are by weighing and
10 evaluating the evidence you've heard during this trial.
11 You do that simply by using your good common sense, and
12 your sound judgment, and your sense of logic and reason.
13 And you bring those things to bear on the evidence you've
14 heard. And then you'll be able to determine the facts and
15 then you take the law I've given you and you apply it
16 those facts, and you'll be able to reach a verdict.

17 I told you at the outset that the Plaintiff has the
18 burden of proof. And that means the Plaintiff must
19 produce evidence which when considered in light of all the
20 facts leads you to believe that what she claims is more
21 likely true than not. To put it differently, if you were
22 to put the Plaintiff and the Defendant's evidence on
23 opposite sides of a set of scales, the Plaintiff would
24 have to make those scales tip slightly in her favor in
25 order to receive a verdict.

1 If after your weighing of the evidence, the scales
2 tip even the slightest in her favor, then Ms. Orr is
3 entitled to a verdict. If, however, after you weigh the
4 evidence, the scales are evenly balanced or they tip in
5 the direction of the Defendant, Greenville Hospital
6 System's side, then they would be entitled to a verdict at
7 your hands. So what you have to do is mentally weigh the
8 evidence and place it on the scales, and see which sides
9 weight -- which sides evidence has the greater weight in
10 your mind, and whether the Plaintiff has carried her
11 burden of proof.

12 Some of you may have sat on criminal cases before and
13 may be familiar with the standard of proof in criminal
14 cases, which is proof beyond a reasonable doubt. This is
15 a civil case, not a criminal case. And the standard of
16 proof is less than is required for the State to convict
17 someone of a crime. So the reasonable doubt standard does
18 not apply, and you should put it out of your mind.

19 Now, how do you determine what the facts are? As I
20 told you at the beginning, you do that by considering and
21 evaluating the evidence. And evidence consists of two
22 sources, as I told you about, witness testimony and
23 exhibits. Those are the only two things you can use to
24 determine what the facts are. Nothing else is evidence.
25 What the lawyers say, while it is very important and you

1 should pay attention to it, is not evidence because they
2 are not witnesses. So if your memory of what the
3 testimony was or what the evidence showed is different
4 from what the lawyers argued, your memory would control.

5 Now, I told you, also, that you would have to be
6 the -- by necessity judge the credibility or believability
7 of all the evidence. And so that means that for every
8 witness who testifies and every exhibit that's admitted,
9 you would have to determine it's believability. I told
10 you that you would have to do that.

11 And I'll tell you now that you may believe everything
12 a witness says, or you may believe nothing a witness says.
13 You may believe parts of a witnesses testimony and
14 disbelieve other parts. And you may believe one witness
15 over several, or several over one. But your sole duty,
16 ladies and gentlemen, is to determine the true facts. And
17 it does not matter to you where that truth comes from.
18 And I know you will not do that arbitrarily or
19 irrationally, and you're going to have some sound basis
20 for the decisions you make as to credibility of the
21 evidence.

22 Now, ladies and gentlemen, this is a civil case of a
23 form of negligence that is known as premises liability.
24 In general, a Plaintiff seeking a verdict for negligence
25 against a Defendant must prove, first of all, there was a

1 breach of the duty of care. Second of all, that they
2 suffered damages. And, third and finally, that those
3 damages were proximately caused by the breach of the duty
4 of care. I'm going to go through those separately for
5 you.

6 But, as far as the first element, the Plaintiff must
7 prove by the greater weight of the evidence the breach of
8 the duty of care. I will just tell you that a Plaintiff
9 in a negligence cause of action must show that the
10 Defendant acted carelessly or unreasonably. Negligence is
11 the failure to do what a reasonable, prudent person would
12 do under the same or similar circumstances, or it is
13 failing to do what a reasonable, prudent person would do
14 under the same or similar circumstances.

