

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE CLARENDON COUNTY
Court of Common Pleas

The Honorable George C. James, Jr.

Case No. 2010-CP-14- 0457
Appellate Case No. 2013-001452

RECEIVED

JUL - 7 2014

S.C. Supreme Court

STOKES-CRAVEN HOLDING CORP.,
d/b/a STOKES-CRAVEN FORD

Appellant,

v.

SCOTT L. ROBINSON and JOHNSON
McKENZIE & ROBINSON, LLC,

Respondents.

**RECORD ON APPEAL
VOLUME II**

Andrew K. Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46a State Street, Charleston, SC 29401
P: (843) 377-1871
F: (843) 377-1310

**Attorneys for Appellant Stokes-Craven
Holding Corp., d/b/a/ Stokes-Craven Ford**

Susan Taylor Wall, Esquire
Amanda C. Williams, Esquire
McNair Law Firm, PA
100 Calhoun Street, Suite 400
Charleston, SC 29401
Attorneys for Respondent Scott Robinson

Warren Powell, Esquire
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place (29204)
PO Box 61110
Columbia, SC 29206
**Attorney for Respondent Johnson
McKenzie & Robinson, LLC**

INDEX VOLUME II

1. Stokes-Craven's Memorandum in Opposition to Defendants' Motions for Summary Judgment and Exhibits thereto continued.....	
a. Exhibit E, Deposition of Dennis Craven.....	464
b. Exhibit F, Deposition of Stephen Brown.....	636
c. Exhibit G, Deposition of Steven McKenzie.....	726
2. Scott Robinson's Motion for Summary Judgment, Memorandum in Support and Exhibits thereto.....	807
a. Exhibit 1, Supreme Court Opinion in <i>Austin v. Stokes-Craven</i>	818
b. Exhibit 2, Letter of John Polito and Exhibits thereto.....	841
c. Exhibit 3, Excerpt of Deposition of Dennis Craven.....	893
d. Exhibit 4, Amended Complaint.....	907
3. Johnson McKenzie & Robinson, LLC's Motion for Summary Judgment, Amended Memorandum in Support and Exhibits thereto.....	916
a. Exhibit 1, Excerpt of Deposition of Stephen Brown.....	941
b. Exhibit 2, Young Clement Rivers' Billing Statements.....	946
c. Exhibit 3, Excerpt of trial transcript of <i>Austin v. Stokes-Craven</i>	952

EXHIBIT E

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
COUNTY OF CLARENDON FOR THE THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP,
d/b/a STOKES-CRAVEN FORD,

Plaintiff,

Civil Action No.: 2010-CP-14-457

vs

SCOTT L. ROBINSON AND JOHNSON,
McKENZIE & ROBINSON, LLC,

Defendants.

D E P O S I T I O N

WITNESS: DENNIS NORMAN CRAVEN

DATE: Thursday, May 19, 2011

TIME: 10:06 a.m.

LOCATION: Law Offices of
William H. Johnson, Esq.
411 North Brooks Street
Manning, South Carolina

TAKEN BY: Attorneys for the Defendants

REPORTED BY: GINA M. SMITH
Certified Shorthand Reporter
Registered Professional Reporter

Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

3e5dff28-a335-46ff-b16e-9ddc96a5edb0

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF

3 STOKES-CRAVEN HOLDING CORP, d/b/a
4 STOKES-CRAVEN FORD:

5 ANDREW K. EPTING, LLC
6 BY: ANDREW K. EPTING, JR., ESQ.
7 3 State Street
8 Charleston, SC 29401

9 ATTORNEYS FOR DEFENDANT

10 SCOTT L. ROBINSON:

11 PARKER POE ADAMS & BERNSTEIN, LLP
12 BY: SUSAN TAYLOR WALL, ESQ.
13 200 Meeting Street, Suite 301
14 Charleston, SC 29401

15 ATTORNEYS FOR DEFENDANT

16 JOHNSON, MCKENZIE & ROBINSON, LLC:

17 BRUNER, POWELL, WALL & MULLINS, LLC
18 BY: WARREN C. POWELL, JR., ESQ.
19 1735 St. Julian Place, Suite 200
20 P.O. Box 61110
21 Columbia, SC 29260-1110

22 ALSO PRESENT:

23 JOHN FLACK
24 STAN TAM, VIDEOGRAPHER

25 (INDEX AT REAR OF TRANSCRIPT)

1 THE VIDEOGRAPHER: My name is Stan Tam,
2 and I'm the videographer. The court reporter is
3 Gina Smith. This is the beginning of Tape Number
4 One in the deposition of Dennis Craven being taken
5 on May 19, 2011, at 10:06 a.m., in the matter of
6 Stokes-Craven Holding Corporation doing business as
7 Stokes-Craven Ford, plaintiff, versus Scott L.
8 Robinson and Johnson, McKenzie and Robinson, LLC,
9 defendants, filed in the State of South Carolina,
10 County of Clarendon.

11 Counsel, please introduce yourselves,
12 beginning with the plaintiff's counsel, after which
13 the court reporter will swear in the witness.

14 MR. EPTING: Drew Epting, Stokes-Craven.

15 MR. POWELL: Warren Powell, counsel for
16 Johnson, McKenzie, and Robinson, LLC.

17 MS. WALL: Susan Wall representing
18 Scott L. Robinson.

19 STIPULATION: It is stipulated by and
20 among Counsel that this deposition is being taken
21 in accordance with the South Carolina Rules of
22 Civil Procedure, and that the deponent does not
23 waive the right to read and sign the deposition
24 transcript.

25 - - - - -

1 DENNIS NORMAN CRAVEN, being first
2 duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. POWELL:

5 Q. Mr. Craven, state your full name, please,
6 sir.

7 A. Dennis Norman Craven.

8 Q. And where do you reside?

9 A. In Summerton, South Carolina.

10 Q. Okay. Have you ever had your deposition
11 taken before?

12 A. Once.

13 Q. In what instance? In what case?

14 A. It was a workmen's comp claim we had.

15 Q. Okay. Well, it's -- according to the
16 South Carolina Rules of Civil Procedure, it's my
17 responsibility at the outset to give you some
18 instructions, and so I'm going to do my best to use
19 the book to do that. If I leave anything out, it's
20 not intentional, and I'm sure these able counsel
21 will point it out.

22 But it's my duty to tell you at the
23 beginning of each -- of the deposition that the
24 rule states deposing counsel shall instruct the
25 witness to ask deposing counsel rather than the

1 witness' own counsel for clarifications,
2 definitions, or explanations of any words,
3 questions, or documents presented during the course
4 of the deposition. It says, the witness shall
5 aside by these instructions.

6 Do you understand what the rule is
7 providing there?

8 A. How about in car salesman terms?

9 Q. If during the course of the deposition --
10 in fact, this is probably a good time to point it
11 out. I guarantee you that I will ask you an
12 inartful question just because of the -- of my
13 clumsiness.

14 A. Okay.

15 Q. Okay?

16 A. Got you.

17 Q. That will happen.

18 A. Thank you.

19 Q. It is not a matter of if, it's just a
20 matter of when. And when that occurs, if you have
21 some question about what I'm asking you, if you --
22 if it's unclear to you in any way, the gist of the
23 rule is that you should ask the lawyer asking you
24 the questions to clarify it rather than your own
25 attorney.

1 A. I understand.

2 Q. Fair enough?

3 A. Thank you.

4 Q. Okay. Also, the rule also states counsel
5 shall not make objections or statements which might
6 suggest an answer to a witness. Counsel's
7 objections shall be stated concisely and in a
8 nonargumentative and nonsuggestive manner, stating
9 the basis of the objection and nothing more.

10 Also, it's my responsibility to point out
11 to you that counsel and a witness shall not engage
12 in private off-the-record conferences during
13 depositions or during breaks or recesses regarding
14 the substance of the testimony at the deposition
15 except for the purpose of deciding whether to
16 assert a privilege or to make an objection or to
17 move for a protective order.

18 Further -- do you understand that?

19 A. Got you.

20 Q. Any conferences which occur pursuant to or
21 in violation of section 5 -- that's the section I
22 just read you -- of this rule are proper subjects
23 for inquiry by deposing counsel to ascertain
24 whether there has been any witness coaching and, if
25 so, to what extent in nature.

1 Do you understand that?

2 A. Got you.

3 Q. Okay. And then finally, any conferences
4 which occur in violation of section 5 shall be
5 noted on the record by the counsel who participated
6 in the conference. The purpose and outcome of the
7 conference shall be noted on the record.

8 Any questions about any of those?

9 A. No. Thank you.

10 Q. Very good. Okay.

11 I'm going to ask you some background
12 information, and then we'll go into the substance
13 of what the case is about.

14 But let me -- for the record, counsel,
15 we're proceeding -- so I understand, we're
16 proceeding at this time as though the witness is
17 being deposed individually and as the 30(b)(6)
18 witness --

19 MR. EPTING: Agreed.

20 MR. POWELL: -- of the corporate
21 plaintiff?

22 MR. EPTING: Agreed.

23 MR. POWELL: Okay.

24 BY MR. POWELL:

25 Q. Where were you born?

1 A. Summerville, South Carolina.

2 Q. Okay. And date of birth?

3 A. 11/8/56.

4 Q. Okay. And tell me about your education.

5 A. Ladson Elementary and then went to R.B.

6 Stall High and then some classes at Trident in
7 business.

8 Q. Okay. You finished high school where?

9 A. R.B. Stall in '75.

10 Q. I see. And then you went to?

11 A. Trident Tech.

12 Q. Trident Tech.

13 A. Took some business courses.

14 Q. Did you receive a degree from there?

15 A. No, I did not.

16 Q. Any education beyond that?

17 A. No.

18 Q. Okay. And you finished Trident Tech in,
19 what was it, '76 or so, or at least ceased your
20 education?

21 A. Late '70s. Late '70s.

22 Q. Late '70s?

23 A. Right.

24 Q. Okay. Give me your work history after
25 high school.

1 A. Worked for Hertz Rent-A-Car for two years
2 at the Charleston airport, and then I left there
3 and went to Cummins Engine Company and --

4 Q. Cummins Diesel?

5 A. Cummins Engine Diesel, yeah, in
6 Charleston. I don't remember what year that was.
7 I think it was '77. Anyway, I spent 11 years
8 there, and then I left them and came into the car
9 business in 1986.

10 Q. Okay.

11 A. And been in the car business since.

12 Q. Where did you -- what was your first
13 position in the car business?

14 A. I was sales at Stokes Honda.

15 Q. And where was that?

16 A. Charleston -- North Charleston.

17 Q. North Charleston?

18 A. Right.

19 Q. Okay. And what was -- your entry-level
20 position I guess was sales?

21 A. Sales.

22 Q. Salesman?

23 A. Correct.

24 Q. For purposes of understanding, in the
25 automobile dealership business, and I guess that --

1 does that describe the -- your work activities from
2 1986 forward, the automobile dealership business?

3 A. Correct.

4 Q. Okay.

5 A. Yes.

6 Q. Have you been involved in any other
7 business ventures other than that?

8 A. No.

9 Q. Okay. So beginning in 1986, you go into
10 the automobile dealership business as a salesman?

11 A. Correct.

12 Q. Are there any certifications, any seminars
13 or certifications up the line above salesman like
14 to manager or any other levels in the dealership
15 business that are recognized in the industry?

16 A. Today or at that time?

17 Q. Well, at that time.

18 A. At that time, no.

19 Q. Okay. So certifications, if there are
20 any, came about since then?

21 A. In the last few years, correct.

22 Q. Just recently?

23 A. Right.

24 Q. Okay. Tell me about those. Tell me about
25 the certifications, what level -- starting at the

1 salesman level and then going on up, what are the
2 different levels that are recognized now?

3 A. Well, there's -- the certifications is
4 based on manufacturers. Each manufacturers has
5 different certifications.

6 Q. I see.

7 A. There's not one generic or industry term
8 of certification.

9 Q. I see.

10 A. You have the sales manager certification.
11 You have a finance manager. You have a service
12 manager certification. You have a service writer.
13 You have comptroller cert right on up to making
14 sure we're all doing the things we need in those
15 particular areas.

16 Q. Okay.

17 A. But industry does not have a certification
18 that says, okay, we're graduated to this point.

19 Q. I understand. So if you're in the Ford
20 system, they have their set of rules --

21 A. Right.

22 Q. -- or their recognitions or
23 certifications --

24 A. Right.

25 Q. -- and then -- and then the same -- may be

1 different for General Motors or Honda --

2 A. Correct.

3 Q. -- or Nissan and so on?

4 A. Correct.

5 Q. Okay. And when did this -- with regard to
6 the Ford system, when did this certification
7 process begin or I guess system begin?

8 A. I would say in the past -- industry
9 started charging in the last six years.

10 Q. I see.

11 A. Five years.

12 Q. Okay.

13 A. Five or six years.

14 Q. Have you gone through -- do you hold any
15 certifications in the Ford system --

16 A. No, sir.

17 Q. -- for that -- okay.

18 Okay. You started -- in '86, you started
19 as a salesman. We kind of got off track a little
20 bit.

21 A. Correct.

22 Q. And then -- and then how long did you do
23 that at Stokes Honda?

24 A. I was a salesman for -- I'm giving you
25 approximate dates -- for two years. Then I became

1 a finance business manager --

2 Q. Okay.

3 A. -- for another additional -- was probably
4 two years.

5 Q. Okay. We're up to -- you were a salesman
6 from '86 to '88?

7 A. Okay. Right.

8 Q. Okay. And then in '88, you started what?

9 A. '80 -- somewhere in that time frame, I
10 became a finance manager at the Stokes
11 organization.

12 Q. At the same location?

13 A. Same location.

14 Q. Where is -- that's in --

15 A. Rivers Avenue.

16 Q. Rivers Avenue?

17 A. Right.

18 Q. Okay.

19 A. And at that time, I became a sales
20 manager. A few years after that point, became a
21 sales manager for the Saab dealership, which is
22 next -- adjacent to it.

23 Q. '90 to '91, somewhere in that area?

24 A. Somewheres in that area, right.

25 Q. You became sales manager --

1 A. Right.

2 Q. -- at the Saab dealership?

3 A. Right.

4 Q. Okay.

5 A. And somewhere in there, a year or so
6 later, I became the general manager of the Saab
7 Isuzu store and stayed as general manager of two
8 operations -- we had two facilities at that time --
9 until 1995 is when I came up here.

10 Q. Okay. '92 to '95 you were general
11 manager --

12 A. Uh-huh.

13 Q. -- for that Saab dealership?

14 A. Right.

15 Q. And then I presume saw an opportunity in
16 Manning?

17 A. Correct.

18 Q. And so 1995 you came to Manning?

19 A. Correct.

20 Q. In what capacity?

21 A. As partner in the franchise, general
22 manager, partner, gofer, wash cars.

23 Q. Okay. General manager, partner. To cut
24 through a lot of details, which I'm not trying to
25 cut you short --

1 A. I understand.

2 Q. -- but you were running the show?

3 A. Exactly.

4 Q. In Manning?

5 A. Exactly.

6 Q. I mean, you worked -- as the vernacular
7 is, you were the man?

8 A. That's right.

9 Q. Okay. And that started in 1995?

10 A. Correct.

11 Q. And is true to the present day?

12 A. Correct.

13 Q. Okay. Now, with those listings there,
14 we've covered your work experience since high
15 school?

16 A. Correct.

17 Q. Okay. Don't take offense at this next
18 question. I think your lawyer will tell you it's
19 something that gets asked of practically every
20 witness in a deposition, but you don't have any
21 criminal history, do you?

22 A. No, sir.

23 Q. Okay. And have you -- other than -- other
24 than this case and the Austin lawsuit, the
25 underlying case, other than those two, have you

1 ever been -- you or to your knowledge -- you
2 individually or to your knowledge Stokes-Craven,
3 the plaintiff, the corporate plaintiff, ever been
4 involved in any other lawsuits?

5 A. One.

6 Q. Okay.

7 A. That is ongoing now. It's a class action
8 through the South Carolina Dealers.

9 Q. Okay. And tell me about that. Is the
10 dealership a plaintiff or a defendant?

11 A. I don't know where we're at at this point.
12 I guess we're a plaintiff.

13 Q. Okay. And what is that about?

14 A. It's a class suit where the attorney
15 general is giving us permission to have such
16 documents -- it's called a document fee, a closing
17 fees -- and now they've drawn suit and said it's
18 not properly done, and all the dealers in South
19 Carolina that was using that now has been tied to a
20 class action suit.

21 Q. Okay. All right. And Stokes-Craven Ford
22 is merely one of the --

23 A. Correct.

24 Q. -- of the many, many parties in that
25 lawsuit --

1 A. Correct.

2 Q. -- seeking some kind of relief from a
3 State decree?

4 A. Correct.

5 Q. Is that the attorney general's opinion?
6 Is that what it's about?

7 A. Right.

8 Q. Okay. Any other -- any other suits other
9 than that? You've not been individually involved
10 in any other litigation?

11 A. No, sir. No, sir.

12 Q. Actually, you've never been a plaintiff or
13 a defendant in any litigation, then?

14 A. No.

15 Q. Okay. Because you weren't an individual
16 party in the case below?

17 A. Right.

18 Q. Okay. Has Stokes-Craven Ford ever
19 experienced any casualties in terms of fire or
20 storm or anything like that? Have you ever had,
21 you know, wind damage, tornado damage, anything
22 like that that you're aware of?

23 A. No.

24 Q. Okay. All right. Your -- also for
25 reasons your attorney if he hasn't already

1 mentioned it to you will explain, I need to ask you
2 what relatives you have in Clarendon County that
3 live -- that reside in Clarendon County, relatives
4 by blood or marriage?

5 A. Just your family as far as wife?

6 Q. Right.

7 A. I have a wife and two sons.

8 Q. Okay. And how old are your sons?

9 A. 17.

10 Q. Okay. Twins?

11 A. Both.

12 Q. Twins?

13 A. Yeah. Both.

14 Q. Bless your heart.

15 A. Yeah.

16 Q. And your wife's name?

17 A. Deborah.

18 Q. Okay. And no cousins, no in-laws, all of
19 your what I would say extended family are in the
20 Charleston area?

21 A. Correct.

22 Q. Okay. Okay. Who are your close friends
23 in the Manning, Clarendon County area?

24 A. There's quite a few, but we'll just -- the
25 closest ones you would say would be Mr. Joe Whitt,

1 Ron Wall.

2 Q. Excuse me?

3 A. Ron Wall.

4 Q. Okay.

5 A. Scott Robinson, Steve McKenzie.

6 Q. Okay.

7 A. We've got plenty, but I think you would
8 want to know just the closest ones, I would figure.

9 Q. Well, the -- you've listed four. Those
10 are your very closest friends?

11 A. Right. Randy Garrett.

12 Q. Okay. And who else?

13 A. I'd have to get my rolodex. I mean, we
14 can go on. Those are my closest ones, though.

15 Q. Okay. What does Mr. Whitt do?

16 A. He owns the truck wash outside the
17 interstate here.

18 Q. Truck wash?

19 A. Right.

20 Q. Okay. And how about Mr. Wall?

21 A. He's the president of the bank, Bank of
22 Clarendon.

23 Q. Okay. And I know about Mr. Robinson and
24 Mr. McKenzie. How about Mr. Garrett?

25 A. Sheriff.

1 Q. Okay. Anyone else that you can think of?

2 A. John Land.

3 Q. Okay. Anybody else?

4 A. Kevin Johnson. I could -- I think I could
5 go on and on.

6 Q. What's Mr. Johnson do?

7 A. He's the house representative.

8 Q. Okay. All right. Are you a member of any
9 men's clubs or civic or social clubs?

10 A. Rotary, Summerton Rotary Club.

11 Q. All right.

12 A. Chamber of Commerce.

13 Q. Okay.

14 A. Church.

15 Q. What church?

16 A. Summerton Baptist Church. Summerton --

17 Q. Summerton Baptist.

18 A. Baptist Church.

19 Q. All right.

20 A. Shriner's.

21 Q. All right. Any other?

22 A. No.

23 Q. Are you a member of any hunting clubs or
24 do you hunt?

25 A. Yes.

1 Q. Okay. What do you hunt?

2 A. Ducks, quail, deer.

3 Q. Okay.

4 A. Pheasant.

5 Q. But you're not a member of a club?

6 A. No.

7 Q. Who do you hunt with?

8 A. I haven't hunted in the last couple of
9 years, but any of those friends that I mentioned.

10 Q. Any of the people that you mentioned?

11 A. Right.

12 Q. Okay. And you -- would it be fair to say
13 that you routinely socialize with the people you
14 mentioned, with those gentlemen?

15 A. No, I wouldn't say that. I don't --
16 there's three or four of them that I would say yes,
17 and the rest of them I don't -- it's not a social
18 we go to each other's house and drink a beer. I
19 wouldn't do that -- say that, no.

20 Q. I understand. Who are the three or four
21 that you would say?

22 A. I would say Steve or Ron or Joe Whitt --

23 Q. Okay.

24 A. -- would be the most prominent three.

25 Q. Okay. All right. And -- all right.

1 Let's see now.

2 What have you done to prepare for today's
3 deposition?

4 A. Preparing as far as getting documents
5 ready or --

6 Q. Or just whatever -- however -- whatever
7 that means to you to get ready to -- to prepare
8 yourself to answer questions.

9 A. Mr. Flack and myself just had some
10 conversations just trying to keep nerves down more
11 than anything else, but --

12 Q. Did you review anything?

13 A. Reviewed some numbers of where I was --
14 been at in the last few years.

15 Q. Numbers?

16 A. Right, of what we were selling a few years
17 ago versus what I am now.

18 Q. I see.

19 A. And --

20 Q. And that was -- that was in preparation
21 for today, for today's deposition?

22 A. Not really, it's just -- we were just
23 going over some numbers of what took -- we've done
24 in the past few years due to this event that we've
25 got going on here.

1 Q. I see.

2 A. It was nothing --

3 Q. When you say numbers, you don't mean sales
4 numbers?

5 A. Sales numbers.

6 Q. Oh, you do?

7 A. Yes.

8 Q. You do mean --

9 A. Yes.

10 Q. Okay. And how does one relate to the
11 other? I'm sorry.

12 A. Our sales numbers is just a matter of, you
13 know, what has our business been accounted for for
14 the last few years due to this coming to a head we
15 would hope. You know, our numbers has been down,
16 and we feel like this has been a big hit to me.
17 It's been a huge hit to me.

18 Q. The results of the Austin trial have been
19 a huge hit to you?

20 A. Yes, sir.

21 Q. And you attribute that to lower sales?

22 A. Yes.

23 Q. Okay. Attribute lower sales to the
24 results of the Austin trial?

25 A. Right.

1 Q. Okay. Okay. Anything else that you've
2 done to prepare for today's deposition?

3 A. No.

4 Q. Okay.

5 (DEPO. EXH. 1, Summons, was marked for
6 identification.)

7 BY MR. POWELL:

8 Q. Let me -- I'm going to show you what's
9 Exhibit Number 1, and I'll represent to you this is
10 a summons and complaint that was filed and served
11 on the plaintiffs' behalf. Have you seen this
12 before?