15 In the context of a case of premises liability,
16 negligence has some additional definitions under the law.
17 First of all, the law defines someone who enters the
18 premises of another at the expressed or implied invitation
19 of the owner to be an invitee. Invitees are people who
20 come on the land of others by expressed or implied
21 invitation, and their entry is connected with the business
22 of the owner or with the activity of the owner. And
23 there's a mutuality of benefit or a benefit to the owner.

24 In the case of an invitee, the owner of the property
25 owes to an invitee the duty of exercising reasonable or

1 ordinary care for his safety, and is liable for injuries
2 resulting from the breach of this duty. It is the duty of
3 the owner to use reasonable care to prevent an invitee
4 from suffering bodily injury.

5 The owner has a duty to warn an invitee only of
6 latent or hidden dangers of which the owner has knowledge
7 or should have knowledge. An owner must warn an invitee
8 of any unsafe conditions of which he knew or should have
9 known, and of which the invitee was reasonably unaware.
10 The owner owes a duty to have his premises in a reasonably
11 safe condition and to give warning of latent or concealed
12 perils.

13 An owner owes an invitee a duty of due care to
14 discover the risks and take safety precautions to warn of
15 or eliminate foreseeable unreasonable risks. An invitee
16 is entitled to expect that the owner will take reasonable
17 care to know the actual condition prevailing at the time
18 the invitee is on the premises and either make those
19 conditions safe, or warn the invitee of the dangerous
20 conditions.

21 The owner is not required to make or keep the
22 premises absolutely safe, or in such condition that no
23 accident can possibly happen to the invitee. The owner is
24 not an insurer or guarantor of the safety of invitees.
25 The duty is only to exercise reasonable care. Therefore,

1 if there is no negligence on the part of the owner, there
2 is no liability.

3 Now, ladies and gentlemen, that covers the first
4 element of the negligence claim that a Plaintiff must
5 prove by the greater weight of the evidence, the breach of
6 duty of care. And you will have to determine from the
7 facts if that duty of care was breached by the Defendant,
8 Greenville Hospital System.

9 If you decide that it was, then you go on to the
10 second element of negligence, which is whether the
11 Plaintiff has proven damages. And I'm going to go over
12 damages in just a moment. And then you would go to the
13 third element of the negligence claim, which is whether
14 those damages were proximately caused by the Defendant,
15 Greenville Hospital System.

16 Now, proximate cause has a specific meaning in the
17 law. And I'm going to tell you what that meaning is.
18 Proximate cause is defined as the natural chain of events,
19 which in the end brings about the injury. It is the
20 direct cause of an injury. And to prove that a
21 Defendant's negligence proximately caused a Plaintiff's
22 injury, the Plaintiff must prove two things. First, that
23 the injury would not have occurred but for the Defendant's
24 negligence. Second, the Plaintiff must prove legal cause.
25 And that's proven by showing that the injury was

1 foreseeable. This means the injury occurred as a natural
2 and probable consequence of the Defendant's negligence.

3 The Plaintiff must prove that some injury from the
4 Defendant's negligence was foreseeable, but she does not
5 have to prove that the specific injury that occurred was
6 foreseeable. Therefore, the law does not hold anyone
7 responsible for something that could not be expected to
8 happen. However, if an injury occurred that could have
9 been foreseen as a natural and probable consequence of the
10 Defendant's negligence, then the law would hold the
11 Defendant liable.

12 Finally, proximate cause does not mean the only
13 cause. A Defendant's act can be a proximate cause of the
14 Plaintiff's injury if it was, at least, one of the direct
15 concurring causes of the injury.

16 Now, if you find that the Defendant, Greenville
17 Hospital System, breached its duty of care to Frankie Orr
18 and that she was proximately damaged thereby, then you
19 would go on to determine what her damages were. So you
20 must decide how much money in damages you should award to
21 the Plaintiff. The type of damages that are at issue in
22 this case are called actual damages, sometimes called
23 compensatory damages because they're designed to
24 compensate the victim and make her whole, and to put her
25 in the same position that she was in before the accident

1 and the injuries insofar as that is possible.

2 So when one is injured by the negligence of another,
3 the injured person is entitled to be fully compensated for
4 all injuries directly or proximately resulting from any
5 negligent act or omission by a Defendant.