13 A. Yes.

14 Q. Okay. And the -- as you can see, the
15 summons and the complaint, if you turn to the last
16 page of the complaint, is signed by Andrew K.
17 Epting, Jr., Esquire, and he is the plaintiff's
18 attorney in this case. Is that right?

19 A. You said the last page?

20 Q. The last -- well, the last page of the
21 complaint.

22 A. Oh, okay.

23 Q. I think you're looking at the affidavit --

24 A. Okay.

25 Q. -- attached to it. It's on page 5.

1 A. Correct.

2 Q. Okay. And the plaintiff, Stokes-Craven
3 Holding Corp d/b/a Stokes-Craven Ford, retained
4 Mr. Epting to prepare and serve this summons and
5 complaint on its behalf?

6 A. Correct.

7 Q. And the representations made in it
8 Mr. Epting or -- you understand are representations
9 of the plaintiff?

10 A. Correct.

11 Q. Okay. And your attorney was authorized to
12 do that?

13 A. Right.

14 Q. All right. And you have -- on behalf of
15 the company have seen the complaint and approved of
16 the allegations and representations in it?

17 A. Correct.

18 Q. Okay. Okay. I've got -- you say you have
19 seen this before and you've read it through before?

20 A. Yes.

21 Q. Okay. Mr. Craven, I'll represent to you
22 this is the part of the deposition I'm going to go
23 through a number of the allegations in the
24 complaint, and this is the part of your deposition
25 where you have an opportunity to explain or -- and

1 I'll inquire as to some of the meanings of the
2 allegations, and this is the opportunity for the
3 plaintiff to expound on that, to talk a little more
4 about it.

5 Now, we'll perhaps look at sections of the
6 trial and I will ask you questions about -- trying
7 to attach events of the trial to allegations in the
8 complaint. Fair enough?

9 A. Okay.

10 Q. Okay. The -- I'm going to ask you to look
11 at page 2, and you see there in paragraph 7 -- I'm
12 going to give you a minute to read paragraph 7
13 because I've got a number of questions for you.

14 A. Okay.

15 Q. Okay. And you see there it says,
16 defendants were negligent -- plaintiff alleges
17 defendants were negligent in their defense of
18 Stokes-Craven and failed to exercise care, skill --
19 reasonable care, skill and diligence in the
20 following ways. Do you see that?

21 A. Right.

22 Q. And in the first -- under A, it says, in
23 failing to use due diligence in the investigation
24 of the facts of the underlying case?

25 A. Okay.

1 Q. Right?

2 A. Right.

3 Q. Okay. I'm going to -- I'm going to go
4 through and ask you some specific questions about
5 that and to try to determine, you know -- try to
6 isolate what we're talking about basically.

7 A. Okay.

8 Q. I'm going to show you -- we can mark this
9 as -- I tell you what, I have a number of
10 selections from the transcript, and I'm just going
11 to mark all of them as one exhibit. We'll go
12 through those. There may be others. This will be
13 Number 2.

14 MR. EPTING: Okay.

15 (DEPO. EXH. 2, Portions of a Transcript,
16 was marked for identification.)

17 BY MR. POWELL:

18 Q. And I want you to look first of all --
19 let's see -- let's look at the page that is 461.

20 A. 461?

21 Q. Yes, sir.

22 A. This starts at 541.

23 Q. Yes, sir. There is a 461 in there. I'm
24 sorry. It's the trial transcript page number.

25 A. Got you.

1 Q. It's not the Bates number at the bottom.

2 A. Excuse me.

3 Q. No, no, my fault.

4 A. Got you.

5 Q. Okay. First of all, I'll represent to you
6 that this is part -- just a part of the trial
7 testimony of Mr. Frierson.

8 A. Okay.

9 Q. And before we get into it, who was
10 Mr. Frierson?

11 A. He was a salesman.

12 Q. Okay. Is he still with Stokes-Craven
13 Ford?

14 A. No, sir.

15 Q. When did he leave?

16 A. I would imagine it was about three years
17 ago.

18 Q. Was he --

19 A. He's deceased.

20 Q. He's deceased.

21 A. Right.

22 Q. Was he still with the company at the time
23 of the trial?

24 A. Yes.

25 Q. Okay. The -- there is a -- there's a

1 reference here, and at the top where he's being
2 asked when was the last time he spoke to anyone --
3 you see at the top here, it says, line 5, he's
4 talking about conversations with people about the
5 events of this case. I can pull the previous page
6 if you'd like.

7 A. Okay.

8 Q. But it says here, when was the last time
9 you talked to him about it? And his answer was,
10 well, yesterday he told me he was going to call me
11 up here, but we didn't discuss anything about it.
12 I don't know exactly.

13 And then the question is, so you really
14 haven't discussed this case with anybody since
15 June, July -- well, maybe August or September of
16 2002. Is that a fair statement? Do you see that?
17 And the answer was, that's a fair statement. Do
18 you see that?

19 A. Uh-huh.

20 Q. Is -- is the first time that you found out
21 that Mr. Frierson had not been approached about
22 discussing this case or his testimony since 2002 --
23 is the first time you found out that no one else
24 had talked to him about it during the trial? Was
25 that news to you that day during his testimony?

1 A. Did anyone question him on any of this
2 information? Is that what you're asking me?

3 Q. Yeah. The question is -- the question
4 that was put to him is when's the last time you
5 talked to anyone about this case?

6 A. When I or he?

7 Q. No, no, no, sir, talked to Mr. Frierson.
8 He was being asked on the stand --

9 A. Correct.

10 Q. -- when was the last time, Mr. Frierson,
11 anyone spoke to you about this case, that you
12 talked about this case to anybody, about these
13 events, Mr. Austin and so on.

14 A. Okay.

15 Q. And his answer was, back in 2002. Would
16 you have expected your attorney to speak to him
17 prior to the two days before trial?

18 A. I don't know where we're at with this. I
19 don't know if -- was he being called to witness? I
20 don't know what position you're asking me here.

21 Q. No, he's -- this that you're looking at is
22 Mr. Frierson's --

23 A. I understand the question, but I don't
24 know what events are taking place. Is he getting
25 ready to go to trial on this issue?

1 Q. No, sir, this is during the trial.

2 A. Okay.

3 Q. I'm reading from you the trial --

4 A. Okay. All right.

5 Q. You have the trial transcript in front of
6 you.

7 A. Correct.

8 Q. And the issue is -- take a short break and
9 I'll -- let me get the notebook and I can answer
10 your question. We'll go off the record for just a
11 minute.

12 THE VIDEOGRAPHER: We are off the record
13 at 10:39 a.m.

14 (A recess transpired.)

15 THE VIDEOGRAPHER: We are back on the
16 record at 10:42 a.m.

17 BY MR. POWELL:

18 Q. Mr. Craven, I'm going to start on the
19 previous page. I think during the break your
20 attorney had an opportunity to explain to you what
21 this document was --

22 A. Correct. Got you.

23 Q. -- what we're looking at?

24 A. Correct.

25 Q. These are the -- you understand these are

1 the verbatim court reporter's transcript of the
2 proceedings in the Austin versus Stokes-Craven
3 trial?

4 A. Correct.

5 Q. Okay. And so I'm going to start on the
6 previous page to try to orient you a little bit --

7 A. Okay.

8 Q. -- about what we're talking about here.

9 Question, did Mr. Craven get away with
10 things -- I think he's talking about Kenny Craven
11 here and that's your brother?

12 A. Right.

13 Q. Did Mr. Craven get away with things at the
14 dealership that other salesmen wouldn't have
15 because he's Dennis Craven's brother? Answer, not
16 to my knowledge. I never did see it myself. And,
17 again, this is Mr. Frierson's testimony.

18 A. Got you.

19 Q. And at that point, Mr. Craven held what
20 position at the dealership? Excuse me, Dennis
21 Craven. Answer, Dennis Craven? Yes, sir. He was
22 the owner. Was he the sole owner? Answer, I don't
23 think so. Was he always on the lot? Was he always
24 there working or would he be gone for a couple of
25 days? Well, sometimes he would, but I mean, he's

1 like any other owner there, they can do what they
2 want to, but they -- he's there more than any other
3 owner I've ever seen.

4 Okay. Now, you've discussed this matter
5 with Mr. Craven, Dennis Craven, before today,
6 right? Answer, a couple of -- a couple years ago
7 that whenever this started up, he had mentioned it
8 to me if I remembered the deal at all, and --
9 question, when was the last time you talked to him
10 about it? Answer, well, yesterday he told me he
11 was going to call me up here and -- but we didn't
12 discuss anything about it. I don't know exactly.

13 Question, so you haven't -- so you really
14 haven't discussed this case with anybody since
15 June, July -- well, maybe August or September of
16 2002. Is that a fair statement? Answer, that's a
17 fair statement.

18 So my question to you is, going back to
19 the complaint, you allege in -- Stokes-Craven, the
20 plaintiff, alleges in the complaint that the
21 defendants were negligent in failing to use due
22 diligence in the investigation of the facts of the
23 underlying case, and so is this an example -- would
24 you have expected your attorney to speak to
25 Mr. Frierson before two days before the trial?

1 A. Yes.

2 Q. Okay. Is that an example of what you're
3 alleging here in the complaint of their failing to
4 use --

5 A. Yes.

6 Q. -- due diligence? Okay. Okay.

7 You see how -- you see the dialogue we're
8 getting into? I'm trying to isolate what --
9 examples of what you mean in the complaint. Fair
10 enough?

11 A. Got you.

12 Q. Okay. Now, and I'd say to -- just to make
13 this clear, a number of these issues, as you might
14 expect, are contested in this case. This is the
15 plaintiff's opportunity to provide their side of
16 it.

17 A. Got you.

18 Q. Fair enough?

19 A. Fair.

20 Q. Okay. Okay. Next, we're going to get
21 into some other examples, but can you -- can you
22 right now off the top of your head provide other
23 instances which the plaintiff would contend that
24 the defendants did not investigate the facts of the
25 case sufficiently prior to the trial? We'll get

1 into -- we'll get into the transcript which
2 might -- which might refresh your memory.

3 A. Okay.

4 Q. But can you think of anything else right
5 now off the top of your head?

6 A. The things that was not done --

7 Q. Yeah.

8 A. -- that I felt like they should have been
9 done.

10 Q. Investigate the facts. We're on this --

11 A. Right.

12 Q. -- specific allegation right now.

13 A. There's a lot of things now that I see
14 that should have been done. At the particular
15 time, I wouldn't have known of what needed to be
16 done or not needed to be done.

17 Q. Okay. Let's go through --

18 A. Yes, there are some things now, yes.

19 Q. Let's go through the transcript I guess.

20 A. Okay.

21 Q. That might -- would that be useful for
22 you?

23 A. Yes.

24 Q. Okay. Okay. Trying as best we can to
25 stick with this first allegation. Let's look at

1 page 482 and 83. And I'll give you an opportunity
2 to read those two pages, if you will. Okay. 482,
3 then.

4 And this -- this concerned the portion of
5 the trial where Mr. Frierson is requested to sign
6 Mr. Austin's name. Do you remember that?

7 A. Yes.

8 Q. Remember --

9 A. Yes.

10 Q. -- he was in the courtroom?

11 A. Correct.

12 Q. Also look at 491 in connection with that
13 and read that page too. He's asked again to sign
14 with his right hand. Do you see that --

15 A. Uh-huh.

16 Q. -- at the top?

17 Are you aware of any of -- any instance
18 where Mr. Frierson's handwriting sample had been
19 taken prior to the trial?

20 A. I don't recall.

21 Q. Okay. Was Mr. Frierson a key actor in the
22 view of the plaintiff -- a key witness in this case
23 in the plaintiff's standpoint?

24 A. Yes.

25 Q. Okay.

1 A. I would say so.

2 Q. Okay. Is one of the allegations -- is one
3 of the examples of the allegations of not
4 investigating the facts or looking into the case,
5 would that be not getting Mr. Frierson's
6 handwriting sample? Should that have been done
7 prior to the trial in your opinion by your lawyers?

8 A. Sure, yes.

9 Q. And in the -- were you aware -- when was
10 the first time you were aware that -- excuse --
11 strike that.

12 Prior to the trial, up to the trial, had
13 you ever been -- had that subject ever come up
14 between you or your lawyers and Mr. Frierson about
15 taking his handwriting sample?

16 A. I don't recall that.

17 Q. Okay. And why was the handwriting sample
18 an important thing?

19 A. There was a as-is form that was presented
20 to Mr. Austin at the time that I did and that was
21 shown that was signed as-is, and he denied that
22 that was his signature, and that's where all this
23 came from.

24 Q. So the authenticity of his signature
25 became an issue?

1 A. Exactly.

2 Q. Okay.

3 A. Right.

4 Q. All right. And it was -- came -- did

5 you -- is it the plaintiff's position that

6 Mr. Robinson should have objected to the witness

7 giving his handwriting sample there in court that

8 day?

9 A. I mean, I wouldn't have an opinion.

10 Q. You don't have an opinion one way or the

11 other about that?

12 A. No.

13 Q. Okay. All right. Okay. Let's look at --

14 was your brother also a potential witness in the

15 case?

16 A. Yes.

17 Q. Okay. And was -- and he was important

18 why?

19 A. He was the one that traded in the truck

20 that Mr. Austin purchased. He handled that

21 transaction.

22 Q. I see.

23 A. So he was tied to the truck that was

24 purchased from the --

25 Q. I see. He took that as a trade-in on

1 another sale?

2 A. Correct.

3 Q. Okay. And -- and for that reason, I
4 would -- I'm not putting words in your mouth. I'm
5 asking you -- put a question mark after this.

6 A. Got you.

7 Q. Would it be so that he would be important
8 because of the condition of the truck as it came
9 into possession of Stokes-Craven Ford was an issue,
10 was what condition it was in and what was seen and
11 how it could -- how it appeared at the time and the
12 information he had about it?

13 A. Correct.

14 Q. Okay. All of those are true?

15 A. Correct.

16 Q. Okay. And so that made him a potential
17 witness in the case?

18 A. Correct.

19 Q. All right. Okay. Let's look at -- let's
20 look at five -- page 520. Okay.

21 And when did your -- when did your
22 brother -- when did his employment with
23 Stokes-Craven cease?

24 A. Don't have the dates. The year -- it was
25 the previous two, three weeks before Mr. Austin

1 purchased the truck.

2 Q. I see.

3 A. Whatever year that was.

4 Q. So it was between -- it was -- his
5 employment extended sometime after -- he was there
6 employed at the time that Stokes-Craven acquired
7 the truck?

8 A. Right.

9 Q. But until almost before -- just before
10 Mr. Austin bought it?

11 A. Correct.

12 Q. Okay. Let's look at page 520 of the
13 transcript, and the question is, did anybody come
14 to you and say, hi, this truck has got \$20,000
15 worth of damage -- and I'll represent to you that
16 this testimony that we're looking at here is your
17 brother's testimony, Kenny Craven's testimony.

18 A. Okay. All right.

19 Q. Do you see that, 520? Did anybody come to
20 you and say, hi, this truck has got \$20,000 worth
21 of damage to it or this truck has been in a wreck?
22 And the answer was what?

23 A. No. No, sir. I never do that.

24 Q. Okay. Never?

25 A. Right.

1 Q. And his answer's never. And then the next
2 line is -- the question is, when was the first time
3 you found out it had been in a wreck? And what was
4 his answer?

5 A. About two days ago.

6 Q. Okay. Were you -- were you surprised to
7 learn that your brother only learned about the fact
8 that the truck was in a wreck two days prior to the
9 trial?

10 A. Could be asked in a different -- how about
11 ask that question in a different way?

12 Q. Fair enough. Fair enough.

13 Is -- does the plaintiff contend that the
14 defendant should have interviewed Mr. Kenny Craven
15 about his knowledge concerning the wreck of the
16 truck sooner than two days before the trial?

17 A. Correct.

18 Q. Okay. And that's one of the -- that's one
19 of the allegations here that -- when you say in
20 failing to investigate the facts of the case,
21 that's one of the elements the plaintiff contends
22 that -- where the defendants fell down on?

23 A. Okay.

24 Q. Is that true?

25 A. Correct.

1 Q. Okay. All right. Let's look now at 534,
2 535. Who was Mr. Thornall?

3 A. He was the used car manager, general
4 manager.

5 Q. He was the general manager at
6 Stokes-Craven --

7 A. Right.

8 Q. -- Ford?

9 And you see at the bottom of the page,
10 they're discussing -- was he an important or
11 potential witness in the case?

12 A. Yes.

13 Q. Okay. And see at the bottom of page 4 --
14 534?

15 A. Correct.

16 Q. Mr. Thornall, what is his position? And
17 the answer is, he's not employed with us. And this
18 is -- this I believe is your testimony. I'll
19 represent to you that this is your testimony in the
20 case. Your testimony, I'll represent to you,
21 begins at page 530.

22 A. Okay.

23 Q. And so you're asked about Mr. Thornall,
24 what is his position, and what is your response?

25 A. He's not employed with us.

1 Q. Okay. He's not employed with you. When
2 did he leave?

3 A. Estimate three years ago.

4 Q. Okay. And question, do you anticipate him
5 being here to testify?

6 A. No, sir.

7 Q. Have you contacted him to testify?

8 A. No, sir.

9 Q. Does the plaintiff contend that your
10 attorney should have contacted Mr. Thornall to
11 testify?

12 A. Yes.

13 Q. Okay. And does the plaintiff contend that
14 Mr. Thornall would have provided testimony that
15 would have benefitted the plaintiff at trial?

16 A. Correct.

17 Q. Okay. And the plaintiff also contends
18 that -- I take it, that had these things been done,
19 including calling Mr. Thornall as a witness at
20 trial, that the results of the trial more probably
21 than not in the eyes of the plaintiff would have
22 been different?

23 A. Correct.

24 Q. Okay. Let's go on now to 540. Okay. And
25 on page 540, this is also your testimony,

1 continuing --

2 A. Okay.

3 Q. -- with your testimony at trial.

4 As you look through these pages, does some
5 of the questions and answers come back to you as
6 you start --

7 A. Not yet.

8 Q. Not yet? But -- well, it has been a
9 while. The trial was when?

10 A. Three years ago, I think it was.

11 Q. Okay. Yeah. Yeah, I think Ms. Wall is
12 right, the trial was during 2006. Is that right?

13 A. Right.

14 Q. So it's been close to five --

15 A. Right.

16 Q. -- years ago.

17 And page 540, let's start up at the top
18 there. Question, did Kenny as a salesman have the
19 authority to appraise Gary's truck? And your
20 answer was what? See at the top of the page there,
21 page 540?

22 A. Right. He definitely did.

23 Q. And I'll read this -- let's just go ahead
24 and we'll trade off and we'll read on down the page
25 if you could.

1 Next question, so a salesman was
2 authorized to appraise this truck. Is that what
3 you're telling me?

4 A. Yes.

5 Q. Mr. Craven, I'm going to hand you what has
6 been sent to me by your attorney, defendant's
7 responses to interrogatories to the plaintiff. Do
8 you remember sending me questions to Mr. Robinson
9 asking for information, who the witnesses were in
10 the case, what they know, and that kind of stuff,
11 and you responded to those, gave that information
12 to Mr. Robinson so that he could submit it to me?
13 Your answer was?

14 A. Correct.

15 Q. Okay. These are the responses that I
16 received from Mr. Robinson. Take a look at the
17 back page, the last page. It's signed by him,
18 right?

19 A. Okay.

20 Q. You received a copy of those?

21 A. Not to my knowledge.

22 Q. And your testimony was that the answers to
23 interrogatories that had been submitted to the
24 plaintiff you had never seen?

25 A. Correct.

1 Q. And the -- I assume the plaintiff's
2 position in this case is that you should have seen
3 them?

4 A. Correct.

5 Q. And as you were on the stand that day, is
6 that the first time that it came to your attention
7 that you had not seen those answers to
8 interrogatories?

9 A. Correct.

10 Q. And that -- is it the plaintiff's
11 contention, then, that if you had seen those
12 answers to interrogatories that you may have been
13 able to do something or plan something better and
14 the results of the trial may have been -- more
15 likely would have been different?

16 A. Correct.

17 Q. Okay. And this is -- you have another
18 example of the -- of 7 A that we're talking
19 about --

20 A. Okay.

21 Q. -- in the allegations, true?

22 A. Correct.

23 Q. Okay. All right. Let's go on to 543.

24 MR. EPTING: Susan, were you purposely
25 turning that down or were you trying to --

1 MS. WALL: To make it warmer.

2 MR. EPTING: Okay. So you won't mind if
3 I -- no, hardly. I wanted to make sure I was the
4 only one not freezing to death.

5 MR. POWELL: Let's go of the record for
6 just a minute.

7 THE VIDEOGRAPHER: We're off the record at
8 11:03 a.m.

9 (A recess transpired.)

10 THE VIDEOGRAPHER: We're back on the
11 record at 11:04 a.m.

12 BY MR. POWELL:

13 Q. Okay. Looking at page 543 of your
14 testimony, Mr. Craven, you see there at --
15 beginning at line 10, it says, okay, so first we
16 have only experienced used car managers can inspect
17 these cars, right?

18 A. Correct.

19 Q. Now, what is he talking about there,
20 experienced used car managers? Is that -- is the
21 used car manager a designation of some kind?

22 A. Correct.

23 Q. I mean, it's not just a -- it's not just a
24 casually tossed out term, that's a -- used car
25 manager is a position?

1 A. Right. That's the gentleman that
2 appraises cars, wholesales cars, buys cars, and
3 he's the one that does that in the dealership.

4 Q. Okay. And you answered correct to the
5 question. And second is salesmen are not allowed
6 to perform these appraisals. Is that -- I think
7 it's supposed to be is that right. And your answer
8 was what?

9 A. Correct.

10 Q. So Kenny shouldn't have been appraising
11 this truck, right, based on this response?

12 A. Correct.

13 Q. Was that -- were you ready for that
14 question at trial?

15 A. Ready as did someone prep me or did --

16 Q. Yes, sir. Were you prepared for that
17 question?

18 A. No.

19 Q. If you had been more prepared, would you
20 have given a different answer?

21 A. No.

22 Q. That would have been the same answer?

23 A. Same answer.

24 Q. Kenny should not have been appraising the
25 car?

1 A. Correct.

2 Q. And how did it happen that he was?

3 A. Wish I knew.

4 Q. He just -- one of those things?

5 A. That's right.

6 Q. Okay. All right. Okay. I think the next
7 page you have pertinent to this is 546, and somehow
8 545 got left out. And I'll read that to you or you
9 can look at this if you'd like.

10 By the way, this is a transcript that --
11 these pages here are documents that we received
12 from your attorney --

13 A. Okay.

14 Q. -- in this case.

15 A. Okay.

16 Q. And, again, this is your testimony. If
17 you look at -- down around line 21, do your records
18 reflect who actually inspected this truck? Do you
19 see that?

20 A. The answer is no, sir.

21 Q. Okay. And then going on to the page which
22 you do have, so -- the question at the bottom of
23 the page, so we don't know who ever inspected this
24 or appraised this truck? And your answer on the
25 next page is no?

1 A. Okay.

2 Q. Is that right?

3 A. Is that number one?

4 Q. Yes.

5 A. Correct.

6 Q. Question, so Kenny never came to you and
7 said Gary wants to sell his truck or is thinking
8 about training in his truck?

9 A. No, sir.

10 Q. Okay. After a vehicle is appraised and is
11 purchased by the dealership as a trade-in, it goes
12 to the shop, right?

13 A. Correct.

14 Q. And gets in inspected?

15 A. Correct.

16 Q. And then down to line 11, how about take a
17 look at the document I gave you earlier, the
18 defendant's response to the plaintiff's
19 interrogatories. That just means we're asking some
20 questions. That's all. Okay. And you comply,
21 right?

22 A. Okay.

23 Q. And the question is, now, number 14, you
24 told us today there is no way to know who actually
25 inspected and appraised the vehicle as a trade-in

1 back on April 21, 2005. How about read what was
2 sent to me by Stokes-Craven's attorney. And your
3 response is what?

4 A. Number 14?

5 Q. Yes, sir. And you say what?

6 A. Barry Thornall visually inspected and
7 appraised the subject vehicle prior to the trade.
8 Trade in by Mr. Bailey.

9 Q. So going on to the next page, so back in
10 2005, Stokes-Craven was saying that Mr. Thornall
11 actually did the inspection, right?

12 A. That's what the documents say.

13 Q. Are you telling me the document is wrong?
14 And your answer's what?

15 A. No, I told you earlier that that wasn't
16 true who appraised the car. The document --
17 Mr. Robinson could have gotten this from one of my
18 managers also.

19 Q. Let's -- excuse me, Mr. Craig. Let's go
20 back. The court reporter's got to pick this up.
21 If you could, read that a little more slowly if I
22 could -- beginning at line 5. Are you telling me
23 the document is wrong, and your answer was?

24 A. No, I told you earlier that I wasn't sure
25 who appraised the car. This document, Mr. Robinson

1 could have gotten this form from one of my managers
2 also. There are various questions here.

3 Q. Your name is in the title of this
4 business, right?

5 A. Yes.

6 Q. And this business is being sued?

7 A. Yes, sir.

8 Q. And it means a lot, doesn't it?

9 A. Correct.

10 Q. And you mean to tell me you're not aware
11 of what's going on with the litigation involving a
12 company with your name on it. Is that what you're
13 telling me? And your answer's what?

14 A. Not the full detail, no, sir, I don't.
15 That's why I have an attorney.

16 Q. Okay. Do you -- does Stokes-Craven
17 Ford -- and sometimes in the course of the
18 deposition I may say you. Understand -- I think we
19 can understand when I say that --

20 A. Got you.

21 Q. -- I'm really speaking of Stokes-Craven
22 Ford because you're here answering for
23 Stokes-Craven Ford --

24 A. Correct.

25 Q. -- correct?

1 A. Correct.

2 Q. Okay. My question to you is: Does the
3 lack of communication or some of the -- does the
4 plaintiff contend, Stokes-Craven contend, that your
5 personal lack of knowledge about the litigation --
6 do you lay that at Mr. Robinson's and the other
7 defendants' doorstep?

8 A. Correct.

9 Q. And that if that had -- and was this --
10 this was the first time -- this was -- when you
11 became aware during your testimony that you had not
12 received this information from Mr. Robinson?

13 A. Correct.

14 Q. And you didn't know it before that?

15 A. Correct.

16 Q. Is your testimony?

17 A. Correct.

18 Q. She can't pick up a nod. She's the best
19 in the business, but she still can't pick up a nod.

20 And that if the -- is the plaintiff's
21 contention in this case, then, that if it had --
22 Mr. Robinson had kept you more informed and you had
23 been better prepared on questions such as this,
24 that more likely than not the trial would have
25 turned out differently?

1 A. Correct.

2 Q. And you possibly would have won the trial?

3 A. It would have turned out different.

4 Q. Okay. More favorable to Stokes-Craven
5 Ford?

6 A. Correct.

7 Q. And as a result of this and some of the
8 other issues we've discussed, is it the plaintiff's
9 contention in the case, then, that as a result of
10 these deficiencies and these items of negligence
11 that the plaintiff says the defendants engaged in,
12 did or didn't do, that it suffered damage at the
13 hands of the verdict?

14 A. Correct.

15 Q. Okay. Okay. Let's see here. How many
16 days did the trial last, Mr. Craven?

17 A. Don't recall. I want to say no more than
18 two.

19 Q. Okay.

20 A. If that.

21 Q. And did you and Mr. Robinson have --
22 during the course of the trial -- say after the
23 first day's testimony, did the two of you get
24 together and have a conference that night?

25 A. Before trial --

1 Q. No.

2 A. -- or after?

3 Q. After the first day of trial.

4 A. I don't recall.

5 Q. Okay. Did you have discussions, strategy,
6 tactical discussions, about the course of the trial
7 during the case itself?

8 A. No.

9 Q. Okay. Were you, Stokes-Craven Ford --

10 A. Got you.

11 Q. -- confident of its position going into
12 the trial?

13 A. No.

14 Q. Okay. You felt poorly about the possible
15 result?

16 A. Back up and ask the question you just
17 asked.

18 Q. That -- I'm making good on my promise I
19 made you in the beginning --

20 A. Okay.

21 Q. -- about an inartful question. I keep my
22 promises.

23 A. Okay.

24 Q. Now, the question was -- going back a
25 couple questions -- prior to the case -- prior to

1 the commencement of the trial, was Stokes-Craven
2 Ford -- were you on its behalf -- did you feel good
3 about your defense of the case? Were you confident
4 of a good outcome?

5 A. Let's define that a little bit if we
6 could. Do I feel like I'm confident by going in
7 the courtroom, no. Am I confident about are we --
8 all the preparation is done in advance? I wouldn't
9 know that answer.

10 Q. My question really is more fundamental.
11 Did you feel that -- going into the trial, did you
12 feel that Stokes-Craven or any of its agents or
13 employees or yourself for that matter had done
14 anything wrong?

15 A. Yes.

16 Q. Okay. And specifically what?

17 A. That signature on the buyer's order --
18 as-is sticker I think it was.

19 Q. Okay. And that was -- were you -- going
20 into the trial, did you feel that that had been --
21 were you satisfied in your own mind that that
22 document had been forged?

23 A. I didn't know. I knew that the customer
24 clearly stated that that was not his, so that
25 leaves no other option, you know, that -- well,

1 who's signature is it? And there's an uncertainty.

2 I didn't know where we were going to go with that.

3 Q. Did -- and that was one of the iffy parts
4 of the whole case?

5 A. Correct.

6 Q. Was that -- do you think that was a major
7 part of the case, that signature?

8 A. There was several. I think it was one of
9 them, yes.

10 Q. That was one of the major parts of the
11 case?

12 A. Right.

13 Q. And that had been an issue for sometime.
14 That had been an issue since you met years
15 before --

16 A. Right.

17 Q. -- with Mr. Austin?

18 A. Right.

19 Q. Okay. So getting back to the question,
20 then, prior to the beginning of the trial, the day
21 before the trial, did Stokes-Craven Ford have a --
22 did it feel like it had a 50/50 chance of winning
23 or a 60/40 chance of winning or can you speak to
24 that at all?

25 A. No, I really can't because never been in

1 this position before. I didn't know what was
2 headed of me.

3 Q. Okay. Did -- were there any -- did you
4 express any desire to your attorneys to settle the
5 case?

6 A. It was brought to his attention when this
7 first came up that the gentleman wanted -- when he
8 was trying to get his car fixed, I told him I would
9 trade in his car --

10 Q. Right.

11 A. -- with not any expenses and let's trade
12 in his car. So he knew I was willing to do that.
13 Did he come and ask let's do some other settling?
14 No, it never has been -- it's never been discussed.

15 Q. Okay. After that -- your testimony is
16 after the initial meeting with -- well, I think you
17 had two meetings with Mr. Austin, as I remember,
18 did you not?

19 A. Yes.

20 Q. Okay.

21 A. I'm going to say yes.

22 Q. After those two meetings, there was never
23 an opportunity to settle the dispute with
24 Mr. Austin, between he and Stokes-Craven Ford, over
25 this entire matter?

1 A. Yes. There was a -- his first attorney.
2 sent a question in to us asking for us to make
3 good. I handed the documents over to Mr. Robinson,
4 and I said, you tell me what needs to be done and
5 you handle it. And his reply was, you know, what
6 are their damages back to them, and they never
7 replied back to him.

8 Q. You say he wrote a letter?

9 A. I don't know if he wrote a letter or he
10 called them, but I know he called -- made a contact
11 with them of saying, you know, what are your --
12 tell me what your damages are and we'll be glad to
13 take care of them.

14 Q. Okay.

15 A. And there was never no reply back from
16 that comment.

17 Q. Okay.

18 A. Now, I don't know if that was a no comment
19 back to Scott or was it no -- I know it was no
20 contact back to me, but I don't think it was a
21 contact back to Scott.

22 Q. Okay. All right. Well, let's try to --
23 we backtracked a good bit. Let's try to catch up a
24 little bit.

25 Going back, then, to -- and we discussed a

1 number of the allegations that -- or references of
2 specific examples cited in the plaintiff's
3 complaint --

4 A. Okay.

5 Q. -- deficiencies and so on. And the
6 trial's proceeding over this two-day period and
7 these events unfold, some of which you find out
8 during the testimony itself concerning the
9 interrogatories and the handwriting sample and all
10 of that, right?

11 A. Correct.

12 Q. And -- and the plaintiff contends that had
13 these things been handled differently, more likely
14 than not, the trial would have turned out better
15 for Stokes-Craven Ford than it did?

16 A. Correct.

17 Q. When the verdict was handed down, I'm
18 thinking it was \$26,000 actual damages and how much
19 in punitive damages?

20 A. It's in the documents. I'm going to have
21 to ask. I'm going to say it's above the 200 mark.

22 Q. Over \$200,000, 200 and --

23 MR. EPTING: 16.

24 BY MR. POWELL:

25 Q. -- \$60,000?

1 MR. EPTING: 16.

2 BY MR. POWELL:

3 Q. \$216,000, that figure?

4 A. Correct.

5 Q. When the verdict was handed down, how did
6 you feel?

7 A. Embarrassed.

8 Q. Okay. And --

9 A. Very.

10 Q. Okay. And would it be a fair statement
11 that the allegations, the specific things we were
12 talking about, that is the failure to keep you
13 advised and the other issues and that deficiencies
14 that the plaintiff contends that the defendants
15 made through the course of handling the case and at
16 trial, when the verdict was handed down it became
17 evident that that was a serious problem for the
18 plaintiff?

19 A. Correct.

20 Q. Okay. All right. Could we take a
21 break --

22 MR. EPTING: Yeah.

23 MR. POWELL: -- for a few minutes.

24 MR. EPTING: Sure.

25 THE VIDEOGRAPHER: We are off the record

1 at 11:20 a.m.

2 (A recess transpired.)

3 THE VIDEOGRAPHER: We are back on the

4 record at 11:29 a.m.

5 BY MR. POWELL:

6 Q. Mr. Craven, I want to switch gears a
7 little bit and get a little better idea of your
8 role at Stokes-Craven Ford. As we started out and
9 we had a brief -- I think you agreed that in the
10 common vernacular that you're the man at
11 Stokes-Craven Ford?

12 A. Correct.

13 Q. And that you are the owner and the -- for
14 lack of a better term, at least at that location,
15 you're the chief executive officer at that
16 location?

17 A. Okay.

18 Q. True?

19 A. Correct.

20 Q. Now. I imagine that -- how many employees
21 there?

22 A. 35.

23 Q. Okay. And at it's -- that's currently?

24 A. Yeah. Yes, sir.

25 Q. And was it greater during -- back in '03,

1 four --

2 A. Yes, sir.

3 Q. -- five, and six?

4 How many employees did you have back then?

5 A. 65.

6 Q. Okay. I am conjecturing that with 65

7 people it is nigh on impossible for you to know or

8 keep up with all kinds of details going on on the

9 lot, true?

10 A. Correct.

11 Q. For example, when a salesman is talking to

12 a customer out there -- how many salesmen would you

13 have back when Mr. Austin bought this truck?

14 A. 20, 25.

15 Q. 20. I mean, there wouldn't be any way in

16 the world for you to know about conversations

17 between each of the salesmen and the customers --

18 A. Correct.

19 Q. -- on the lot? Or the showroom. I mean,

20 even though -- I assume you have a showroom

21 there --

22 A. Correct.

23 Q. -- inside.

24 And so, your duties, then, are up the line

25 from that. In fact, there wouldn't be any way that

1 you could know about activities going on in the
2 service department because you're not out there,
3 right?

4 A. Correct.

5 Q. And you're not a mechanic, right?

6 A. Correct.

7 Q. And so you have to -- and your role in
8 large measure is on the business side of the
9 company, true?

10 A. True.

11 Q. And I'm going to go through some of the
12 duties that you might have in that connection and
13 ask you if that's -- if that's the area that you
14 get into from day to day.

15 For example, Stokes-Craven is an
16 authorized Ford dealer?

17 A. Correct.

18 Q. And are you primarily the individual at
19 Stokes-Craven Ford that communicates on upper-level
20 decisions with Ford Motor Company?

21 A. Correct.

22 Q. Okay. And does that include what cars to
23 buy, how many cars to purchase or financing of the
24 situation or -- tell me a little about that.

25 A. No, I have an individual that's assigned

1 to -- they do all the ordering of the cars.

2 Q. Okay.

3 A. Allocations.

4 Q. But you approve all that?

5 A. Not every single item, but I -- overall
6 inventory I walk back -- I make sure the
7 inventory -- the right amount of inventory is here
8 on the ground --

9 Q. Right.

10 A. -- but I don't approve every single order,
11 no.

12 Q. No, I understand. And that's really --
13 that's really something that would be in someone
14 under your supervision -- one of your employees
15 would do?

16 A. Right. Correct.

17 Q. But when you say your overall
18 responsibility, that would concern, you know, how
19 many cars are available for sale with a view toward
20 selling a certain number of them and how many you
21 might want over the next three months or two
22 months. Is that accurate? Am I getting into the
23 right area of things you'd be looking at?

24 A. When things go array is when I jump in and
25 handle that, yes.

1 Q. When things?

2 A. Go array. They didn't -- we don't have
3 enough inventory and I'll notice it or then I'll
4 get in and involved with it.

5 Q. I see.

6 A. Correct.

7 Q. And you will straighten that out?

8 A. Correct.

9 Q. Okay. And what about hiring and firing,
10 is that also -- was that also your responsibility?

11 A. Also my manager's responsibility.

12 Q. Right. The two of you do that together?

13 A. More than two.

14 Q. Okay. You and your managers would do
15 that?

16 A. I have the authority to do that, but I may
17 not fire somebody. Somebody else -- my managers
18 have authorization to fire people if need to be.

19 Q. I understand. And of course you have the
20 authority to fire the managers?

21 A. Absolutely.

22 Q. Okay. So, hence, the man?

23 A. Right.

24 Q. Okay. Okay. We talked about personnel
25 and how that works. What other day-to-day activity

1 do you take care of? Do you get involved with
2 the -- do you have someone that looks after the
3 maintenance of the building?

4 A. I do it all, you know. I look after the
5 buildings or if I see something need to be done,
6 I'll jump in as far as investmentwise. When you
7 ask my day to day, I may be washing a car one
8 minute and trying to sell one the next.

9 Q. I understand. So you actually do sell
10 cars also?

11 A. Oh, yes, sir.

12 Q. Okay. And do you -- does Stokes-Craven
13 own its property there where it's located?

14 A. We own it, yes, but --

15 Q. It's owned by the individuals?

16 A. It's owned by the bank, but yes, we own
17 it.

18 Q. I see. Well, I mean, your -- you have
19 a --

20 A. We have a mortgage on it.

21 Q. -- you have a mortgage on it?

22 A. Correct.

23 Q. But the legal title is held in the company
24 name?

25 A. Correct.

1 Q. Okay. And you deal with the insurance on
2 the building --

3 A. Correct.

4 Q. -- as part of what you do?

5 Who is the -- and as well as other
6 insurance matters for the company, true?

7 A. Correct.

8 Q. And who is the agent, insurance agent?

9 A. It's Universal right now or Zurich, excuse
10 me.

11 Q. Okay. That's -- that would be the
12 carrier, insurance carrier, insurance company. Do
13 you have -- does Stokes-Craven Ford have a local
14 agent or in the -- I think in the business they
15 call them retail agents?

16 A. No.

17 Q. Do you have an insurance agent that --
18 independent agent that looks out for your accounts?

19 A. No.

20 Q. You buy it direct from Zurich?

21 A. Right.

22 Q. Is it an on-line purchase?

23 A. No. They have a rep that's based out of
24 Charleston.

25 Q. Oh, I see. Okay. They have a -- they

1 have the -- Zurich has an agent in Charleston?

2 A. He works for Zurich. He's not an agent.

3 Q. Okay.

4 A. He's an individual that works for the
5 company.

6 Q. I see. And what's his name?

7 A. Man Christian.

8 Q. And is that who you communicate with
9 concerning insurance matters --

10 A. Yes.

11 Q. -- for Stokes-Craven Ford?

12 A. Correct.

13 Q. Okay. How long has Mr. Christian -- is
14 it? How long has he been your contact for
15 insurance matters?

16 A. More than the last five years.

17 Q. Okay. And was he the contact at the time
18 of -- well, he would have been, then, the contact
19 at the time of the Austin trial?

20 A. I'm not sure. I think we had a different
21 carrier at that time.

22 Q. Okay.

23 A. And I don't recall who that was at the
24 moment.

25 Q. Okay. Is there anyone at Stokes-Craven

1 Ford, the Manning -- the Manning location,
2 Stokes-Craven Ford, that has any higher authority
3 concerning the purchase of insurance and dealing
4 with the insurance company than you do?

5 A. No.

6 Q. Okay. Let's see. Just one minute.

7 (DEPO. EXH. 3, Insurance Information, was
8 marked for identification.)

9 MR. POWELL: Marked this as Number 3.

10 MR. EPTING: Thank you.

11 THE VIDEOGRAPHER: Mr. Craven, can I ask
12 you to readjust your mike. I think it pulled down
13 just a while ago. Thank you.

14 BY MR. POWELL:

15 Q. Okay. Can you -- can you identify -- take
16 your time and look through it. Can you identify
17 Exhibit 3 for us, Mr. Craven?

18 A. Okay.

19 Q. And what is it?

20 A. Seems to be our insurance policy.

21 Q. Okay. Well, there are declarations and
22 there's the commercial property, there's commercial
23 garage and there's a number of them. There's a
24 liability section in there. Do you see that?

25 A. Correct.

1 Q. And in the normal course of business, this
2 would have been sent to you by the -- well, it says
3 here, Carter Insurance Group out of Tampa. Do you
4 remember dealing with the Carter Insurance Group?

5 A. I don't recall.

6 Q. Well -- but you remember dealing with the
7 Granite State Insurance Company, member American
8 International Group?

9 A. Correct.

10 Q. Okay. And they were the insurance company
11 for Stokes-Craven Ford back during this time
12 period. This is from '02 to '03, September the 1st
13 of '02 to September the 1st of '03, correct?

14 A. Okay. Correct.

15 Q. And go ahead and look through all of this.
16 This was the -- can you identify this as the policy
17 and the -- the applicable policy and declarations
18 in effect during that time?

19 A. I will agree with that.

20 Q. Okay. When suit was entered against
21 Stokes-Craven Ford, did you consider turning that
22 suit over to the insurance carrier to defend?

23 A. No, I did not.

24 Q. And why not?

25 A. I just turned it over to my attorney.

1 Q. Okay. You -- you didn't consider -- did
2 you realize -- you understood that in a liability
3 claim that if any part of it was covered, that you
4 had benefits under the policy to pay attorney's
5 fees to defend you. You knew that?

6 A. I do now.

7 Q. Okay. You didn't know that then?

8 A. I don't recall back then, but --

9 Q. Okay. Certainly if you had called your
10 agent or called the company and asked them, you
11 could have found out?

12 A. Correct.

13 Q. Okay. And communications -- as we've
14 already discussed, communications with the -- with
15 insurance -- with the company's insurance company
16 was part of your responsibility?

17 A. Correct.

18 Q. Okay. And so the answer to that question
19 was easily within your grasp by calling the
20 insurance company?

21 A. Correct.

22 Q. Okay. As the -- did you and Mr. Robinson
23 have any conversations concerning getting the
24 insurance company to step in and defend
25 Stokes-Craven Ford?

1 A. No, we did not.

2 Q. Okay. Never came up?

3 A. Never came up.

4 Q. Did you have -- did you have any desire to
5 not to increase your insurance premiums by not
6 reporting it?

7 A. Absolutely not.

8 Q. Okay. So your testimony is that this
9 discussion about insurance from the beginning of
10 time, from the beginning of the suit or the time
11 Mr. Robinson started to help you, until the day of
12 the verdict never came up between the two of you?

13 A. Correct.

14 Q. Okay. Did -- as Mr. Robinson submitted
15 his statements for services rendered, Stokes-Craven
16 Ford paid those?

17 A. Correct.

18 Q. Okay. And they -- by the time the verdict
19 was handed down, it had paid at least over a
20 thousand dollars in attorney's fees to
21 Mr. Robinson's firm?

22 A. Correct.

23 Q. Okay. And after the verdict came down,
24 was there any discussion between you and
25 Mr. Robinson or any -- you and anyone else

1 concerning the possibility of insurance paying the
2 judgment?

3 A. No, I did not.

4 Q. Okay. After the verdict came down, was
5 there any discussion between you and Mr. Robinson
6 at all about the result?

7 A. I don't recall.

8 Q. Okay.

9 A. And I say that because your state of mind
10 at that point -- I was lost, you know, so it would
11 be unfair for me to say what was said after the
12 verdict. I just -- I didn't understand what all
13 was happening.

14 Q. Okay. But you knew enough to know that at
15 that point --

16 A. That it wasn't good.

17 Q. -- that it was --

18 A. Excuse me.

19 Q. -- it was a serious problem, and you
20 contend in this case that you knew at that time it
21 was a serious problem for Stokes-Craven Ford?

22 A. Exactly.

23 Q. Okay. And for some of the reasons we've
24 already discussed?

25 A. Correct.

1 Q. Right. Okay. Let's see. And
2 Mr. Robinson's duties with regard to this case I
3 take it ended not too long after the verdict. It
4 went to some other attorney after that?

5 A. Correct.

6 Q. And shortly after the trial you changed
7 attorneys?

8 A. Correct.

9 Q. And that would be, what, within 30 days?
10 60 days?

11 A. Yes.

12 Q. Okay. Within 60 days after the trial --

13 A. Correct.

14 Q. -- you had changed lawyers?

15 And at least on this case, following
16 within 60 days after the trial, neither
17 Mr. Robinson nor his law firm were attorneys for
18 Stokes-Craven Ford in connection with any matter
19 related to the suit brought by Mr. Austin?