6 Now, these actual damages for a Plaintiff who has
7 been physically injured include pain and suffering both
8 past, present, and future, if proven, as well as mental
9 anguish, impairment of health and physical condition, and
10 the actual losses and expenses the Plaintiff has suffered
11 because of the Defendant's negligence.

12 Now, a Plaintiff is entitled to recover future
13 damages that are reasonably certain to occur in the future
14 as a result of the Defendant's acts. Actual damages need
15 not be proven to a mathematical certainty or be based on
16 evidence of the precise amount of damages. Instead, the
17 evidence must allow you to determine what amount of
18 damages is fair, just, and reasonable. Any future damages
19 must be reasonably calculated to have resulted from the
20 alleged injury sustained in this case, and must be reduced
21 to their present cash value.

22 In a personal injury action, the Plaintiff may,
23 generally, recover for the necessary and reasonable
24 medical expenses they have suffered. The Plaintiff must
25 prove the expenses caused by the injury were necessary and

1 reasonable. And the actual amount charged may be
2 considered by you, but you are not bound by that amount.
3 You must find only such sum as is reasonable and
4 necessary.

5 Pain and suffering is an appropriate element of
6 damages. And this compensates a Plaintiff for physical
7 discomfort and the emotional response to the sensation of
8 pain caused by the injury. Mental suffering,
9 apprehension, shock, fright, anxiety, grief, humiliation,
10 and anxiety either present or expected in the future can
11 be properly considered as an element of damages. Loss of
12 the capacity to enjoy life resulting from a personal
13 injury is a proper element of damages.

14 And these types of damages, pain and suffering,
15 mental anguish, and loss of enjoyment of life do not have
16 price tags attached to them. There's, obviously, no
17 market for such things. And they're not capable of
18 precise measurement. You would have to apply the
19 principle that compensation must be equal to the loss or
20 injury. And you must decide what amount is just and
21 reasonable according to your view of the evidence, should
22 you decide the Plaintiff has proven her entitlement to
23 damages.

24 Now, ladies and gentlemen, the Plaintiff bears the
25 burden of proving by the greater weight of the evidence

1 that she is entitled to actual damages. And the
2 existence, the causation, and amount of the damages cannot
3 be left to guesswork or speculation. Proof is not
4 required with absolute or mathematical certainty. But the
5 damages must be proven to a reasonable degree of
6 certainty.

7 Now, the Defense claims that the Plaintiff had a
8 preexisting injury or condition prior to the date the
9 Plaintiff claims the injury occurred. If you find the
10 Plaintiff received an injury as a result of the negligence
11 of the Defendant and is entitled to recover, the fact that
12 the Plaintiff had a preexisting injury or condition would
13 not prevent the Plaintiff from recovering. A Defendant is
14 responsible for all ill effects, which considering the
15 Plaintiff's condition of health when the Plaintiff was
16 injured, naturally and necessarily follow the injury.

17 The Defendant takes the Plaintiff as the Plaintiff is
18 found, whether the Plaintiff is in perfect health, poor
19 health, or somewhere in between. A Defendant's liability
20 is in no way lessened or affected because the injury would
21 not have resulted or would not have been as serious or
22 severe had the Plaintiff been in good health, or that the
23 injuries were aggravated and made it more difficult to
24 cure by reason of the fact that the Plaintiff was not in
25 good health. In other words, the presence of a

1 preexisting injury or condition aggravates and prolongs
2 the injury. And if that occurs and increases the damages,
3 the Plaintiff should be compensated for the increased or
4 added damages.

5 A person with a preexisting injury or condition is
6 not, however, entitled to any compensation for the
7 preexisting injury or condition. In addition, if the
8 problems are the result of the natural progression of the
9 worsening of a preexisting injury or condition, the
10 Plaintiff would not be entitled to be compensated for
11 those problems.