20 A. Correct.

21 Q. Okay.

22 MR. POWELL: Let's take a break. I'm
23 trying to cut out a lot of stuff. I don't think
24 you have an objection to that.

25 THE WITNESS: No, sir.

1 THE VIDEOGRAPHER: We're off the record at
2 11:46 a.m.

3 (A recess transpired.)

4 THE VIDEOGRAPHER: We are back on the
5 record at 11:56 a.m.

6 BY MR. POWELL:

7 Q. Mr. Craven, looking again at Exhibit 3, it
8 says that from September 1 of '02 to September 1 of
9 '03 the Granite State Insurance Company, member of
10 the American International Group, Inc., was the
11 insurance carrier for Stokes-Craven Ford?

12 A. Correct.

13 Q. Would the same have been true for the
14 prior year, from 2001 through 2002?

15 A. I'm not sure.

16 Q. What about after this year? Were you with
17 these people just one year?

18 A. I'm not sure.

19 Q. Okay. The reason I ask is that those
20 policies before and after I don't think have been
21 produced.

22 MR. EPTING: Well, I'll certainly do that,
23 and it may well be that -- is the idea that perhaps
24 the trade-in might have come in in a previous year
25 or something, but we'll look at that.

1 MR. POWELL: All right.

2 MR. EPTING: Okay.

3 BY MR. POWELL:

4 Q. Would you have records at your office,
5 insurance policies -- you retain insurance policies
6 from -- for how far back?

7 A. There's some documents we go three years
8 and some seven years.

9 Q. Okay.

10 A. I would hope we would.

11 Q. If Mr. Austin -- if Mr. Austin purchased
12 the vehicle in June of 2002, that purchase would be
13 outside the coverage of this policy, true?

14 A. Correct.

15 Q. Okay. And did -- did Stokes-Craven Ford
16 have insurance, have liability -- general liability
17 insurance prior to September 1 of '02?

18 A. Correct, yes.

19 Q. And can the company prove that?

20 A. Sure. Yes, sir.

21 Q. And how would you go about proving that?

22 A. Have to go dig some records up and see
23 what bonds we had or whatever and find out who that
24 was and backtrack it I'm sure.

25 Q. Okay.

1 A. Mr. Flack would have to go and go up in
2 the attic and start digging.

3 Q. Okay.

4 MR. EPTING: How long would that take?

5 MR. FLACK: It could take some time.

6 BY MR. POWELL:

7 Q. Okay. And for the period of time from
8 September 1 of '03 to September 1 of '04, the same
9 would be true, you should -- you think you do have
10 those insurance records also?

11 A. I would hope so.

12 Q. Okay. Who is the custodian of those
13 records, if there is such a person at Stokes-Craven
14 Ford?

15 A. No such unless it's Mr. Flack.

16 Q. Okay. And are they kept on the premises?

17 A. Yes.

18 Q. Is there ever a period of time when paper
19 documents are reduced to CD or electronically
20 stored?

21 A. No.

22 Q. Y'all haven't started into that process
23 yet?

24 A. No.

25 Q. Okay.

1 MR. EPTING: Warren, what would you like?
 2 I mean, for example, these are quite thick. Shall
 3 I get you the same or comparable document for '02
 4 and how about maybe just a listing of these were
 5 the insurance companies from '03 forward, something
 6 like that?

7 MR. POWELL: Well, I would like -- I would
 8 like, you know, what they had --

9 MR. EPTING: Okay. All right.

10 MR. POWELL: -- similar to Exhibit 3 for
 11 the year prior, policy year prior, and particularly
 12 the policy year following.

13 MR. EPTING: Okay. All right. So we'll
 14 get year before, year after.

15 MR. POWELL: Yeah.

16 MR. EPTING: Okay. All right.

17 MR. POWELL: I think that's right. And
 18 let's go off the record.

19 THE VIDEOGRAPHER: We're off the record at
 20 12 p.m.

21 (A recess transpired.)

22 THE VIDEOGRAPHER: This is the end of Tape
 23 Number One in the deposition of Dennis Craven. We
 24 are off the record at 12:02 p.m.

25 (A lunch recess transpired.)

1 THE VIDEOGRAPHER: This is the beginning
2 of Tape Number Two in the deposition of Dennis
3 Craven. We are on the record another 1:05 p.m.

4 BY MR. POWELL:

5 Q. Mr. Craven, earlier you had alluded to a
6 conversation with your controller concerning
7 numbers in sales and whatnot and the effect of this
8 verdict upon Stokes-Craven Ford?

9 A. Correct.

10 Q. Do you recall that?

11 A. Correct.

12 Q. And am I to take it that what you mean by
13 that is that Stokes-Craven Ford suffered a damage
14 to its reputation as a result of the verdict?

15 A. I feel it has, yes, sir.

16 Q. Okay. And that's the position of the
17 plaintiff in this case?

18 A. Right.

19 Q. Okay. And that began when the verdict was
20 handed down?

21 A. Shortly after that.

22 Q. Okay.

23 A. The newspapers did a fantastic job of not
24 publishing any of that and none of that actually
25 got out, and then as word seeped out, you could

1 feel it.

2 Q. Shortly --

3 A. I can feel it in here now.

4 Q. Shortly after the verdict?

5 A. Correct.

6 Q. Right. Okay. Tell me about the people
7 you have spoken to excepting, of course,
8 Mr. Epting, leaving him out, or anyone on his
9 staff, people you've spoken to about the Austin
10 versus Stokes Ford case beginning with the verdict,
11 from that time forward, from that time to the
12 present. Who have you talked to about that case --

13 A. No one.

14 Q. -- people you've spoke to? No one at all?

15 A. Not a soul.

16 Q. Not -- well, now, think for a second.
17 Now, that's not exactly right because I think
18 earlier you mentioned you'd spoken to your
19 controller about some issues.

20 A. You said outside of him.

21 Q. No, outside of Mr. Epting.

22 A. Okay. Yes, the people involved with
23 this --

24 Q. Right.

25 A. -- knew about it, but only peoples

1 involved such as John, Scott or Steve. Outside of
2 that, no one that was not involved in this, I
3 never -- my wife doesn't even know this situation
4 that I'm in.

5 Q. Okay. You've never spoken to your wife
6 about the case?

7 A. No, sir.

8 Q. And hadn't spoken to -- you spoke to your
9 controller and people -- you've spoken to people in
10 the company about it?

11 A. My other partners.

12 Q. Right.

13 A. I've spoke to them. Not inside our
14 dealership, no.

15 Q. Okay. And who are your other partners you
16 spoke to?

17 A. Edwards Stokes?

18 Q. Edward Stokes.

19 A. Uh-huh. And Jerry Stokes.

20 Q. And Jerry Stokes. And they are -- you say
21 they're partners, but isn't it -- they're
22 shareholders -- is it a partnership?

23 A. Shareholders.

24 Q. They're shareholders in the corporation?

25 A. Right.

1 Q. Okay. The holding company?

2 A. Correct.

3 Q. Right. And spoke to no neighbor about it

4 or --

5 A. Not a soul.

6 Q. Did you speak to Steve McKenzie about it?

7 A. Yes.

8 Q. Okay. And Scott Robinson about it?

9 A. Right.

10 Q. Okay. And what did you -- other than
11 those two, Steve McKenzie, Scott Robinson, speak to
12 William Johnson about it?

13 A. No. Excuse me, no, sir.

14 Q. No?

15 A. No, sir.

16 Q. Okay. And when did you -- do you remember
17 when you spoke -- first spoke after the trial to
18 Scott Robinson?

19 A. I don't remember the dates, but I remember
20 it was a conversation afterwards that we've had,
21 you know, what do I do now, where do I go and
22 what's the procedures from here on.

23 Q. Okay. And that conversation was obviously
24 within the first 60 days after the verdict?

25 A. Yes.

1 Q. Right. And then -- and then you ended
2 up -- I guess your lawyers after Mr. Robinson, I
3 take it to be, Young Clement and Rivers?

4 A. Yes.

5 Q. Law firm in Charleston?

6 A. Correct.

7 Q. Okay. And did your representation in the
8 Stokes -- of the Austin versus Stokes-Craven matter
9 go immediately from Mr. Robinson after that first
10 60 days to the -- to Young Clement Rivers or was
11 there any lawyers in between?

12 A. No, sir, went straight to them.

13 Q. Went straight to them from Mr. Robinson?

14 A. Correct.

15 Q. So if we look when they first came on,
16 Mr. Robinson was no longer your lawyer?

17 A. Correct.

18 Q. Okay. You mentioned Mr. McKenzie. What
19 did you -- what was the conversation with
20 Mr. McKenzie?

21 A. Again, it would be, you know, what would
22 happen here, where do we go from here and what's
23 the procedures and things that will take place.

24 Q. Same kind of conversation --

25 A. Right.

1 Q. -- you had with Mr. Robinson?

2 A. Right.

3 Q. Okay. And that also was within that
4 60-day time frame?

5 A. Correct.

6 Q. Okay. Anybody else besides those two,
7 your controller, your partners?

8 A. No, sir.

9 Q. Okay. Do you use e-mail to communicate?

10 A. Yes, sir.

11 Q. Okay. And what service, internet service,
12 do you use?

13 A. Farmer's Telephone.

14 Q. Farmer's Telephone. Okay. What's your
15 e-mail address?

16 A. Dennis@stokescraven.com..

17 Q. Okay. Do you have a personal e-mail?

18 A. No, sir.

19 Q. The only -- you have no computer at home?

20 A. No, sir. Well, I don't. My children --
21 there's computers at the house. Okay.

22 Q. I'm willing to believe that.

23 A. Okay.

24 Q. And -- but you have no computer at home
25 that you use at all?

1 A. No.

2 Q. Okay. The only computer you use to -- for
3 business or e-mail is the one at work?

4 A. Correct.

5 Q. Okay. And do you have any other
6 addresses -- e-mail addresses other than the one
7 you just provided?

8 A. No.

9 Q. Okay. But you use e-mail to -- excuse me.

10 A. I might have one with -- I think it's
11 Yahoo that I had to get my iPad, but I don't use
12 it. I mean, I had to get through to get our system
13 set up with iPad --

14 Q. Okay.

15 A. -- my I pad I just purchased.

16 Q. All right. And the computers that you use
17 at your office, are they networked?

18 A. Yes.

19 Q. Okay. And do you have a central server at
20 the office? Do you know what I'm talking --

21 A. I'm not sure. We do have -- I'm not sure.
22 Mr. Flack can enlighten you on that.

23 Q. He's the man about that?

24 A. He's -- he handles that part.

25 Q. Okay. Tell me -- so on the computer

1 questions, you would defer to him?

2 A. Correct.

3 Q. Okay. Does Stokes-Craven Ford have a
4 computer consultant company that keeps your system
5 up and going and healthy and operating?

6 A. You need to discuss that with Mr. Flack.

7 Q. Refer that to him also?

8 A. Yes.

9 Q. Okay. How long have -- how long has
10 Stokes-Craven Ford been on-line, computerized for
11 purposes of communication on the net?

12 A. Ten years, I would say.

13 Q. Okay. All right. Did you communicate
14 with anyone by e-mail about this case?

15 A. Other than the ones I've already spoke to
16 you about?

17 Q. Yes.

18 A. No, sir.

19 Q. Okay. Is there any arrangement between
20 Stokes-Craven Ford and Mr. Austin through his
21 attorney or directly from Mr. Austin, either one,
22 as to the payment of the judgment?

23 A. Not at this time.

24 Q. Okay. And what do you mean by that, not
25 at this time?

1 A. We don't have one. I don't know how to
2 properly answer that. You're going to have to
3 refer that to Mr. Drew Epting.

4 Q. Well --

5 MR. EPTING: I'll be happy to answer it.
6 Dennis has talked to the bankruptcy council, and
7 the only conversations that we have had is is if
8 you levy, we're ready to file because he is loaded
9 down in debt and can't pay it, and that's all there
10 is.

11 BY MR. POWELL:

12 Q. Okay. Who is your bankruptcy counsel?

13 A. He's in Mt. Pleasant, Mr. -- I want to say
14 Brown, I think his name is.

15 Q. Okay.

16 A. I'm not sure.

17 MR. EPTING: Kevin Campbell's office.

18 MR. POWELL: Excuse me?

19 MR. EPTING: Kevin Campbell.

20 MR. POWELL: The trustee?

21 MR. EPTING: Usually.

22 BY MR. POWELL:

23 Q. Okay. So it's your testimony, then, that
24 a levy of this judgment would render -- would leave
25 the company unable to operate --

1 A. Correct.

2 Q. -- and pay its obligations?

3 A. Correct.

4 Q. All right. And is there any other
5 arrangement other than the threat of filing
6 bankruptcy between Stokes-Craven Ford and
7 Mr. Austin through his attorney?

8 A. No, sir.

9 Q. Just a minute.

10 I'm going to pass you off to Ms. Wall.

11 MR. EPTING: Warren, let me talk to you
12 outside one second.

13 MR. POWELL: Sure.

14 THE VIDEOGRAPHER: We're off the record at
15 1:15 p.m.

16 (A recess transpired.)

17 THE VIDEOGRAPHER: We are back on the
18 record at 1:25 p.m.

19 BY MR. POWELL:

20 Q. Mr. Craven, earlier we had had -- there
21 was a series of questions about people you had
22 communicated with concerning the results of the
23 trial, and you had given me a list, and one of the
24 people that you had mentioned was Steve McKenzie
25 that you had spoken to about it, and you talked

1 to -- your testimony was that you talked in general
2 about the same things that you had spoken to
3 Mr. Robinson about.

4 A. Uh-huh.

5 Q. And this -- all of this is occurring
6 within weeks of the verdict, right?

7 A. Right.

8 Q. Yeah. And I'll ask you directly, did
9 Mr. McKenzie during those conversations within a
10 couple weeks after the verdict mention anything to
11 you about whether they had -- whether his partner
12 in the firm had messed up the case or screwed up
13 the case?

14 A. Weeks after?

15 Q. Yes, sir.

16 A. No.

17 Q. Did he ever do that?

18 A. Yes.

19 Q. When?

20 A. I'd say within the last year.

21 Q. Just within the last year?

22 A. Yes.

23 Q. Okay. And in what -- under what
24 circumstance?

25 A. That they were over their head in this

1 particular incident, didn't see the liability that
2 was coming -- forthcoming, and wanted to know
3 what -- excuse me, he used the term exposure, what
4 was -- didn't realize my exposure was that big.

5 Q. And where was this -- where did this
6 conversation take place?

7 A. In my office.

8 Q. Okay. And what was he doing there?

9 A. I invited him there.

10 Q. To -- for what purpose?

11 A. To ask his opinion in what should I do to
12 go forward because I was getting ready to lose my
13 business.

14 Q. And what did he tell you?

15 A. What I just said, that, you know -- all
16 those things that I just mentioned to you.

17 Q. Okay.

18 A. Yes, you need to do what you need to do
19 and go forward.

20 Q. Okay. Any -- anything else that was said?

21 A. I mean, could have been, but that was the
22 gist of the conversation that I can recall.

23 Q. Okay. Are there any relatives in your --
24 do you have any relatives that are members of the
25 bar?

1 A. No, sir.

2 Q. Okay. You don't have a brother-in-law
3 that's a lawyer?

4 A. Oh, yeah, I'm sorry. Yes. I'm sorry.

5 Q. Okay. Did you ever -- did you ever speak
6 to him about the results of this case?

7 A. No, sir.

8 Q. To this day --

9 A. To this day.

10 Q. -- you haven't talked to him about it?

11 A. No, sir.

12 Q. All right. And what's his name?

13 A. Jeff Waggoner.

14 Q. And where does he practice?

15 A. Mt. Pleasant.

16 Q. What kind of practice does he have?

17 A. I don't know.

18 MR. EPTING: He -- I'd say it's almost all
19 personal injury, isn't it, Susan?

20 MS. WALL: Pretty much.

21 MR. EPTING: Yeah.

22 MR. POWELL: How old is he?

23 MR. EPTING: He's 55.

24 MR. POWELL: May have been in law school
25 with me, may have very well.

1 MR. EPTING: Yeah.

2 BY MR. POWELL:

3 Q. Okay. Anyone else -- I hate to be
4 repeating myself --

5 A. I understand.

6 Q. -- but under the circumstances, I've
7 got -- anyone else that you can recall speaking to
8 about this case?

9 A. No.

10 Q. Okay.

11 A. No.

12 Q. All right. Okay. I'm going to hand you
13 off to Ms. Wall and let her go at it for a while.

14 A. Okay.

15 EXAMINATION

16 BY MS. WALL:

17 Q. Mr. Craven, my name is Susan Wall. I
18 represent Scott Robinson in this matter, and I have
19 some questions to ask you.

20 If at any time you don't understand or
21 don't hear what I'm asking you, please tell me to
22 repeat or ask me to restate it, because if you
23 answer my question, we're entitled as a matter of
24 law to draw the conclusion that you understood the
25 question and you answered it to the best of your

1 ability. Do you understand that?

2 A. Yes, ma'am.

3 Q. And you understand that you are under oath
4 to tell the truth, the whole truth, and nothing but
5 the truth?

6 A. Yes, ma'am.

7 Q. We understand from your testimony earlier
8 that you are not only acquainted with Scott
9 Robinson, but in fact you are friends with Scott
10 Robinson, correct?

11 A. Correct.

12 Q. And you know Mr. Robinson very well, don't
13 you?

14 A. Yes.

15 Q. I'm going to refer to him as Scott. When
16 I do, I'm talking about Scott Robinson. All right?

17 A. Correct.

18 Q. And you know Scott to be an honest person,
19 don't you?

20 A. Yes.

21 Q. And you know him in fact to be a fine
22 human being, correct?

23 A. Correct.

24 Q. Now, you just testified that you met with
25 Steve McKenzie. You asked him to come to your

1 office sometime in the last year and -- to discuss
2 the case known as Austin versus Stokes-Craven. Is
3 that correct?

4 A. Correct.

5 Q. And Steve McKenzie was not your attorney,
6 that is the attorney for Stokes-Craven, in the
7 matter -- the lawsuit brought by Mr. Austin, was
8 he?

9 A. Would you repeat that, please?

10 Q. Yes. Mr. McKenzie was not the attorney
11 for Stokes-Craven in the lawsuit that was brought
12 by Mr. Austin, was he?

13 A. I don't know. There was a partnership
14 split within the company at that time. At the time
15 of the case, I was assuming that Mr. McKenzie and
16 Mr. Johnson were all involved in this case.

17 Q. Did you ever meet with Mr. McKenzie or
18 with Mr. Johnson with regard to the case brought by
19 Mr. Austin?

20 A. No, ma'am.

21 Q. You had all of your meetings, all of your
22 conversations with Mr. Robinson, correct?

23 A. Correct.

24 Q. And Mr. Robinson would come to your
25 offices sometimes two and three times a week to

1 discuss the Austin case with you, wouldn't he?

2 A. He's been there having discussions. I
3 don't know about two or three times a week.

4 Q. Frequently. Is that correct?

5 A. Frequently.

6 Q. All right. Did you ever ask to speak --
7 instead of dealing with Scott, to speak with either
8 Mr. McKenzie or Mr. Johnson with regard to the
9 Austin case?

10 A. No, I did not.

11 Q. Mr. McKenzie was not at the trial of the
12 Austin case except for a very short period of time,
13 less than an hour on the second day. Isn't that
14 correct?

15 A. Correct.

16 Q. After this conversation that you had that
17 you've described for us with Mr. McKenzie, have you
18 had any other conversations with Mr. McKenzie in
19 any way related to the Austin versus Stokes-Craven
20 matter?

21 A. No, ma'am.

22 Q. In any way related to the lawsuit that you
23 filed on behalf of your company, Stokes-Craven,
24 against Scott and the law firm of Johnson, McKenzie
25 and Robinson?

1 A. There's been some conversations, yes.

2 Q. All right. Tell us about those
3 conversations.

4 A. Very casual in-the-yard type of situations
5 of, you know, I got -- I have a deposition
6 coming -- that's coming up, and I didn't get into
7 mine, and he said, this all will be over with soon
8 and just everything will be okay, those type of
9 conversations.

10 Q. Did he describe for you what he meant by
11 everything will be okay?

12 A. No, just --

13 Q. The Stokes-Craven dealership, is that
14 owned 33 percent by you, 33 percent by Jerry
15 Stokes, and 33 percent by Edward Stokes?

16 A. Correct.

17 Q. And when I say 33, 33 and a third. Is
18 that correct?

19 A. Yes, ma'am, that's right.

20 Q. All right. And do the three of you make
21 decisions together with regard to various matters
22 dealing with the Stokes-Craven dealership?

23 A. There are decisions made we make together,
24 yes.

25 Q. When the Austin case was filed against --

1 the lawsuit was filed naming Stokes-Craven as the
2 defendant in March 2004, did you tell the two
3 Mr. Stokes about the lawsuit?

4 A. Yes.

5 Q. And what did you and Edward and/or Jerry
6 talk about with regard to that lawsuit?

7 A. Who was going to handle it, and I said
8 Scott, and that they have some situations against
9 them in Charleston about some other lawsuits that
10 was going on, and that was pretty much the end of
11 the conversations.

12 Q. When you told them that Scott was going to
13 handle the lawsuit, did they object?

14 A. No. They left that up to me.

15 Q. All right. Now, the other lawsuits that
16 they referenced in that conversation, what lawsuits
17 were those?

18 A. I didn't -- I don't know. I just know
19 there's others.

20 Q. Did they make you aware that they -- their
21 dealerships in the Charleston area had been
22 involved in other lawsuits with Mr. Moskos who was
23 the plaintiff's attorney in filing the lawsuit for
24 Mr. Austin?

25 A. Yes.

1 Q. And what was their opinion of Mr. Moskos
2 and the fact that he was the plaintiff's lawyer in
3 the suit against Stokes-Craven?

4 A. Not very pleased.

5 Q. Okay. They weren't pleased that it was
6 Mr. Moskos.

7 Did they tell you that Mr. Moskos, words
8 to the effect, was a thorn in their sides?

9 A. I don't recall.

10 Q. All right. Did they discuss with you that
11 they did not want you to settle the lawsuit filed
12 by Mr. Austin through Mr. Moskos?

13 A. No, they did not.

14 Q. Did you ever have any settlement
15 discussions with your shareholders Edward and Jerry
16 Stokes with regard to the Austin case?

17 A. No.

18 Q. Why not?

19 A. They were just letting me handle the
20 situation.

21 Q. You had an opportunity to settle with
22 Mr. Austin when he came to visit you at your
23 dealership shortly after he bought the truck in
24 2002, correct?

25 A. Yes.

1 Q. You had another opportunity to settle the
2 lawsuit when his then lawyer Mr. Polito,
3 P-O-L-I-T-O, sent you and your dealership a letter
4 in February of 2003, correct?

5 A. Yes.

6 Q. And that was before any lawsuit was filed
7 because the lawsuit wasn't filed until March of
8 2004, correct?

9 A. Correct.

10 Q. What was your response to the Polito
11 letter?

12 A. I handed it to Mr. Robinson.

13 Q. When did you retain Mr. Robinson as
14 counsel in this matter since the lawsuit wasn't
15 even filed until 2004?

16 A. What's the question again?

17 Q. The question is: When did you hire
18 Mr. Robinson to represent Stokes-Craven when the
19 lawsuit wasn't filed until March of 2004?

20 A. He handled the whole situation that we're
21 in. I said, you handle it and tell me where we're
22 at with it.

23 Q. When did you first ask him to, quote,
24 handle, end quote, the situation?

25 A. When I was served the papers.

1 Q. All right. So when you were served the
2 law -- with the lawsuit?

3 A. No, with the papers from Polito.

4 Q. So it's your testimony that you got Scott
5 Robinson involved in the Austin matter when you
6 received the demand letter from Mr. Polito in
7 February of 2003?

8 A. Correct.

9 Q. I'm going to hand to you what we're going
10 to mark next in order.

11 Do you want to tell me?

12 MR. EPTING: Four.

13 (DEPO. EXH. 4, 2/18/03 Letter, was marked
14 for identification.)

15 BY MS. WALL:

16 Q. And ask you if you recognize what we've
17 marked as Exhibit Number 4 as a copy of the letter
18 you received on or about February the 18th, 2003,
19 from John R. Polito?

20 A. Correct.

21 Q. When you received this letter, did you
22 read it?

23 A. Yes.

24 Q. Did you look at the photographs and other
25 attachments?

1 A. Yes.

2 Q. Which included reports from two experts.

3 Is that correct?

4 A. Correct.

5 Q. And what conclusion did you draw from this
6 demand letter?

7 A. That we have sold him the vehicle.

8 Q. Pardon me?

9 A. That we have sold him this vehicle, has
10 been damaged, and I handed this to Mr. Robinson for
11 us to figure out where we go from here.

12 Q. And what did you figure out how to go from
13 here?

14 A. There was never no comments made back to
15 Scott on this.

16 Q. Comments from who?

17 A. He made contact through the attorney,
18 asked him what were their damages, and they never
19 replied back to him.

20 Q. Did you when you read this letter which
21 said that they were willing to settle for that
22 which is outlined on page 5, tendered possession of
23 title, standard general release in exchange for
24 satisfying all outstanding vehicle loan
25 indebtedness, reimbursing the loan payments already

1 made of \$556.17 a month, reimbursement of
2 attorney's fees of \$1,500 and reimbursement of \$125
3 in expert evaluation costs, did you make the
4 determination that you wanted to settle on these
5 grounds?

6 A. No, ma'am. I left that to Mr. Robinson
7 for him to get with me.

8 Q. All right. Did Mr. Robinson get with you
9 with regard to this demand letter?

10 A. Yes, and he says that he doesn't agree
11 with it.

12 Q. Tell me about the conversation that you
13 had with Mr. Robinson. What is it that
14 Mr. Robinson allegedly told you he didn't agree
15 with?

16 A. That they don't -- the liability here --
17 they cannot show in their damages the value of
18 their damages.

19 Q. This letter outlined for you the theory
20 that Mr. Austin had that -- and the evidence that
21 he had been sold a car that had been previously
22 wrecked and he wasn't told that, one, and that,
23 two, his name had been forged to a document,
24 correct?

25 A. Correct.

1 Q. That's what he's alleging in here,
2 correct?

3 A. Correct.

4 Q. When you got this, did you speak to any of
5 the people in your dealership so that you could
6 find out whether or not these two issues were true
7 or not true?

8 A. Yes.

9 Q. Who did you speak to?

10 A. The salesmen and -- with the forgery, the
11 salesman that actually handled the deal and the
12 manager that actually handled the deal, were they
13 aware of any of these things.

14 Q. And what did they tell you?

15 A. No. They denied everything. They didn't
16 know about it and no one told them about it.

17 Q. You yourself had seen when you met with
18 Mr. Austin a year before the signature that he
19 claimed was not his and was forgery. You had seen
20 that a year earlier, correct?

21 A. I've seen the piece of document that I
22 gave him myself, yes.

23 Q. Okay. And you compared it to his
24 signature on his driver's license in 2002, didn't
25 you?

1 A. Yes.

2 Q. And what conclusion did you come when you
3 saw the signature on the -- your dealership's
4 document and the signature on his driver's license?

5 A. That it didn't look the same to me.

6 Q. It didn't look the same, did it?

7 A. No, it didn't.

8 Q. Didn't that lead you to conclude in 2002
9 that there in fact had been a forgery?

10 A. Yes.

11 Q. And in this letter of settlement from
12 Mr. Polito, he brings that issue out again, doesn't
13 he?

14 A. Correct.

15 Q. And he copies for you the signature page
16 as one of his attachments, correct?

17 A. Correct.

18 Q. Did you conclude when you got this letter
19 from Mr. Polito that somehow this was no longer a
20 forgery?

21 A. No.

22 Q. Then why didn't you as the head of the
23 dealership that was being sued or being demanded
24 of -- this is before the suit -- being demanded of
25 by Mr. Polito on behalf of Austin, why didn't you

1 conclude I need to settle this case?

2 A. Because I gave this to my attorney and for
3 him to tell me where we need to go.

4 Q. So you were leaving it up to your attorney
5 to make a decision as to whether or not your
6 dealership should settle a matter that had to do
7 with the actions of your people in your dealership?

8 A. Exactly.

9 Q. Is that your testimony?

10 A. Yes, ma'am.

11 Q. All right. And did you discuss this
12 Polito letter with your shareholders, partners, the
13 Stokes brothers?

14 A. No, ma'am.

15 Q. Why not?

16 A. It was my problem and I'll handle it.

17 Q. But it was also their problem, wasn't it,
18 because aren't they 33 and a third each percentage
19 interest in Stokes-Craven Ford?

20 A. They are an interest, but I disagree with
21 you saying it's their problem too.

22 Q. All right. My question for you was since
23 they owned a greater interest in Stokes-Craven Ford
24 than you did, their interest combined being
25 approximately 67 percent, why did you determine not

1 to tell them about the settlement demand from
2 Mr. Polito in 2003?

3 A. Because I handed this to my attorney and
4 he was going to handle it. That's what I told
5 them.

6 Q. And what instructions did you give your
7 attorney with regard to this Polito letter when you
8 handed in the letter?

9 A. Tell me where do we go from here.

10 Q. And so what did he tell you?

11 A. He'll handle it.

12 Q. And what did he do?

13 A. Contacted this attorney, said what are
14 your damages, and never got a reply back.

15 Q. Isn't it a fact that in this letter the
16 damages are set out by Mr. Polito? He sets out
17 those damages in this letter written to you.
18 They're in there. Isn't that right?

19 A. Sure. Yes, ma'am.

20 Q. So you knew what Mr. Austin's damages were
21 and, in fact, you knew them in 2002 because
22 Mr. Austin in 2002 had come to you and asked you
23 give me my money back and, here, you take this
24 wrecked truck?

25 A. Okay.

1 Q. Isn't that right?

2 A. Correct.

3 Q. Okay. And those were his damages,
4 correct?

5 A. Correct.

6 Q. So you knew in 2002 what his damages were,
7 but you refused to do what he asked you to do which
8 was you take this truck back and you pay me back
9 for what I've already paid. You refused to do that
10 in 2002, didn't you? Because he asked you to do
11 that, right?

12 A. He asked me to do this. He was an
13 attorney, so I said I'll let my attorney handle it.

14 Q. Just a moment. Mr. Austin directly asked
15 you to do that back in 2002, correct?

16 A. Correct.

17 Q. And you said no?

18 A. He also asked me would he trade in --
19 could I trade in this vehicle, and I said, yes,
20 I'll be glad to do that at no expense, no profit,
21 no nothing, be glad to trade. Okay, I'll get back
22 with you. And never heard from him again.

23 Q. Isn't it a fact you did hear from him
24 again and his demand was that you take this truck
25 back --

1 A. The only way I heard from him again --

2 Q. -- and he wanted his money back?

3 A. -- was through an attorney. I did not

4 hear from him, no, ma'am.

5 Q. All right. So it's your testimony that

6 the next time you heard anything was this Polito

7 letter?

8 A. Exactly.

9 Q. And in the Polito letter, the same issues

10 are set out, the same demand is made that

11 Mr. Austin made of you initially which was take

12 this truck back and pay me back the money I've had

13 to pay for it. Isn't that right?

14 A. And, again, I handed this to my attorney.

15 Q. But in answer to my question --

16 A. Yes.

17 Q. -- is that's correct, isn't it?

18 A. Sure.

19 Q. Do you recall that Mr. Robinson told you

20 that if you went to trial in this case brought by

21 Mr. Austin that you would not escape without a

22 verdict against your company?

23 A. No, I do not recall that.

24 Q. You don't recall that?

25 A. No, I do not.

1 Q. Looking again at Exhibit Number 4, when
2 you read this letter, you, because you've testified
3 you read it before you gave it to Mr. Robinson,
4 when you read it and you looked under alleged
5 facts, did you conclude that first paragraph of
6 alleged facts, the vehicle was previously owned by
7 Gary Bailey of Summerville, that he purchased the
8 vehicle from Stokes-Craven in 1999 for \$24,741,
9 that Stokes-Craven gave him \$16,668 in trade-in
10 value, and then in June 2002, Stokes-Craven sold
11 the vehicle to Mr. Austin for \$26,371, did you
12 conclude at the time that you read that that those
13 facts were true?

14 A. Yes.

15 Q. You knew them to be true, correct?

16 A. Yes.

17 Q. And then in looking at the second
18 paragraph, Ford was actually involved in making
19 accident-related repairs to Mr. Bailey's vehicle.
20 Barry Thornall, your general manager, knew of this.
21 He lived down the road from Mr. Bailey. Did you
22 know that to be true?

23 A. That is not true. Ford did not do any
24 repair work.

25 Q. Who did?

1 A. A body shop in Summerville.

2 Q. Did you know at the time of reading this
3 letter in February 18, 2003, that accident-related
4 repairs were made to the Bailey vehicle?

5 A. At the time that Mr. Austin bought the
6 truck, a week or so later is when I found out that
7 there was damages to the truck, yes.

8 Q. So when you were reading this letter in
9 February of 2003, you knew that to be true?

10 A. Correct.

11 Q. The second page of this letter goes on to
12 say that in early May 2002, various things occurred
13 with Mr. Bailey, and Mr. Bailey concluded -- was
14 confident that Stokes-Craven knew that the vehicle
15 had sustained extensive wreck damage.

16 Did you investigate to see if anybody at
17 your dealership knew in May of 2002 that the
18 vehicle had sustained extensive wreck damage?

19 A. Yes.

20 Q. And who did you conclude did know that?

21 A. Nobody knew it. You asked did I
22 investigate. Yes, I investigated.

23 Q. Okay. And did you learn who had that
24 knowledge?

25 A. No one had that knowledge.

1 Q. What conversation, if any, did you ever
2 have with Billy Frierson with regard to the sale to
3 Mr. Austin, his knowledge of prior damage to that
4 vehicle?

5 A. I asked Mr. Frierson did he tell
6 Mr. Austin that the truck had a
7 hundred-thousand-mile warranty, which Mr. Austin
8 alluded to, which he said he did not. He said the
9 engine had a hundred-thousand.

10 And I asked him did he have this -- did he
11 sign this document that we can't obviously find out
12 whose signature this is, and he says, that wasn't
13 me. That's the only knowledge that I know of.

14 Q. How long had Mr. Frierson worked for you
15 before June 2002?

16 A. Approximately four years, five years.

17 Q. And after 2002, how long did he continue
18 to work for your dealership?

19 A. Three years, four years.

20 Q. Was he working for your dealership at the
21 time of the trial in August of 2006?

22 A. Yes.

23 Q. How long after the trial did he continue
24 to work for your dealership?

25 A. Three or four years.

1 Q. And was that until his death or was he --

2 A. No.

3 Q. Did you discharge him prior to that?

4 A. He retired.

5 Q. He retired?

6 During the time that he worked for your
7 dealership, other than the Austin claim, was he the
8 subject of any other claim made by anyone whether
9 it was a lawsuit, a telephone call to you, a
10 written complaint, or just a verbal complaint about
11 his performance, lack of performance, honesty,
12 dishonesty, or the like?

13 A. No.

14 Q. This letter on page 3 goes on to outline
15 various meetings that Mr. Austin had in your
16 presence. Do you recall that? With you and others
17 at your dealership.

18 A. Repeat.

19 Q. Okay. Let me repeat my question. This
20 letter goes on on page 3 to set forth, describe,
21 various meetings that Mr. Austin had at your
22 dealership with you and others?

23 A. Correct.

24 Q. Okay. In the middle of page 3, it states,
25 and I quote, Mr. Craven then turned to Mr. Thornall

1 and asked him if he knew that this was, quote,
2 Gary's, end quote, truck, to which Mr. Thornall
3 replied yes.

4 Do you recall that having occurred?

5 A. Where are you at?

6 Q. The second full paragraph, last sentence.

7 A. Second paragraph, last sentence,

8 Mr. Austin had stated asking about --

9 Q. No, Mr. Craven then turned to

10 Mr. Thornall, the second full paragraph.

11 A. Okay. What was the question?

12 Q. My question was: Do you recall that that
13 in fact occurred --

14 A. No, I do not.

15 Q. -- that you turned to Mr. Thornall, you
16 asked him if he knew was this Gary's truck, and
17 Mr. Thornall said to you yes?

18 A. Bear with me a moment. Let me read this
19 paragraph.

20 Did not happen.

21 Q. Did not happen?

22 A. Did not happen.

23 Q. Did Mr. Thornall ever deny to you that he
24 knew that Mr. Bailey's truck had been wrecked?

25 A. He denied that he never knew, correct.

1 Q. Did you provide any updates, whether
2 orally, by e-mail, by other writing, to your
3 partners, shareholders with regard to the Austin
4 claim from the time it was made in March of 2004
5 until after trial?

6 A. No, ma'am.

7 Q. Did your partners Jerry and Edward ever
8 tell you that they were familiar with Mr. Moskos as
9 a plaintiff's counsel because he had sued some of
10 their other dealerships?

11 A. Jerry Stokes, no. Edward Stokes, yes.

12 Q. And what did Edward tell you about that
13 situation?

14 A. He did not get in any detail, just said
15 that they had some files pending with him right now
16 on some other cases.

17 Q. Did he tell you that he didn't think
18 Moskos had staying power?

19 A. No.

20 Q. Did you ever have a discussion with either
21 of your partners with regard to concern about
22 Moskos being involved in a class action concerning
23 odometer claims?

24 A. No.

25 Q. You don't recall that?

1 A. That they -- we had a discussion with each
2 other?

3 Q. Did you have any discussions with them
4 about that?

5 A. No, I did not.

6 Q. Did you have any discussions with anyone
7 about concerns about class action odometer claims?

8 A. No.

9 Q. You don't recall having that discussion
10 with anyone?

11 A. No, I did not have that discussion.

12 Q. Did your partners discuss with you a
13 coordinated approach with regard to Moskos?

14 A. No. We did not have a discussion about
15 Moskos.

16 Q. Well, now, you've testified earlier you --

17 A. On what you just said.

18 Q. -- did have a discussion about Moskos?

19 A. To your comment you just replied to.

20 Q. Do you recall Mr. Robinson discussing with
21 you during the pendency of the Austin litigation
22 the problems with the facts in the case, that is
23 specifically issues involving the facts of forgery
24 and that this car that was sold to Mr. Austin had
25 been in a prior wreck?

1 A. There was no discussion of that during
2 trial.

3 Q. Pardon me?

4 A. You said was there a discussion during
5 trial.

6 Q. No, no. I asked you before, up to the
7 time of trial.

8 A. No.

9 Q. Do you recall any discussions with
10 Mr. Robinson concerning settlement, offers to
11 settle, strategy, evaluation, concept of settlement
12 before trial?

13 A. There was one. He went to Mr. Moskos,
14 what could we settle this for, which I was unaware
15 of. Mr. Moskos told him \$120,000, thereabouts. He
16 came back and told me that's what was said and he
17 said he was crazy, so okay.

18 Q. And when did this occur?

19 A. During trial.

20 Q. During trial.

21 A. Or before trial or --

22 Q. Which one was it?

23 A. Break. I don't recall.

24 Q. Well, had you already started --

25 A. Yes.

1 Q. -- the trial?

2 A. Yes.

3 Q. So the trial was going on. There may have
4 been a lull in the proceedings, I mean a break, the
5 judge may have been gone, but trial had already
6 started, correct?

7 A. I don't recall exactly when that took
8 place.

9 Q. Did you make an offer to Moskos during
10 trial to settle the case?

11 A. No.

12 Q. Did you ever give Mr. Robinson a copy of
13 the Stokes-Craven insurance policy?

14 A. No.

15 Q. At any time?

16 A. Never.

17 Q. How did you come to retain Young Clement
18 Rivers as appellate counsel? How did you even
19 learn about them?

20 A. Stokes has a -- I guess you would call it
21 a comptroller of all of his stores, and he was
22 already involved with them and -- which she was
23 involved with the lawsuits that was in Charleston
24 and referred me back to those people, to the Young
25 Clement.

1 Q. So the Stokes Holding Company
2 comptroller --

3 A. No.

4 Q. -- referred you to them?

5 A. Stokes Automotive.

6 Q. And who was that person?

7 A. Charity Chastain.

8 Q. Is it your contention on behalf of
9 Stokes-Craven that at the time of the verdict in
10 August of 2006 Stokes-Craven could not pay that
11 verdict into the court pending the appeal?

12 A. Correct.

13 Q. And on what do you base that statement?

14 A. We didn't have the cash in the operation.

15 Q. You had testified earlier that the
16 property that Stokes-Craven operates out of has a
17 mortgage on it, correct?

18 A. Correct.

19 Q. What bank?

20 A. Wells Fargo.

21 Q. And who is the banker that Stokes-Craven
22 deals with at Wells Fargo?

23 A. Bill Wallace.

24 Q. And has Stokes-Craven been dealing with
25 Bill Wallace for a number of years?

1 A. Correct.

2 Q. Does Wells Fargo have a loan only on the
3 physical property, the real property, or also on
4 inventory?

5 A. Both.

6 Q. All right. So you -- the dealership has
7 loans from Wells Fargo both on real property and
8 inventory, correct?

9 A. Correct.

10 Q. What else does it have loans on?

11 A. Operating capital.

12 Q. Is that also with Wells Fargo?

13 A. Correct.

14 Q. What other banks does Stokes-Craven have
15 dealings with in borrowing money?

16 A. That's it.

17 Q. And has it been dealing with Wells Fargo
18 since it opened its operations in approximately
19 1996?

20 A. No. It was Nations Bank.

21 Q. So it was Nations Bank first and then
22 Wells Fargo?

23 A. Correct.

24 Q. When was the switch made?

25 A. Approximately in 2003, four.

1 Q. And did Wells Fargo merge with Nations
2 Bank --

3 A. I'm trying to remember.

4 Q. -- or did --

5 A. We were with Bank of America which merged
6 and then it became Nations Bank and then we went
7 with Wachovia and then it became Wells Fargo, I
8 think is the way it goes.

9 Q. So as far as you know, it was the same
10 continuum of banking relationship, the name of the
11 bank just simply changed over time. Is that
12 correct?

13 A. Correct.

14 Q. And had you been dealing with Bill Wallace
15 even when it was Bank of America?

16 A. Correct.

17 Q. Did you go to Mr. Wallace in 2006 and ask
18 to borrow money on behalf of the dealership in
19 order to pay the judgment in to the court to stop
20 interest from running?

21 A. No, ma'am.

22 Q. In this case, your -- through your counsel
23 you have produced various tax returns for various
24 years. You're aware of that?

25 A. Correct.

1 Q. In looking -- have you had an opportunity
2 to look at the 2006 tax return for Stokes-Craven?

3 A. I have, yes.

4 Q. And upon what do you base your statement
5 that Stokes-Craven could not pay the judgment in to
6 the court in order to stop interest from running
7 pending the appeal?

8 A. Re-ask the question. Re-ask the question.

9 Q. Upon what do you base your statement that
10 Stokes-Craven could not pay in to the court the
11 judgment in 2006 pending the appeal?

12 A. The statement doesn't show actual cash in
13 the bank.

14 Q. So you are relying on having actual cash
15 in the bank in order to do that rather than
16 borrowing the money. Is that correct?

17 A. I need to operate, correct.

18 Q. You've already testified that your company
19 borrowed operating capital, correct?

20 A. Not then.

21 Q. Pardon me?

22 A. Not then.

23 Q. Not in 2006?

24 A. Right.

25 Q. When did it first begin doing so?

1 A. Last year.

2 Q. Did you make any attempt to borrow
3 operating capital in 2006?

4 A. No, ma'am.

5 Q. No?

6 A. No.

7 Q. In looking at the tax returns for
8 Stokes-Craven 2005, 2006, 2007, each year the gross
9 profit and total income went up. Do you recall
10 that? Does that sound correct to you?

11 A. What years?

12 Q. From 2005 to 2006 to 2007.

13 A. Correct, and it also went down after that
14 drastically.

15 Q. In 2007 -- during the year 2007, was that
16 Stokes-Craven's best year ever?

17 A. No.

18 Q. When was its best year?

19 A. '96, '97.

20 Q. 2007 was better than 2006 and 2005, wasn't
21 it?

22 A. Yes.

23 Q. By more than two times, correct,
24 approximately?

25 A. If you got the documents. Approximately.

1 Q. You draw a salary from Stokes-Craven,
2 don't you?

3 A. Correct.

4 Q. And then you also draw monies as a
5 one-third owner, correct?

6 A. Correct.

7 Q. Did you have conversations with
8 Stokes-Craven's CPA in 2006 about paying the
9 judgment in to the court pending appeal?

10 A. No, I did not.

11 Q. Who was the CPA for Stokes-Craven in 2006
12 and 2007? Was it Mr. Burch?

13 A. Yes.

14 Q. And did there come a time when
15 Stokes-Craven no longer used the services of
16 Mr. Burch?

17 A. Yes.

18 Q. And why was that?

19 A. There was a dealing with Edward Stokes,
20 and he and some other -- in the other stores that
21 was inappropriate, so we all changed when he
22 changed.

23 Q. And who did you change to?

24 A. Dixon-Hughes.

25 Q. So is it your testimony that the only

1 reason you changed to Dixon-Hughes was because the
2 other Stokes dealerships changed accountants?

3 A. Correct.

4 Q. Did you ever have any problems with
5 Mr. Burch, any concerns with his performance or
6 nonperformance in his activities with
7 Stokes-Craven?

8 A. No.

9 Q. You were asked earlier in your testimony
10 with regard to other lawsuits that Stokes-Craven
11 has been involved in and I believe your testimony
12 was there was only one. Is that correct?