12 Now, ladies and gentlemen, that covers the
13 substantive law. Let me just briefly go over with you
14 some items about your deliberation. You don't serve as
15 jurors in this case or any case to be partisans or
16 advocates for one side or the other. Instead, you are
17 judges, judges of the facts. And your sole interest is to
18 find the true facts from the evidence and, as I've said,
19 take the law I've just given you and apply it to those
20 facts and you'll, ultimately, be able to reach a verdict.

21 Now, Mr. Foreman, this verdict form is very
22 straightforward. It just asks whether the jury finds for
23 the Defendant or the Plaintiff. And if you find for the
24 Plaintiff, what amount of damages? Don't attach any
25 significance as to which option I put first. Obviously,

1 it doesn't mean anything. I just had to put one of them
2 first. And you're only authorized to sign it when the
3 verdict is unanimous.

4 Now, each of you has a vote. And your vote is just
5 that, it's your vote and nobody else's. And if you looked
6 up the word "jury" in the dictionary, you would see it is
7 defined as a company of people sworn to render a true
8 answer. And I've already talked to you about this idea of
9 seeking the truth and the true facts of the case, and
10 determining whether the Plaintiff has met her burden of
11 proof.

12 Now, if during your discussions you decide that you
13 should change your mind, don't be afraid to do so, if
14 you're of different minds. But don't do so just to get
15 this case over with or to reach a unanimous verdict.
16 Because this is an important case for both sides. And
17 this is their day in court.

18 Thank you for your attention to me.

19 And don't start talking about the case until you get
20 the exhibits. That will be your signal that you can start
21 deliberating.

22 Thank you.

23 (WHEREUPON, the jury was excused from open court at
24 approximately 5:05 p.m.)

25 THE COURT: Any objection or exception to the charge?

1 MR. CHAMBERS: Not from the Plaintiff, Your Honor.

2 MR. SHAW: Your Honor, the only objection that we
3 would have is that one of the charges that we had
4 recommended was a charge in regards to that it goes
5 without saying that accidents happen for which no man is
6 to blame. The fact that an injury in and of itself, even
7 absent an explanation, does not necessarily mean that a
8 party is guilty of negligence. Again, I think given the
9 circumstances of this case, that was an appropriate
10 charge.

11 And, Your Honor, the other charge that I'm not sure
12 that I -- that it's in here, but given Mr. Chambers's
13 insinuation to the jury that the jury should find -- or
14 send a message to the Greenville Hospital System with its
15 verdict, there is no punitive damages in this case, Your
16 Honor. And any such verdict that would be based on
17 sending a message and not, actually, based on actual
18 damages would be improper in this case. And I think that
19 maybe a charge to the jury on that would be appropriate.

20 THE COURT: Well, I understand your request,
21 Mr. Shaw. And I think what you are requesting me to
22 charge the jury about the mere fact that an accident
23 occurred doesn't mean anybody is negligent may be some
24 amplification of the Plaintiff's burden of proof. I think
25 I've already told them ad nauseam about the Plaintiff

1 bearing the burden. So I don't feel that it would be
2 required to charge them that. That would simply be a
3 highlight, I think, of the particular principle of law.

4 And, as to the second issue, I -- he's not asking for
5 actual damages. I suppose we would have to just see what
6 the verdict is. And if there is a verdict for the
7 Plaintiff and the damages are somehow indicative of some
8 result of passion or prejudice, or something outside of
9 the record, then that may be the time to take that up.
10 But I don't know of anything, at this stage, that would be
11 required of me to do.

12 Mr. Chambers.

13 MR. CHAMBERS: I agree, Your Honor.

14 THE COURT: All right. Do y'all want to make sure
15 the exhibits are there? And we'll send them on back.

16 MR. CHAMBERS: I've already checked, Your Honor. And
17 I'm satisfied that they're all there.

18 MR. SHAW: Yes. They're all there.

19 THE COURT: Thank you very much.

20 We'll be at ease until we hear something from the
21 jury.

22 (WHEREUPON, the proceedings were recessed at
23 approximately 5:08 p.m.)

24 (WHEREUPON, Court's Exhibit No. 2 was marked for
25 identification and admitted into evidence.)