13 A. Correct.

14 Q. And tell us about that one.

15 A. The class action that's going on for all
16 the dealers in South Carolina.

17 Q. And in that, Stokes-Craven -- is it all
18 the Ford dealerships or all car dealerships?

19 A. All car dealerships.

20 Q. And who is counsel for Stokes-Craven?

21 A. You're going to have to refer that to
22 Mr. Flack.

23 Q. So you don't know?

24 A. No. I don't recall his name, but --

25 Q. Are you aware that interrogatories were

1 sent to your company as the plaintiff in this
2 lawsuit and were answered through your attorney
3 Mr. Epting?

4 A. One more time. Excuse me.

5 Q. Sure. Are you aware that in this lawsuit
6 in which Stokes-Craven is the plaintiff and has
7 sued Mr. Robinson and Johnson, McKenzie and
8 Robinson, questions were asked, that are known as
9 interrogatories --

10 A. Correct.

11 Q. -- in writing, were sent to your counsel
12 and responses were then sent to defense counsel
13 through your --

14 A. Correct.

15 Q. -- lawyer Mr. Epting?

16 A. Correct.

17 Q. And in those responses, one of the
18 questions -- okay.

19 I'm going to hand you what we'll mark as
20 Number 5.

21 (DEPO. EXH. 5, Stokes-Craven Holding Corp
22 d/b/a Stokes-Craven Ford's Answers to Defendant
23 Scott L. Robinson's First Set of Interrogatories,
24 was marked for identification.)

25 MR. EPTING: Thanks.

1 BY MS. WALL:

2 Q. Have you ever seen this document before?

3 A. Yes.

4 Q. And when did you see it?

5 A. I would imagine a few weeks ago if not
6 longer. We've been reviewing all of these. John
7 showed me.

8 Q. So did you review these responses in
9 preparation for your deposition here today?

10 A. Yes.

11 Q. But you didn't review it before
12 January the 6th, 2011, did you? That's date of
13 these responses.

14 A. I don't remember the dates.

15 Q. All right. That's the date of these
16 responses. Do you recall reviewing a draft of this
17 before January the 6th --

18 A. Yes.

19 Q. -- 2011? You do?

20 A. No, no, I do not recall. I'm sorry.

21 Q. In -- if you will look at the bottom of
22 page 6, the request was a list of every lawsuit
23 that you -- and the you is defined to include
24 Stokes-Craven Holding Corporation doing business as
25 Stokes-Craven Ford -- have been involved in as a

3e5dff28-a335-46ff-b16e-9ddc96a5edb0

1 plaintiff or a defendant and then, in your
2 response, please set forth the name of the case,
3 the case number, the county in which the case was
4 filed and the disposition of the case. Do you see
5 that at the bottom of the page 6?

6 A. Yes.

7 Q. All right. Then you turn over to the top
8 of the page 7 because that gives the response. Do
9 you see that? And that lists a case known as Heron
10 et al versus Dick Dyer and Associates and Adams
11 et al versus Action Ford. Is that the lawsuit that
12 you were referencing earlier having to do with this
13 document from the attorney general's office?

14 A. Yes, ma'am.

15 Q. And then it also lists a claim of
16 Stephanie P. Weeks. What was that claim about?

17 A. Sexual harassment. She'd filed a sexual
18 harassment.

19 Q. All right. When did that occur?

20 A. Two years ago, three years ago.

21 Q. And was she an employee of Stokes-Craven?

22 A. Correct.

23 Q. Does she continue to be an employee?

24 A. No.

25 Q. Have there been any other claims against

1 Stokes-Craven or Stokes-Craven Holding Corporation
2 or you?

3 A. No.

4 Q. Since we now know there's an additional
5 one with Stephanie Weeks, have there been any
6 others?

7 A. No.

8 Q. Other than of course Mr. Austin's claim?

9 A. Correct.

10 Q. You have no recollection of any other
11 lawsuits?

12 A. No.

13 Q. When Stokes-Craven Ford was established as
14 an entity wherein you were a one-third owner and
15 you had the two Craven brothers as the other --

16 A. Stokes brothers.

17 Q. Stokes, excuse me -- as the other two
18 owners, did you have to pay capital in in order to
19 establish this company --

20 A. Yes.

21 Q. -- your one-third interest?

22 A. Yes.

23 Q. And how much did you pay in in your
24 one-third to establish the company?

25 A. A hundred thousand.

1 Q. And was that money that you borrowed from
2 a bank?

3 A. No, ma'am.

4 Q. What is the relationship between
5 Stokes-Craven Ford and Stokes-Craven Holding
6 Corporation?

7 A. Stokes-Craven -- Stokes-Craven Holding is
8 d/b/a Stokes-Craven Ford.

9 Q. So Stokes-Craven Holding Corporation, as
10 that name would imply, is the holding company for
11 Stokes-Craven Ford. Is that correct?

12 A. Correct.

13 Q. Does Stokes-Craven Holding Corporation --
14 is it a holding company for any other company other
15 than Stokes-Craven Ford?

16 A. Yes.

17 Q. What other company?

18 A. Stokes-Craven Chrysler Jeep Dodge.

19 Q. And where is that located?

20 A. 2585 Paxville Highway, Manning.

21 Q. Do you also -- are you the primary person
22 in charge of that dealership?

23 A. Yes.

24 Q. How do you divide your time between the --
25 I'm going to call it the Dodge dealership and the

1 Ford dealership?

2 A. I'm at both of them all day.

3 Q. So you go back and forth. Is that right?

4 A. Yes.

5 Q. When was the Stokes-Craven Chrysler Dodge
6 dealership established?

7 A. 2001.

8 Q. Has Stokes-Craven Chrysler Dodge ever been
9 a defendant in a lawsuit?

10 A. No.

11 Q. And is Stokes-Craven Chrysler Dodge owned
12 as the Ford company is, one-third, one-third,
13 one-third with the Stokes brothers?

14 A. Underneath the holding company, yes.

15 Q. Does the holding company own any other
16 company?

17 A. There's a used car lot, but I don't know
18 if that's under a holding company or if it's under
19 the Stokes-Craven Ford. My apologies there.

20 Q. Is that known as Regal Auto Sales?

21 A. Yes.

22 Q. All right. If you will turn again in
23 Exhibit Number 5 to the very last page, page 10,
24 interrogatory number 12 asks for affiliate sister
25 companies and/or -- instead of pertinent, it should

1 have been parent companies. It references Regal
2 Auto Sales. Is that the entity --

3 A. Yes.

4 Q. -- you were just talking about? All
5 right.

6 And what does Regal Auto Sales do?

7 A. Used cars.

8 Q. All types?

9 A. Yes.

10 Q. Sells used cars?

11 A. Yes.

12 Q. And how does a used car go to Regal Auto

13 Sales as opposed to, say, Stokes-Craven Ford?

14 Stokes-Craven Ford sells used cars, doesn't it?

15 A. Uh-huh.

16 Q. So how is the decision made -- why would
17 it go to Regal as opposed to Stokes-Craven Ford or
18 vice-versa?

19 A. Are you talking about from a retail
20 standpoint or from a wholesale standpoint or from a
21 company -- I don't know where your question is
22 there.

23 Q. All right. From a retail standpoint, how
24 do you determine -- if you have a Ford pickup and
25 it's been previously owned, how do you determine

1 whether to sell it from Stokes-Craven Ford lot or
2 to sell it from the Regal Auto Sales lot?

3 A. Each lot stands on its own, and basically
4 we'll send -- we can supply them with cars, same --
5 they can supply us back with cars. Each store has
6 its own buyer that buys cars.

7 Q. Do you spend any time at Regal Auto Sales?
8 Do you manage that entity?

9 A. Yes, 10 percent.

10 Q. Pardon me?

11 A. About 10 percent of my time, if that.

12 Q. But, on paper, are you also the man in
13 charge of Regal Auto Sales?

14 A. Yes.

15 Q. So we -- you are the man in charge of
16 Stokes-Craven Ford, Stokes-Craven Chrysler Dodge
17 and Regal Auto Sales. Is that correct?

18 A. Correct.

19 Q. How long has Regal Auto Sales been in
20 business?

21 A. 2002, thereabouts, two, three.

22 Q. Why in 2002 was Stokes-Craven Holding
23 Corporation changed to an S corporation?

24 A. Tax purposes.

25 Q. And the -- for tax purposes, as an S

1 corporation, each of the three of you, Edward
2 Stokes, Jerry Stokes, and Dennis Craven, recognize
3 one-third of the income through your personal tax
4 returns. Is that correct?

5 A. Correct.

6 Q. And what was the personal income that you
7 had from -- through Stokes-Craven Holding
8 Corporation, referencing the three companies that
9 it owns, in 2006?

10 A. I'll have to look at some documents to be
11 able to answer that one for you.

12 Q. Would that be greater than the salary that
13 you received from Stokes-Craven Ford, Stokes-Craven
14 Chrysler Dodge, Regal Auto Sales and your one-third
15 interest as a shareholder of Stokes-Craven Holding
16 Corporation?

17 A. That was a big question there. How about
18 redo that one for me.

19 Q. Let me just put on the record, we don't
20 have -- this is an S corporation or it became an S
21 corporation. We don't have your tax returns. So
22 what I'm simply trying to find out is when it
23 became an S corporation in 2002, which means the
24 income flows to and through the individuals,
25 correct?

1 A. Correct.

2 Q. Is that how you understand it?

3 A. Correct.

4 Q. All right. So your individual tax return
5 would reflect your portion of both your interest in
6 Stokes-Craven Holding Corporation as well as the
7 personal employee income, if you will, that you
8 received from each of these three companies as
9 being the head of the three companies, correct?

10 A. Correct.

11 Q. So I had asked you earlier whether you got
12 a salary from Stokes-Craven Ford, and you said yes,
13 you did, and again I'll talk about 2006, and the
14 answer is yes, correct?

15 A. Okay.

16 Q. You also got a salary from Stokes-Craven
17 Chrysler Dodge in 2006, correct?

18 A. No.

19 Q. Okay. Did you get --

20 A. I get the same salary. Now, how John
21 divides it among the stores --

22 Q. All right.

23 A. -- it may be 4,000 one store and 6,000
24 another store, but I have that one salary.

25 Q. All right. So the one salary is for your

1 activities on behalf of all three stores, correct?

2 A. Exactly.

3 Q. Staying with Exhibit Number 5, the first
4 question is who are the witnesses in this -- who do
5 you think are witnesses in this case. Now, named
6 in this is -- as number G, John Flack. What does
7 Mr. Flack know, to your knowledge, if anything,
8 about the Austin matter?

9 A. All the documents that took place,
10 personnel that was here, he had -- files all that
11 and he pulled files for all that.

12 Q. All right. What was Mr. Flack's -- what
13 activities was he responsible for in 2002?

14 A. He was the comptroller.

15 Q. All three companies?

16 A. Uh-huh. Yes, ma'am.

17 Q. And did he continue to be the comptroller
18 through 2006?

19 A. Yes.

20 Q. Was he involved in working with you or
21 Mr. Robinson in relation to the Austin claim and
22 then lawsuit?

23 A. Yes.

24 Q. What did he do in that regard?

25 A. If there was any documents that needed to

1 be gathered up, he did that or any -- basically any
2 documents or dates that we needed to attend or go
3 anywhere, he handled all that for me.

4 Q. Okay. So he found documents for you.
5 Would you go to him and ask him to please pull
6 this, that, and the other thing?

7 A. Right.

8 Q. And he would give them to you?

9 A. Correct.

10 Q. And you in turn would give them to
11 Mr. Robinson?

12 A. Sometimes he would just send them himself.

13 Q. And then you said something about dates.
14 What was that? What did he have to do with dates?
15 Maybe I misunderstood you.

16 A. Dates of we have a meeting coming up or a
17 court hearing or whatever, he would tell me.

18 Q. What else? Anything?

19 A. That's all I can come up with.

20 Q. Was he -- to your knowledge, was he
21 involved in any way in dealing with Mr. Austin in
22 selling him the car, in meeting with him
23 afterwards, in talking to any of Mr. Austin's
24 lawyers? Was Mr. Flack involved in any of that?

25 A. No.

1 Q. What involvement did Mr. Flack have with
2 regard to the appeal, if anything?

3 A. Again, would be making sure we got all the
4 documents, making sure we had the right court
5 dates, he'd remind me of, and that facility of
6 things.

7 Q. And what knowledge, if any, does Mr. Flack
8 have with regard to the current action which is
9 Stokes-Craven against Mr. Robinson and the law
10 firm? Anything other than the same thing --

11 A. No, same thing.

12 Q. -- gathering documents?

13 A. Right.

14 Q. So he has no firsthand knowledge as a
15 witness of any events. Is that correct?

16 A. Of anything to do with Mr. Austin, no.

17 Q. What does he know about Mr. Robinson?

18 A. I don't know if they ever talked. You're
19 asking something -- I don't know if they ever
20 talked or he asked him for documents or -- I
21 wouldn't know that. Well, I would know that, but I
22 don't recall of any documents.

23 Q. So you don't recall if Mr. Flack spoke
24 directly with Mr. Robinson before the trial?

25 A. I don't recall.

1 Q. Did Mr. Flack ever tell you that he did?

2 A. Again, I don't recall any conversations
3 like that.

4 Q. Have you ever had any direct conversations
5 with Mr. Moskos?

6 A. No, ma'am.

7 Q. When did Mr. Flack first come with
8 Stokes-Craven?

9 A. Ten years ago.

10 Q. In answer to interrogatory on page 7
11 number 7 asking for a list of every attorney who
12 has provided legal services to you, you defined as
13 Stokes-Craven and you, the first answer on the top
14 of page 8 is, William Jenkinson handled the sale of
15 Stokes-Craven store in Darlington in 2000.

16 What Stokes-Craven store is that?

17 A. It was another Ford store that we had in
18 Darlington.

19 Q. Was that store also under Stokes-Craven
20 Holding Corporation?

21 A. Yes.

22 Q. All right. So now we have not just the
23 three, but there's now a fourth that was in
24 existence at some point in time, correct?

25 A. No. That was under -- the Chrysler store

1 took its place. That's when all the changing --
2 that store has been -- it was sold in 2000 or '99,
3 and that's when we came -- or changed in all the
4 books to Stokes-Craven Holding which now is just by
5 the Chrysler store and the Ford store. That store
6 was sold in 2000 -- in 2000.

7 Q. To whom was it sold?

8 A. Raceway Ford.

9 Q. Was it a Ford dealership?

10 A. Yes.

11 Q. And why was it sold?

12 A. Wasn't making any profit.

13 Q. All right. So the Darlington

14 Stokes-Craven Ford store was sold in 2000 leaving
15 the only Ford dealership for Stokes-Craven --

16 A. Correct.

17 Q. -- in Manning?

18 A. Correct.

19 Q. How long did you operate the Stokes-Craven
20 Ford dealership in Darlington?

21 A. We opened it in 1997.

22 Q. And were you the man in charge of that?

23 A. Yes.

24 Q. So do we understand, then, from 1997 to
25 2000 you were in charge of the Darlington

1 Stokes-Craven Ford, the Manning Stokes-Craven Ford,
2 those two?

3 A. Just those two.

4 Q. Okay. Because the Stokes-Craven Chrysler
5 Dodge came in in 2001 and the Regal Auto Sales came
6 in in 2002, correct?

7 A. Right.

8 Q. This answer states that Scott Robinson
9 handled the purchase of Stokes-Craven Manning
10 property in approximately 2000, that he handled the
11 purchase of your personal home at 1709 Goat Island
12 Road, that he handled the purchase of your personal
13 property at 1711 Goat Island Road.

14 Did you have any objections or criticisms
15 of Mr. Robinson's handling of those three matters?

16 A. No.

17 Q. The Stokes-Craven Darlington store, were
18 you a one-third owner there together with the two
19 Mr. Stokes?

20 A. Yes.

21 Q. You testified earlier that the numbers are
22 down at -- were you referencing Stokes-Craven Ford?

23 A. Yes.

24 Q. Were you referencing any other dealership
25 now that we know there are two others?

1 A. I was referencing my numbers are down
2 period, but -- the numbers in the Chrysler store is
3 down also.

4 Q. What about in the third entity, the Regal
5 Auto Sales?

6 A. No.

7 Q. And to what do you attribute the numbers
8 being down at the Chrysler store?

9 A. I would say that they're both the same. I
10 feel like this has had something to do with this.

11 Q. This what? What is this?

12 A. This verdict that I have. As you can
13 tell, it's a small town. It's kind of hard to deal
14 with that in this kind of a town. And just the
15 peace of mind for myself, this thing's been
16 worrying you from one end to the other. I just
17 haven't had my head into the game.

18 Q. So you haven't had your head in the game
19 since 2006?

20 A. It's been pretty much.

21 Q. To what extent do you attribute the
22 downturn in the economy for your numbers being down
23 at a car dealership?

24 A. The economy's had a lot to do with it.
25 The same time, the numbers -- comparable

1 dealerships, Ford dealerships, particularly is
2 their numbers are up and mine are still not up.
3 They're able, you know -- a hundred percent up from
4 year over year.

5 Q. Which Ford dealership is that?

6 A. Those based off the South Carolina, North
7 Carolina region.

8 Q. And that's generally statistical
9 information that you've received from Ford?

10 A. From Ford.

11 Q. And is it your testimony that in 2011 your
12 numbers have not gone up?

13 A. No, in 2011 it seems like there is going
14 to be a turn for us. I mean, it's been some time,
15 so I'm hoping that it is anyway.

16 Q. Was it up in 2010 as compared to 2009?

17 A. No.

18 Q. But it was up a great deal in 2007
19 compared to 2006, correct?

20 A. Yes.

21 Q. You gave us -- your testimony is to your
22 recollection the conversations that you had with
23 Steve McKenzie after the verdict in 2006. Do you
24 recall any conversations that you had with Scott
25 Robinson after you retained Young Clement Rivers as

1 your new counsel in the appeal?

2 A. After I contacted Young Clement? No.

3 Q. And you contacted Young Clement Rivers
4 within several weeks or a month or so after the
5 verdict, correct? It was in 2006, correct?

6 A. Okay. Correct.

7 Q. After the verdict, Mr. Robinson did
8 continue to represent your dealership with regard
9 to the Austin case because he filed posttrial
10 motions, correct? Do you recall that?

11 A. Yes.

12 Q. And that was the last of what he did
13 before the appeal --

14 A. Yes.

15 Q. -- correct?

16 And Young Clement Rivers prepared all the
17 briefs, met with you, correct, argued the appeal,
18 did all of that? Is that correct?

19 A. Correct.

20 Q. Did you conclude while waiting for the
21 Court's opinion that you would win the appeal?

22 A. I had no idea. I'm sorry.

23 Q. When did you first retain bankruptcy
24 counsel, Mr. -- why am I drawing a blank?

25 MR. POWELL: Campbell.

1 BY MS. WALL:

2 Q. -- Campbell?

3 MR. EPTING: It's actually Michael Conrady
4 who's in Kevin's office.

5 BY MS. WALL:

6 Q. Mr. Conrady. When did you first retain or
7 go to see -- and I don't want to know about your
8 conversations with him. I just want to know when
9 you first went to see either Mr. Campbell or
10 Mr. Conrady in his office.

11 A. After I met with Brown, Stephen Brown, and
12 they went over whatever happened in the appeal.

13 Q. After the decision that came out from the
14 Supreme Court --

15 A. Yes.

16 Q. -- on the appeal?

17 A. Yes.

18 Q. So not while the appeal was pending?

19 A. No.

20 Q. Okay. How many times did you attempt to
21 settle the claim brought by Mr. Austin? Did you
22 make any attempt at all to settle before trial in
23 2006?

24 A. No.

25 Q. Did you make any attempt to settle while

1 the appeal was pending?

2 A. No.

3 Q. Did you make any attempt after the

4 decision of the Supreme Court in 2010?

5 A. No.

6 Q. Did you ever authorize any attorney to

7 make a settlement offer at any time on behalf of

8 Stokes-Craven Holding or Stokes-Craven Ford?

9 A. No.

10 Q. You own your own home, correct?

11 A. Yes.

12 Q. Do you own any other real estate, any

13 other property, other than your one-third interest

14 in the Stokes-Craven Ford property?

15 A. That's the only property I own.

16 Everything else is in -- my wife owns.

17 Q. I'm sorry?

18 A. My wife owns.

19 Q. All right. So the -- your one-third

20 interest in the property where the Chrysler

21 dealership is, that's in your wife's name?

22 A. No, that's my name.

23 Q. All right. So you have one-third interest

24 in the property where the Ford dealership is, where

25 the Chrysler dealership is, and also where the

1 Regal Auto Sales is?

2 A. Regal, that's just leased property.

3 Q. All right. And all your other properties
4 are in your wife's name?

5 A. Yes.

6 MS. WALL: Why don't we take a break.

7 THE VIDEOGRAPHER: We'll change tape.

8 This is the end of Tape Number Two in the
9 deposition of Dennis Craven. We are off the record
10 at 2:51 p.m.

11 (A recess transpired.)

12 THE VIDEOGRAPHER: This is the beginning
13 of Tape Number Three in the deposition of Dennis
14 Craven. We are on the record at 3:09 p.m.

15 BY MS. WALL:

16 Q. Mr. Craven, we've established that you're
17 a one-third owner in Stokes-Craven Holding
18 Corporation, correct?

19 A. Correct.

20 Q. And as the one-third owner and when it
21 converted to an S corporation, you gave us the date
22 in approximately 2002, 2003, you would receive --
23 you and your two partners would receive each your
24 one-third amount of the profit after paying all
25 debts and expenses, correct?

1 A. Yes.

2 Q. So if there was profit, after paying debts
3 and expenses, you all would share equally
4 one-third, one-third, one-third, correct?

5 A. Correct.

6 Q. And you in fact received distributions of
7 profits in 2006, didn't you?

8 A. Okay. I'd need to see the documents to
9 see what all I've gotten in that time.

10 Q. All right. To the best of your
11 recollection, would that be correct?

12 A. Correct, to the best of my recollection.

13 Q. And to the best of your recollection, you
14 received a distribution of profits in 2007, did you
15 not?

16 A. Yes.

17 Q. And to the best of your recollection, you
18 received distribution of profits in 2008, correct?

19 A. Yes.

20 Q. And to the best of your recollection, you
21 received distribution of profits in 2009, correct?

22 A. Yes.

23 Q. Do you receive a K-1 each year?

24 A. No.

25 Q. When did Dixon-Hughes begin as the

1 accountants for Stokes-Craven Holding Corporation?

2 A. About three years ago.

3 Q. 2008 or 2009?

4 A. Yes.

5 Q. And before that, was it Burch and Company?

6 A. Burch and Associates.

7 Q. Burch and Associates. Okay.

8 Are they in Columbia, Burch and

9 Associates?

10 A. No.

11 Q. Where?

12 A. Augusta.

13 Q. Augusta.

14 Do you keep copies of your personal tax
15 returns each year?

16 A. Yes.

17 Q. Does your wife work?

18 A. No.

19 Q. Has she ever worked?

20 A. Yes.

21 Q. When was the last time she worked?

22 A. 1997.

23 Q. And where did she work?

24 A. Sea Land, Charleston.

25 Q. She's never worked while you've been in

1 the Manning area?

2 A. No, ma'am.

3 Q. And is her maiden name Waggoner?

4 A. No, ma'am.

5 Q. What's her maiden name?

6 A. Christopher.

7 Q. Does she have any relatives in Clarendon
8 County?

9 A. No, ma'am.

10 Q. Your brother-in-law Jeff Waggoner, what's
11 the relationship? Is it a brother of yours or a
12 sister of yours?

13 A. He's my wife's sister's husband.

14 Q. What information do you have on a lawsuit
15 filed against Stokes-Craven brought by Deborah H.
16 White?

17 A. Nothing that I'm aware of.

18 Q. So you have no recollection of that
19 lawsuit?

20 A. No, ma'am.

21 Q. What about a lawsuit brought by Joseph
22 Bolden, Jr., B-O-L-D-E-N? Any knowledge of that?

23 A. No, ma'am.

24 Q. Do you have any ownership or any other
25 type of involvement in any of the 21 Stokes

1 dealerships throughout South Carolina and Georgia
2 other than the three that we've talked about?

3 A. No, ma'am.

4 Q. The Stokes-Craven Ford dealership, is it a
5 franchise dealership?

6 A. Ford, yes, is a franchise.

7 Q. With Ford?

8 A. Yes.

9 Q. And the same question with regard to
10 Chrysler Dodge would be with Chrysler Dodge?

11 A. Yes.

12 Q. Is that correct?

13 A. Correct.

14 Q. Is there any difference between
15 Stokes-Craven Holding Corporation and Stokes-Craven
16 Holdings, Inc.?

17 A. Not that I'm aware of, no. There was one
18 dissolved. I don't know if it was the Inc. I
19 think it was the Inc. is when we dissolved all
20 that.

21 Q. All right. So it was first Stokes-Craven
22 Holdings, Inc., and then it became Stokes-Craven
23 Holding Corp. Is that correct?

24 A. I think that's correct, yes.

25 Q. When it was changed to an S corporation.

1 Is that correct?

2 A. Yes.

3 Q. What value does your shares in the
4 Stokes-Craven Holding Corporation have? Does it
5 vary from year to year?

6 A. Yes.

7 Q. And what is it based on?

8 A. I'm sure it would be based on blue sky,
9 which is what the value of the business is worth,
10 and then inventory levels.

11 Q. And that would be the same as to all three
12 of the companies that Stokes-Craven Holding
13 Corporation is the holding company for, correct?

14 A. The two, not the Regal. It wouldn't --
15 nothing there.

16 Q. Mr. Thornall, how long was he -- when did
17 he first begin with Stokes-Craven Ford?

18 A. I want to say 1990 -- around 1997.

19 Q. And when did he leave Stokes-Craven Ford?

20 A. Four years ago -- five years ago, I would
21 say. I'm not sure. Let's see. This is 2012.

22 Q. 2006?

23 A. I'm going to say somewhere around 2007.

24 Q. And tell us about his leaving
25 Stokes-Craven Ford. Was it related in any way to

1 the Austin claims and/or trial and verdict?

2 A. No, ma'am.

3 Q. What was it related to?

4 A. Poor workmanship.

5 Q. And when did his poor workmanship begin?

6 A. Within a year. But --

7 Q. So --

8 A. -- he wasn't terminated. He resigned.

9 Q. Did he resign in lieu of being terminated?

10 A. No.

11 Q. But you were -- you were dissatisfied with
12 his workmanship?

13 A. Yes. Yes.

14 Q. And you began being dissatisfied with his
15 workmanship in 2006?

16 A. Yes, 2006, seven, in that area, yes.

17 Q. And were you dissatisfied with him as an
18 employee before the trial of this case in
19 August 2006?

20 A. Yes.

21 Q. Had you spoken to him about his poor
22 workmanship or other issues that you saw?

23 A. Yes.

24 Q. The appeal activities by Young Clement
25 Rivers, your -- who paid their bill of

1 approximately \$60,000?

2 A. Stokes-Craven.

3 Q. And when you say Stokes-Craven, was it the
4 holding corporation or the Ford dealership?

5 A. It's all one, but the whole -- the Ford
6 dealership.

7 Q. And was that paid out of cash flow?

8 A. Yes.

9 Q. Let's see. You were given in your earlier
10 testimony a copy of the summons and complaint in
11 this case. I believe it was marked as exhibit --

12 MR. EPTING: One.

13 BY MS. WALL:

14 Q. One. Would you look at that, please, sir.
15 At the very end of the document, the last four
16 pages, is a document entitled affidavit of
17 Ronald L. Richter, Jr. Do you see that?

18 A. Page 4?

19 Q. The last four pages --

20 MR. EPTING: You're looking for this.

21 BY MS. WALL:

22 Q. -- of Exhibit Number 1.

23 A. Okay.

24 Q. You're looking at what's entitled
25 affidavit of Ronald L. Richter, Jr., correct?

1 A. Correct.

2 Q. Have you ever spoken to Mr. Richter?

3 A. Yes.

4 Q. And when was that?

5 A. I want to say it was a few months after
6 the verdict came back.

7 Q. And are you referring to the verdict in
8 2006 or the --

9 A. No, from the Supreme Court.

10 Q. Okay. So within a few months of the
11 Supreme Court's opinion in 2010?

12 A. Correct.

13 Q. The Supreme Court's opinion being in
14 March 2010, correct?

15 And what did you talk to Mr. Richter
16 about?

17 A. Well, he would be serving as counsel or he
18 wanted to verify who I was, who he was, just the
19 basic information, nothing in depth, what took
20 place.

21 Q. What basic information did you give him?

22 A. Name and address, companies, and --

23 Q. Did you talk about the facts of the case
24 with him?

25 A. No, ma'am, not in depth. Might have been

3e5dff28-a335-46ff-b16e-9ddc96a5edb0

1 in general, but nothing in depth at all.

2 Q. Do you have any recollection of what you
3 talked about with him?

4 A. Not verbatim, no, ma'am.

5 Q. Well, I'm not asking verbatim. Do you --

6 A. No, ma'am.

7 Q. And what hourly rate did you agree to pay
8 Mr. Richter on behalf of your company?

9 A. Mr. Flack will have those records.

10 Q. So you don't recall?

11 A. No.

12 Q. Has Mr. Richter sent you a bill?

13 A. Yes.

14 Q. And how much was the bill?

15 A. Four or 5,000.

16 Q. And was it paid?

17 A. Yes.

18 Q. Do you recall -- excuse me. Do you
19 consider Mr. Richter as one of your lawyers?

20 A. No, ma'am.

21 Q. What is he?

22 A. You're going to have to refer that to
23 Mr. Epting, what he would be at this point.

24 Q. Well, when you met with him, what did you
25 understand he was going to do for you, if anything?

1 A. He was -- from my understanding, he was
2 just validating all the information that he had
3 received to take place.

4 Q. And what information did he tell you he
5 had received?

6 A. The verdict that we had, the very general
7 the verdict would have happened, and he'd need to
8 document that we've had conversations and what all
9 we've done and pretty much that was it. Pretty
10 general questions.

11 Q. Did you take any notes when you were
12 meeting with him?

13 A. No.

14 Q. When you dealt with Mr. Robinson with
15 regard to the Austin lawsuit, did you keep a
16 journal, a diary, take notes, create memos,
17 anything of the kind?

18 A. No, ma'am.

19 Q. Did you e-mail back and forth with
20 Mr. Robinson or did you do everything in person?

21 A. Person.

22 Q. Have you had an opportunity to read the
23 affidavit of Ronald L. Richter, Jr.?

24 A. No, ma'am, I have not read it.

25 Q. Were you aware that it was a part and

1 attached to your complaint --

2 A. Correct.

3 Q. -- in this case?

4 A. Yes.

5 Q. And before the complaint was filed, had
6 you read the complaint?

7 A. Yes.

8 Q. So is it your testimony you read the
9 complaint but you didn't read the affidavit
10 attached to the complaint?

11 A. No, ma'am, I didn't.

12 Q. Have you to this day had an opportunity to
13 read this affidavit?

14 A. I've had the opportunity, yes, but I have
15 not done it.

16 Q. So you don't know whether it's correct,
17 not correct, has any errors in it. You just don't
18 know, correct?

19 A. I relied on my attorney to watch that.

20 Q. So you don't think that you have any
21 obligation as the principal behind the plaintiff in
22 this lawsuit to review an affidavit that forms the
23 basis of your complaint and instead you simply say
24 that you rely on your attorney?

25 A. Yes, ma'am. That's what I hire him for.

1 Q. You understand that it is not your
2 attorney's lawsuit, it is your lawsuit, that is a
3 lawsuit brought by Stokes-Craven Ford, correct?

4 A. Quite well.

5 Q. Pardon me?

6 A. Quite well.

7 Q. How many meetings did you have with
8 Mr. Richter?

9 A. Just one that I can recall.

10 Q. Have you personally searched all of your
11 records kept either in your home or at your place
12 of business or anywhere else where you keep any
13 kind of documentation, any kind of records for
14 documents relating in any way to your claims,
15 claims of Stokes-Craven Ford, in this lawsuit
16 against Mr. Robinson and Johnson, McKenzie and
17 Robinson?

18 A. Yes.

19 Q. Did you take that upon yourself or did you
20 assign that to someone else?

21 A. I did it by myself.

22 Q. So you just didn't assign that to someone
23 else to do, you did yourself?

24 A. You said personally records, so that was
25 personally I would get involved with my personal

1 stuff.

2 Q. All right. Records having to do with your
3 company's claims against Mr. Robinson and Johnson,
4 McKenzie and Robinson --

5 A. Okay.

6 Q. -- did you search for those records
7 personally or did you assign someone to search for
8 those?

9 A. I assigned someone to search for those.

10 Q. Who did you assign to search for those
11 records?

12 A. Mr. Flack.

13 Q. And what records did he provide to you in
14 response to that assignment?

15 A. From deal jackets to complaints to letters
16 that was actually -- that we'd had to be able to
17 turn them over to who all has asked for them.

18 Q. And then in turn did Mr. Flack give them
19 to you and then you gave them to your attorney --

20 A. No.

21 Q. -- or he directly did?

22 A. He directly did.

23 Q. Did you have occasion to review those
24 documents before they went to your attorney to
25 ensure that they were complete?

1 A. Some I did, some I did not.

2 Q. Have you had any discussion with
3 Mr. McKenzie with regard to Mr. McKenzie's
4 deposition?

5 A. No, ma'am.

6 Q. Have you had any discussion with
7 Mr. Robinson with regard to his deposition?

8 A. No, ma'am.

9 Q. When you went into trial the first day of
10 the Austin trial on August the 14th, 2006, what
11 expectation did you have as to the outcome of the
12 trial? Did you have any?

13 A. No, I didn't. It was first time I've ever
14 been in a courtroom, so I was just hanging on.

15 MS. WALL: That's all the questions I
16 have.

17 MR. POWELL: I've got a few following up.

18 REEXAMINATION

19 BY MR. POWELL:

20 Q. Mr. Craven -- excuse me. Thank you. I
21 have a few questions following up.

22 Mr. Craven, when did the holding company,
23 that is Stokes-Craven Holding Corp, become an S
24 corp?

25 A. I'm going to approximately tell you 2003.

1 Q. Okay.

2 A. I don't remember.

3 Q. Okay. I will represent to you that unless
4 they have radically changed things that the way an
5 S corp reports profits to its members is by way of
6 a form called a K-1. So in response to one of
7 Ms. Wall's questions, she asked you if you had
8 received a K-1 from Stokes-Craven Holding Corp for
9 tax purposes, and you had said no. Could you be --
10 is there some other form that you receive?

11 A. I wouldn't receive any of those forms.
12 The accountant -- the accounting firm calls
13 Mr. Flack and asks for all documents, so he gathers
14 all those documents and sent them straight in. And
15 is that a --

16 Q. Right.

17 A. -- excuse me, a K-1 or a 1099, I don't
18 know exactly what he turns in.

19 Q. I think you're perhaps misunderstanding
20 what I'm getting at.

21 A. Okay.

22 Q. I realize that's the avenue from
23 Stokes-Craven Holding Ford -- Stokes-Craven Holding
24 Corp to the CPAs, okay, to prepare the company's
25 tax returns.

1 A. Okay.

2 Q. Okay. And I'll just represent to you --
3 I'm sure Mr. Epting knows and forgotten more about
4 this than I know -- but the way it generally will
5 work is that the accountants will prepare the
6 company's tax returns and then will also prepare in
7 connection with that a K-1 to each of the
8 shareholders of that corporation if it's an S corp.
9 Different deal if it's a C corp, okay, but an S
10 corp reports profits on a K-1.

11 And then that goes to you individually as
12 a shareholder and to the other shareholders, both
13 Mr. Stokes in Charleston, right?

14 A. Okay.

15 Q. Right. And so do the accountants -- do
16 your accountants, the accountants for Stokes-Craven
17 Holding Corp, do they also prepare your personal
18 returns?

19 A. Yes.

20 Q. Okay. And so when that's all over and you
21 sign your -- you get a packet from them?

22 A. Correct.

23 Q. And it's in a -- I think so they can
24 charge more -- a pretty folder, you know, a blue or
25 green or --

1 A. Okay.

2 Q. -- you know, folder, right?

3 A. Correct.

4 Q. Yeah, I mean, you know, it's pretty
5 standard. And in there, there's a K-1?

6 A. Okay.

7 Q. I mean, you -- have you never noticed
8 that?

9 A. No, sir.

10 Q. Okay. Well, I assure you there will be
11 one in there.

12 A. Okay.

13 Q. And where are those kept, your individual
14 returns that you -- that you get from your
15 accountants? They'll send you one to sign, right?

16 A. Correct.

17 Q. And then I suspect yours is filed
18 electronically or not?

19 A. It is -- it is now I think.

20 Q. It is now. But back then it would not
21 have been?

22 A. Correct.

23 Q. So '06 -- and that change has come since
24 then. Okay.

25 So, then, they will send one for you to

1 sign -- back then you would get one to sign and
2 mail, you and your wife to sign it, correct?

3 A. Correct.

4 Q. And mail, and then they'd keep -- they'd
5 give you a copy of all that for your records?

6 A. Okay.

7 Q. And tell you to hold on to them?

8 A. Correct.

9 Q. Right. And you hold on to them -- you've
10 got them how far back?

11 A. Mr. Flack has them in his office from ten
12 years ago.

13 Q. Okay. Okay. So --

14 MR. EPTING: Warren, how about this, y'all
15 will give us a confidentiality order. We'll
16 produce the tax returns. I think we're worrying
17 about K-1s that in fact don't really exist because
18 Mr. Flack said he's wrong. And so before we get
19 too far down this road, why don't -- I'll just send
20 you a confidentiality order and we'll produce the
21 tax returns. Okay. We'll just use the existing
22 one.

23 MS. WALL: We have one for the other one.

24 MR. EPTING: So we'll just produce the tax
25 returns and I'll have him clarify his answer if it

1 needs to be in the errata sheet.

2 MR. POWELL: All right. Well, I mean, I'm
3 going to ask him some questions as the
4 computer/whatever, records, 30(B)(6) rep in just a
5 minute since he referred those questions to
6 Mr. Flack if that's okay. I think we can ask him
7 that. Okay. Let me see what else. I think --

8 BY MR. POWELL:

9 Q. Has Stokes-Craven Ford paid Mr. Campbell
10 or Mr. Conrady a retainer, bankruptcy counsel?

11 A. No, sir.

12 Q. Has one been asked for?

13 A. Not yet.

14 Q. Have you personally met with either of
15 those gentlemen?

16 A. Yes, sir.

17 Q. In Mt. Pleasant?

18 A. Yes, sir.

19 Q. When was that?

20 A. Right after the verdict from the Supreme
21 Court.

22 Q. Okay.

23 A. Weeks, month.

24 Q. Okay. Was there -- was there a discussion
25 about filing a chapter 11 or -- does that sound

1 familiar to you, chapter 11 filing?

2 A. We just discussed -- went over the
3 different ones that was available, that there is,
4 11, 12, 13.

5 Q. And that's all you talked about is the
6 different chapters that would be available --

7 A. Correct.

8 Q. -- to you?

9 A. Correct.

10 Q. Okay. All right. Okay. That's all I
11 have.

12 THE VIDEOGRAPHER: This concludes the
13 deposition of Dennis Craven. We are off the record
14 at 3:41 p.m.

15 (The deposition concluded at 3:41 p.m.)

16

17

18

19

20

21

22

23

24

25

SIGNATURE OF DEPONENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, DENNIS NORMAN CRAVEN,
have read the foregoing deposition consisting of
167 pages which was reported by Gina M. Smith,
Notary Public in and for the State of South
Carolina on May 19, 2011.

I find the transcript of this deposition
to be a true and accurate transcript according to
my testimony on that date with the exception of the
corrections as listed on the attached correction
sheet, which was filled in by me.

DENNIS NORMAN CRAVEN

_____, 2011

1	ERRATA	PAGE	
2	PAGE	LINE	CHANGE AND/OR CORRECTION (AND EXPLANATION)
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____

17
18 THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA
19 PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF
20 DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA
PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO
ATTACH THIS PAGE AND MY VERIFICATION TO THE
ORIGINAL TRANSCRIPT.

21 DATED: _____

22 _____ DENNIS NORMAN CRAVEN

23

24

25

1 CERTIFICATE OF REPORTER

2
3 I, Gina M. Smith, Registered Professional
4 Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify:

5 That the foregoing deposition was taken
6 before me on the date and at the time and location
7 stated on page 1 of this transcript; that the
8 deponent was duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that the
10 testimony of the deponent and all objections made
11 at the time of the examination were recorded
stenographically by me and were thereafter
transcribed; that the foregoing deposition as typed
is a true, accurate and complete record of the
testimony of the deponent and of all objections
made at the time of the examination to the best of
my ability.

12 I further certify that I am neither related
13 to nor counsel for any party to the cause pending
or interested in the events thereof.

14 Witness my hand, I have hereunto affixed my
15 official seal this 2nd day of June, 2011, at
Columbia, Richland County, South Carolina.

16
17
18
19
20 Gina M. Smith
21 RPR, CSR, Notary Public,
22 State of South Carolina
23 at Large.
24 My Commission expires
25 July 23, 2013.

I N D E X

	Page
1	
2	
3	Stipulation 3
4	EXAMINATION
5	BY MR. POWELL 4
6	BY MS. WALL 93
7	REEXAMINATION
8	BY MR. POWELL 161
9	Certificate of Reporter 170

E X H I B I T S

11	1	Summons and Complaint	24
12	2	Portions of a Transcript	27
13	3	Insurance Information	70
14	4	2/18/03 Letter	101
15	5	Stokes-Craven Holding Corp d/b/a	
16		Stokes-Craven Ford's Answers to	
17		Defendant Scott L. Robinson's First	
18		Set of Interrogatories	126

EXHIBIT F

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON) Case No.: 10-CP-14-457

STOKES-CRAVEN HOLDING CORP.
d/b/a/ STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON and JOHNSON
McKENZIE & ROBINSON, LLC,

Defendants.

DEPOSITION OF
STEPHEN L. BROWN, ESQUIRE

DATE: April 19, 2012
TIME: 10:07 a.m. to 12:30 p.m.
LOCATION: McNair Law Firm, LLC
 100 Calhoun Street
 Suite 100
 Charleston, South Carolina

REPORTED BY: Beth Walters

PALMETTO STATE COURT REPORTERS
3022 S. Morgan's Point Road, Box 118
Mt. Pleasant, SC 29466
843.670.1637 Fax: 843.216.9767
Palmettostatecr@yahoo.com

1 This transcript may not be reproduced,
2 emailed to another party or transcribed in any form
3 or by any means, electronic, mechanical,
4 photocopying, recording or otherwise, without the
5 prior written permission of the Court Reporter.

6

7 A-P-P-E-A-R-A-N-C-E-S

8 For the Plaintiff:

9 By: Andrew K. Epting, Jr., Esquire
10 Attorney at Law
11 3 State Street
12 Charleston, SC 29401
13 (843) 377-1871

14 For Defendant Scott L. Robinson:

15 By: Susan Taylor Wall, Esquire
16 McNair Law Firm, P.A.
17 100 Calhoun Street, Suite 400
18 Charleston, SC 29401
19 (843) 723-7831

20 For Defendant Johnson McKenzie & Robinson, LLC:

21 By: Warren C. Powell, Jr., Esquire
22 BRUNER, POWELL, ROBBINS, WALL
23 & MULLINS, LLC
24 Post Office Box 61110
25 Columbia, SC 29260
 (803) 252-7693

1 INDEX TO EXAMINATIONS

2 STEPHEN L. BROWN, sworn

3		Page
4	Examination by Ms. Wall	4
5	Examination by Mr. Powell	55
6	Re-Examination by Ms. Wall	86

7

8 EXHIBITS

9 Defendant Scott L. Robinson's:

10	1 Young, Clement, Rivers Statement of Account	6
11	2 Privilege Log	12
12	3 Letter to Charity Chastain	38
13	4 Letter to Charity Chastain dated May 27, 2009	40
14	5 Letter dated June 9, 2009 from Young, Clement, Rivers	42
15		
16	6 Letter dated June, 9, 2009 from Steve Moskos	42
17	7 Final Appellant's Brief of Appellant Respondent	55
18		
19	8 Final Brief of Appellant Respondent	55

20

21

22

23

24

25

1 It is stipulated by and between counsel
2 for the parties that this deposition is taken
3 pursuant to notice and that all questions as to
4 notice are waived; that all objections, save as to
5 the form of the question, are reserved until the
6 time of trial; that the deposition is taken pursuant
7 to the South Carolina Rules of Civil Procedure, for
8 the purposes allowed therein; and that the deponent
9 was explained his right to read and sign the
10 deposition and did waive that right.

11 (STEPHEN LYWOOD BROWN, ESQUIRE, having
12 been first duly sworn, testifies as follows:)

13 E-X-A-M-I-N-A-T-I-O-N

14 BY MS. WALL:

15 Q Please state your full name.

16 A My name is Stephen Lynwood Brown.

17 Q And do we understand that you are an
18 attorney licensed to practice in the State of South
19 Carolina?

20 A Yes, I am.

21 Q And how long have you been practicing?

22 A I started in 1993, September of '93.

23 Q As I know you're aware, I represent one of
24 the defendants in this lawsuit filed by
25 Stokes-Craven Holding Corporation, and I'll be

1 asking you questions here today as may some of the
2 other attorneys. If at any time you don't
3 understand or don't hear a question, please let me
4 know, and we'll be happy to repeat or rephrase, all
5 right?

6 A Uh-huh.

7 Q And if any time you'd like to take a
8 break, just let us know. We'll be happy to do so,
9 but please understand that you are not entitled to
10 discuss your testimony or anticipated testimony with
11 anyone. If you do so, we will examine you fully on
12 those discussions, all right?

13 A I understand.

14 Q And everything that we say will be taken
15 down by the court reporter. We'd appreciate your
16 indulgence in allowing the questioner to finish the
17 question before you respond, and if you'll make your
18 responses audible for the court reporter.