1 THE COURT: I understand we have a verdict. Anything
2 before we bring the jury in?

3 MR. CHAMBERS: Not from the Plaintiff, Your Honor.

4 MR. SHAW: No, sir, Your Honor.

5 THE COURT: I appreciate the fine job both lawyers
6 did.

7 And bring the jury in, please.

8 (WHEREUPON, the jury came into open court at
9 approximately 5:47 p.m.)

10 THE COURT: All right. Mr. Foreman, has the jury
11 reached a unanimous verdict, sir?

12 JUROR #38, ZANE GADBURY: Yes, sir, we have.

13 THE COURT: If you'll hand it to the bailiff, we'll
14 receive it and publish it.

15 (Pause.)

16 THE COURT: Have you still got your pen?

17 JUROR #38, ZANE GADBURY: No, sir.

18 THE COURT: I just need you to date it. That's my
19 fault. I didn't put a date on there.

20 THE BAILIFF: Today is the 18th, 11/18.

21 JUROR #38, ZANE GADBURY: Yes, sir.

22 THE COURT: All right. Yes, ma'am.

23 VERDICT

24 THE CLERK: Your Honor, this is case number
25 2012-CP-23-2379, Frankie Orr v. the Greenville Hospital

1 System. We, the jury, unanimously find for the Plaintiff,
2 Frankie Orr, in the amount of \$40,000 actual damages,
3 signed' Zane Gadbury, Foreperson, November 18th, 2013.

4 If this is your verdict, so say you all.

5 Please signify with your right hand if so.

6 (WHEREUPON, all jurors raised their right hand.)

7 THE CLERK: Thank you.

8 THE COURT: All right. Any matters before the jury
9 is discharged from the Plaintiff?

10 MR. CHAMBERS: No, Your Honor.

11 THE COURT: From the Defendant?

12 MR. SHAW: Not before the jury is discharged, Your
13 Honor.

14 THE COURT: Thank you, ladies and gentlemen, for your
15 service.

16 And this does conclude your service this week. We
17 don't have any more cases on the docket. And part of the
18 reason is because jurors come up to the courthouse on
19 Monday and a lot of the cases resolve themselves.

20 And so we thank you for your contributions to your
21 community. And you have a three-year exemption from jury
22 service now in circuit court. I can't do anything about
23 the federal court, or city court, or magistrate's court.
24 But, in circuit court, you have a three-year exemption.

25 And thank you very much.

1 Have a good evening.

2 (WHEREUPON, the jury exited the courtroom at
3 approximately 5:50 p.m.)

4 MOTIONS

5 THE COURT: Okay. Any motions at this stage?

6 MR. CHAMBERS: Certainly not from the Plaintiff, Your
7 Honor.

8 MR. SHAW: Your Honor, the Defense would move for a
9 judgment notwithstanding the verdict on the grounds that
10 there's no basis to support the jury finding in this case.
11 And, particularly, there's no basis to support the finding
12 of liability on behalf of the hospital.

13 THE COURT: I respectfully deny the motion. I think
14 it was up to the jury and there was evidence to support
15 the verdict.

16 Anything else?

17 MR. SHAW: No, sir, Your Honor.

18 THE COURT: Thank you.

19 *****END OF TRANSCRIPT OF RECORD*****
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21
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23
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CERTIFICATE OF REPORTER

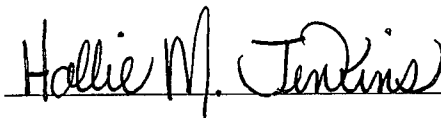
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of November, 2013.

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

February 5, 2014



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 22, 2014



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JUN 02 2014

SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas**

D. Garrison Hill, Circuit Court Judge

Case No. 2012-CP-23-02379

RECEIVED

JUN 02 2014

SC Court of Appeals

Frankie Orr, ...Respondent,

v.

Greenville Hospital System, ...Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that, on the date indicated below, he served counsel for the Respondent with a copy of the Record on Appeal by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

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