19 A I will do my best.

20 Q Where are you employed?

21 A Young, Clement, Rivers, LLP.

22 Q And you've been there how long?

23 A Since early September 1993.

24 Q Describe for us your area of practice.

25 A I am the practice group chair for an area

1 that's known as commercial and appellate litigation.
2 Commercial and appellate litigation is a bit of a
3 catch all. The appellate part, I think, is
4 self-explanatory. The commercial litigation tends
5 to encompass a variety of what I can only describe
6 as a motley assortment of cases. Everything from
7 lender liability related issues to bad faith
8 litigation for insurance companies, some defamation
9 defense, some insurance related coverage issues,
10 just a bit of a catchall area.

11 Q So do we understand that you do both
12 appellate work and also trial work?

13 A That is correct.

14 Q In preparing for this deposition here
15 today, did you review any documents?

16 A I reviewed a printout of my firm's billing
17 on this case.

18 Q What else?

19 A I reviewed the privileged law you sent to
20 me with a letter a day or so ago. Really, that's
21 it.

22 (Young, Clement, Rivers Statement of
23 Account, Defendant Scott L. Robinson's Exhibit No.
24 1, is marked for identification.)
25

1 BY MS. WALL:

2 Q Let's go ahead and mark as Exhibit No. 1
3 the first document that you referred to, which is
4 entitled, "Young, Clement, Rivers Statement of
5 Account" with Bates Craven numbers on the bottom.
6 We've marked it as Exhibit No. 1, and I'd ask for
7 you to identify that as the printout of the billing
8 that you just referenced.

9 A Ms. Wall, yes and no. I reviewed it in a
10 different format. This is the format that goes to
11 the client, and our computer system, it can just
12 print it all out, page after page, without all the
13 interrupting. It's sort of just a complete history.
14 So this is the information I reviewed but in a
15 different format. I did not, for example, have any
16 checks where they paid them attached. The
17 formatting was different, but the substance would
18 have been essentially the same. And in addition, I
19 will tell you that there has been time put on this
20 file after these bills that I have never billed Mr.
21 Stokes for, which I will happy to explain to you
22 about, if you're interested at the appropriate time.
23 That would have also been included in this printout
24 from my computer.

25 Q So when you reviewed, did you review the

1 information on your computer or on a hard form?

2 A A hard form, and if you'd like that, I'd
3 be glad to give it to you.

4 Q And the hard form then, as we understand
5 it, would have all of the entries that we currently
6 have marked as Exhibit No. 1, perhaps in a slightly
7 different format, but nevertheless the same entries
8 with additional entries after April the 19th, 2010;
9 is that correct?

10 A I believe that to be correct.

11 Q Would there be additional entries from
12 November 2006 until April 19th, 2010?

13 A There should not be.

14 Q The additional time --

15 A Hang on a second. Repeat that question,
16 Ms. Wall.

17 Q The time entries that begin November the
18 30th, 2006 and end April the 19th, 2010, are those
19 time entries that we have, as marked on Exhibit 1 --
20 do they show all of the time entries during that
21 time period?

22 A Yes, ma'am. They should be the same.

23 Q The only additional time entries would be
24 those after April the 19th, 2010?

25 A That is correct.

1 Q And please tell us, as best you can, what
2 those time entries concerned and to whom they were
3 sent. I believe you -- and let me back up a minute.
4 Poor question, but do we understand that those time
5 entries were related to Mr. Stokes?

6 A Correct.

7 Q Which Mr. Stokes?

8 A No, strike that, Mr. Craven,
9 Stokes-Craven. This was for Dennis Craven.

10 Q So was it for Stokes-Craven Holding
11 Corporation?

12 A Correct.

13 Q And did you understand that Stokes-Craven
14 Holding Corporation is owned two-thirds by the
15 Stokes brothers and one-third by Mr. Craven?

16 A I understood Mr. Craven owned some
17 interest in it. I never knew the exact position he
18 owned or others owned. I assumed, in light of the
19 title of the company, that the Stokes owned some
20 interest, but that was an assumption on my part.

21 Q What entries did you have after April the
22 19th, 2010?

23 A Ms. Wall, at some point Mr. Craven at or
24 near this time period passed on to me -- and I
25 cannot remember how it was passed on to me, whether

1 it was a telephone call or a letter or I just -- I
2 apologize, but I don't know -- but essentially that
3 he could not pay any more bills, that he was at the
4 end of his rope and that he was having to look at
5 other ways to deal with the situation. At or near
6 that same time, Mr. Moskos filed a petition for
7 attorney's fees and costs with the Supreme Court
8 that was in excess, I believe, of \$100,000. And I
9 had grave concerns that it would be difficult to get
10 that responded to by some new counsel on behalf of
11 Mr. Stokes, if he had new counsel or what was going
12 on. I didn't want that unanswered on my watch. And
13 so I made the determination that whether we ever got
14 paid or not would have to be immaterial. We were
15 going to respond to that petition because of the
16 amount of money involved, number one, and number
17 two, I thought it was inappropriate because, as I
18 had read the opinion back at that time, Justice
19 Beatty did not have three votes for the smorgasbord
20 approach with regard to allowing attorney's fees.
21 So Russ Hines, who is an associate of mine and
22 previously worked at the Supreme Court, drafted a
23 reply to that, and he worked more closely with Ed
24 Buckley on that issue to respond to it. And it was
25 denied by the Supreme Court in total. I do not know

1 the exact amount of time. I would estimate
2 something in the \$4,000 range, but that's an
3 estimate on my part, because yesterday I couldn't
4 break out what amount it really was, but it seemed
5 to be something of that -- but it was answered just
6 because I could not leave \$100,000 petition for
7 attorney's fees hanging in light of what had
8 happened in this case.

9 Q And that fee in the \$4,000 range, whatever
10 it ultimately was, was not billed to nor paid by Mr.
11 Craven or Stokes-Craven Holding Corporation,
12 correct?

13 A That is correct. It shows up as a WIP,
14 work in progress, in our computer system, but I
15 never sent a bill to him on that.

16 Q Now when you say you thought it was
17 important to respond to this in light of what had
18 happened in this case, what are you talking about?

19 A In light of the fact that the Supreme
20 Court had upheld the judgment. I knew from a
21 meeting that I had with Mr. Stokes prior to oral
22 arguments that this judgment had the potential to
23 put him out of business or put him into bankruptcy.
24 And so in light of that knowledge -- quite frankly,
25 I wouldn't let a petition go unanswered for any

1 client, even if we were in the process of
2 transitioning or coming out of a case. I think
3 until I'm relieved from a case I have an obligation
4 to see that things are responded to. And so those
5 were my concerns, and then the amount was just so
6 tremendous, typical Mr. Moskos.

7 Q The amount in the petition for fees and
8 costs?

9 A Yes, ma'am.

10 Q So we understand that you reviewed a
11 printout of your billing, which is reflected in
12 Exhibit 1 --

13 A Yes, ma'am.

14 Q -- with additional entries as you
15 described. You also reviewed what you described as
16 the privilege log. I'm going to mark as Exhibit No.
17 2 a two page log of privileged documents and ask you
18 if that's what you're referring to.

19 A Yes, ma'am.

20 (Privilege Log, Defendant Scott L.
21 Robinson's Exhibit No. 2, is marked for
22 identification.)

23 BY MS. WALL:

24 Q Now this log of privileged documents was
25 prepared and signed -- it appears to be Russ Hines;

1 is that correct?

2 A That is correct.

3 Q But by your law firm, right?

4 A Yes, ma'am.

5 Q And this was on about the 4th of November
6 2010, correct?

7 A Then -- correct.

8 Q Do you recall that this was in response to
9 a subpoena for documents?

10 A I assumed it was. I can't specifically
11 recall.

12 Q Who told you to assert the attorney-client
13 privilege as to these various documents set forth in
14 Exhibit 2?

15 A No one told me to assert it. I was unable
16 to get a determination from my -- Mr. Stokes or
17 counsel as to whether or not I should or should not
18 produce these documents. And so I erred on the side
19 of withholding these few documents until such time
20 as either permission could be given for me to
21 provide them to y'all or a court could say it was
22 appropriate to do so.

23 Q And from whom did you attempt to obtain
24 the determination?

25 A I believe I tried to get in touch with Mr.

1 Epting, but Mr. Epting was maybe traveling at that
2 point in time or something was going on where we
3 could not communicate with one another. Since he
4 represented Dennis Stokes, I did not call Dennis
5 Stokes about it.

6 Q Dennis Craven?

7 A I mean Dennis Craven. I'm sorry.

8 Q After November of 2010, was there any
9 discussion, correspondence or contact of any nature
10 with Mr. Epting to clarify up to three days ago
11 whether the former client of Young, Clement, Rivers
12 was in fact holding to any privilege?

13 A I assumed -- no, there was not. I assumed
14 that that was an issue that y'all would -- y'all
15 being defense counsel and Mr. Epting, would address
16 and come to some conclusion on with regard to that
17 issue.

18 Q So you had no further involvement in it
19 after November 2010?

20 A No, ma'am.

21 Q Are you aware as we sit here today that
22 these documents have been produced, that Mr. Craven
23 has not at any time taken the asserted privilege
24 with regard to Young, Clement, Rivers, except for
25 one of the documents on this list? Are you aware of

1 that?

2 A No, ma'am.

3 Q I will direct your attention to Young,
4 Clement, Rivers 7 under the Bates range, which is an
5 email from you to Mr. Epting dated October the 6th,
6 2010. What was that about? That has not been
7 produced.

8 A I have no idea.

9 Q Do you still have that email in your
10 firm's possession?

11 A No, ma'am.

12 Q Why not?

13 A Because we do not maintain emails except
14 for a very limited period of time.

15 Q Well, why would you have maintained it for
16 purposes of listing on a privilege log in 2010?

17 A It could have been dropped into the actual
18 file. In other words, if the email was in the file,
19 then it could still be in there, if it has been
20 dropped to that file. In terms of just email
21 preservation generally, we don't generally preserve
22 emails after some -- we have a policy, and I don't
23 know what it is. So if it's here, then more than
24 likely it was dropped into the prolog, which is our
25 operating system file for this file. So it could be

1 there, but I typically don't print out like hard
2 copies of emails to send to files and things of that
3 nature. If they're there, they exist, it existed
4 because it was sent to a -- forwarded to my
5 secretary who drops it into an operating system.

6 Q So in order to prepare this privilege log,
7 it would have to exist, correct?

8 A I would assume so.

9 Q Well, how else would anybody know that you
10 had written an email on October the 6th, 2010 to Mr.
11 Epting?

12 A That's why I say I would assume it would
13 have to exist. I would assume Mr. Hines reviewed it
14 and saw and put it on here. He wouldn't make up an
15 email that was --

16 Q When was the last time you had any
17 discussion with Mr. Epting with regard in any way to
18 either your presence here today or any matters
19 relating to the underlying suit of Austin versus
20 Stokes-Craven Holding Corp. Or your involvement in
21 any appeal on behalf of Stokes-Craven Holding Corp.?

22 A I met with Mr. Epting on Monday of this
23 week.

24 Q Tell us what you discussed.

25 A Mr. Epting simply asked me for my

1 recollection as to sort of how the appeal
2 transpired. I told him what I could remember about
3 the appeal and the issues. And other than that, not
4 very much.

5 Q Did Mr. Epting review any documents with
6 you?

7 A I don't think so, no, ma'am.

8 Q Did you meet at your office or his office?

9 A My office.

10 Q How long did the meeting take?

11 A I would guess somewhere between 30 minutes
12 to an hour.

13 Q Tell us what you discussed with Mr. Epting
14 when he asked you, first of all, your recollection
15 of the appeal.

16 A I told him that this appeal was generated
17 by Ed Buckley, who is one of my partners. Mr.
18 Buckley has done some work before he joined our
19 firm. He made a living with his father, among other
20 things, suing car dealerships. And then when he
21 came to Young, Clement, he started defending car
22 dealerships. So Mr. Buckley has had a -- some
23 dealings the Stokes family prior to this case. I
24 remember Mr. Buckley coming to me and saying that
25 Stokes-Craven had taken a hit in a case, and that it

1 was up in one of the smaller counties. I don't know
2 if he exactly told me which one, and that he was
3 going to go meet with what he called "everyone" to
4 see if it was possible to get the appeal in. Our
5 firm does a lot of outside appeals for other firms,
6 so that was not atypical. Mr. Buckley met with the
7 various people and did in fact get the appeal. I
8 recall that I spoke with Scott Robinson and had him
9 send us his file, got a general -- just sort of a
10 general conversation with him about the trial,
11 ordered the transcript as you're required to do, and
12 then it took a period of time for the transcript to
13 come in. When we got the transcript -- and I'd have
14 to actually look at the billing to determine the
15 sequence. Scott had talked about some of the issues
16 in the case, and then you get the -- when I get a
17 transcript, I just read it start to finish. And to
18 be honest, I prefer people not to really tell me so
19 much what they think the appellate issues are,
20 because I like looking at it with totally fresh eyes
21 with sort of an unbiased mind. In this case, read
22 the transcript, went through Mr. Robinson's file. I
23 also actually sent someone to Clarendon to get a
24 copy of the Clerk of Court's file, because I felt
25 like maybe we didn't have the complete file from Mr.

1 Robinson. I went through those materials and then
2 started looking at the issues and addressing them.
3 The issue that caused me the biggest concern was the
4 amount of the verdict in relation to the evidence in
5 the record that could support such a verdict. Ed
6 Buckley also would have looked at the transcript,
7 and the thing that drove him the craziest was the
8 Federal Odometer Act issue, which is a pet peeve of
9 his and has been for some time with Mr. Moskos. We
10 started briefing, and if I recall correctly, Dino
11 had a cross appeal. So we had an appeal going. He
12 had an appeal going, and there was lots of back and
13 forth between the briefing of everything. I used
14 primarily Russ Hines and Joseph Rohe to assist me on
15 researching, although I'm able to get on a computer
16 and do my own research. I will confess to you, as
17 I've gotten older I'm not as good as I once was.
18 Russ Hines has pointed out an associate of mine who
19 worked at the Supreme Court. Joseph Rohe at this
20 point in time was a paralegal who had a law degree
21 from the University of Durham in England and was
22 attending Charleston School of Law because of the
23 lack of reciprocity. He now works with Smith
24 Leatherwood as a licensed attorney, but I would
25 often get him to help me pull cases or update or

1 shepherdize (ph) or things of that nature. With
2 regard to the Odometer Act issue, Jeff Wiseman, who
3 was another associate in my group, had done some
4 previous briefing on that issue with Ed on other
5 cases. And so he sort of took that on as his part
6 of the case. And what we did was simply went
7 through, pulled case law, continued to go through
8 and formulate what we thought were the best
9 arguments to make to the court. Whenever I would go
10 through and read the transcript, if I had questions,
11 I would call Mr. Robinson. He was on the --
12 remained on the appeal with us. He was very --
13 always happy to answer any question I provided to
14 him, and we ultimately got the case briefed. And as
15 I recall, and I could be wrong on this, but we were
16 very close to an oral argument date with the Court
17 of Appeals when the Supreme Court issued a 204(b)
18 certification and took the case over there. At some
19 point in time, Ms. Wall -- and I can't remember if
20 it was right before we were supposedly going to the
21 Court of Appeals or ultimately before we went to the
22 Supreme Court -- we had a meeting at the Stokes'
23 dealership up in North Charleston. I think it was
24 some time in the summer, June of -- some point in
25 time, I think -- and I couldn't actually -- if you

1 want me to, I can tell you exactly when it was more
2 than likely.

3 Q Well, we can go back through and pick up
4 the time. That's fine.

5 A All right. But it's -- it was -- it's on
6 there, and Dennis Stokes was there. I mean Mr. --
7 let me get this. I'm sorry. I keep wanting to call
8 him Dennis Stokes. Dennis Craven was there. He had
9 a young gentleman with him who I believe was his
10 financial guide for either his holding company or
11 the dealership. I don't know, but there was a young
12 guy there who physically had their -- what looked
13 like their checkbook or a portfolio.

14 Q Does the name John Flack ring a bell as
15 that person?

16 A Could be. I just can't tell you. Mr.
17 Buckley had had previous discussions with Mr. Craven
18 about what, you know, interest would accrue and
19 whether he had the financial wherewithal to do
20 anything in terms of depositing the money with the
21 court. He could not. We raised -- I raised that
22 issue yet again and told him the Supreme Court can
23 be very, very slow deciding cases, and once again
24 was there any possible way to deposit the money with
25 the court. His money guy, the younger fellow,

1 pulled out the thing and said, "No, there's no way
2 right now. We have paid what we have due and owing
3 to" -- and he cited off various things that made no
4 sense to me like holding companies or payments you
5 make, I guess, for your floor plan for car
6 dealerships -- "and we have X amount of money left."
7 And all I remember thinking was, "Oh, Lord, I hope
8 they can pay my bill," but it wasn't very much. And
9 we also discussed sort of how the briefing -- I mean
10 how the appellate process would work, what the oral
11 argument would be like and what to expect. We then
12 went up and argued the case at the Supreme Court.
13 To my recollection, it was Mr. Buckley, myself, Mr.
14 Craven. I believe Ms. Chastain was there, who was a
15 Stokes person who had some involvement at overseeing
16 litigation or -- I knew she's the comptroller for
17 Stokes, but she also was very involved in any
18 litigation that they ever had.

19 Q So she was -- Charity Chastain was Stokes'
20 representative?

21 A I can't say she was their representative.
22 I knew she worked for Stokes, and she attended the
23 oral argument. Now, in what capacity, I do not
24 know.

25 Q She had a number of conversations and

1 meetings with you throughout this appeal, correct?

2 A She had a number of conversations. As for
3 meetings, I know we met before the oral arguments.
4 It's possible we had other meetings. I just don't
5 recall them.

6 Q And with the correspondence that came from
7 Young, Clement, Rivers, that correspondence would --
8 whether it was in the form of letters or emails,
9 copies of letters or emails directly -- went only to
10 Charity Chastain and not to any of the Stokes
11 brothers or Mr. Craven, correct?

12 A That I don't know, other than speak for --
13 the documents speak for themselves.

14 Q And then --

15 A Okay. I think Mr. Robinson also was
16 present at oral argument. We went in to argue the
17 case.

18 Q Who argued?

19 A I argued the primary part of our appeal,
20 and Mr. Buckley argued on reply because there were
21 cross appeals. So it was a bit of a jumbled mess.
22 And I stood up and the first thing I -- I attempted
23 to argue was on the issue -- preservation issue.
24 The Chief Justice said, "Stop. Stop. Let's don't
25 focus on that. Let's focus on the meat of the

1 matter. Let's get down to the meat of this case."

2 And she did not allow anything to be said on issue

3 preservation, which I took to be a very good sign.

4 It made my heart feel better. We then moved into

5 all the various issues in the case.

6 Q And why did your heart feel better because
7 she didn't want to talk about preservation? Explain
8 that.

9 A Because I had concerns as to whether or
10 not the valuation issue had been properly preserved.

11 Q And when did you come to have those
12 concerns, when you read the transcript?

13 A Well, when I read the transcript and then
14 when I looked for post trial motions and in talking
15 about what issues, what Mr. Robinson -- you know,
16 had this been addressed. I knew when I read the
17 transcript -- I'm just old enough now to not
18 necessarily know the names of cases, but I sort of
19 think I know that there's law out there that says
20 something. And I sort of recall that there was law
21 out there that said, "If you're sold something
22 that's not really what it's supposed to be, you're
23 entitled to the difference in the value of what you
24 bought if it had been what you thought it was as
25 compared to the difference of what it's really

1 worth." And in this case, to me there was no
2 evidence in the record to support the jury's actual
3 damage verdict because of the testimony of the
4 purported expert that this car had zero retail value
5 because Mr. Austin wouldn't buy it. And if you go
6 back and look at that case -- I think it's a Toyota
7 case, but I could be wrong, so please don't -- don't
8 treat this like a bar exam, because I do have some
9 age on me now -- but in that particular case I think
10 the court actually just reversed the jury verdict,
11 said, "There's no evidence to support the verdict.
12 Therefore, we hereby reverse." And I was
13 particularly happy because if there was no way to
14 support an award of actual damages, then obviously
15 there could be no punitive damages. And so I
16 thought that at a minimum if we could get that issue
17 decided, that there was no support for the actual
18 damages award, worst case scenario, we get at least
19 a new trial. Best case scenario, maybe they would
20 do what had happened in the previous case, but worst
21 case scenario, maybe a new trial. And the
22 biggest -- as I argued the case, the only real
23 person who fought me on that issue, so to speak, was
24 Justice Beatty. And his approach was, "Well, there
25 is evidence of value of the car. The value is

1 zero." And my response was, "Justice Beatty, he
2 drove the truck to the trial, I believe, every day.
3 I quite frankly sat outside here today trying to see
4 what he drove up in today. It did not have zero
5 value, because it had been wrecked. It had some
6 value. And the difference between that and what he
7 paid would have been a permissible range of damages,
8 assuming all other elements of the case had been
9 met." And Justice Beatty fought me very hard on it.
10 Justice Toal did not seem to say a whole lot one way
11 or the other. It was very clear Justice Pleicones
12 believed that was the law. And Justice Kittridge
13 asked the question, said, "Well, if we go along and
14 we think that you're, quote, correctly quoting the
15 law, do you win outright, or do we give them a new
16 trial?" And I think my response was, "Well, I'd
17 like to win outright, but in light of some of the
18 other issues raised in the case, if it's a new
19 trial, it's a new trial. We'd certainly take
20 either." And when Mr. Moskos stood up to argue he
21 tried -- the first thing he did was try to get into
22 issue preservation, and the Chief Justice absolutely
23 shut him down. And I can't remember her quote, Ms.
24 Wall, but it was something along the lines of,
25 "Let's just don't worry about the issue

1 preservation. I want you to explain to me where
2 there's evidence in the record to support the jury's
3 award of actual damages." And Mr. Moskos went to
4 the -- what I would call the Justice Beatty
5 approach, "Well, it was zero retail value." And she
6 goes, "I've never heard of such. Where is there
7 evidence?" I mean she hammered him on that issue.
8 So Ed got up and argued on reply and addressed that
9 Federal Odometer Act issue, which I will repeat,
10 it's just some sort of personal mission in his life
11 to get cleared up. And we walked out of the
12 courtroom, and everyone on our side seemed to be
13 very pleased. Mr. Craven thought it had gone well.
14 Ms. Chastain seemed happy. Dino Moskos walked up
15 and said -- and excuse the bad language -- but he
16 goes, "I think y'all just kicked my ass." And our
17 thought process at that point was, "That's fine and
18 dandy. While he thinks we may have just, quote,
19 kicked his ass, let's get this case resolved, if
20 possible." So we went back. I got a nice
21 handwritten note, which I did not save, but from Mr.
22 Craven that just said, "Thank you very much for what
23 you did. I thought you did a great job, et cetera,
24 Dennis." And then I think we sat around for nine or
25 ten months waiting on a decision. And --

1 Q Well, during that time, did you
2 participate either verbally or in writing, with any
3 issues concerning an offer to settle or potential
4 for settlement with Moskos?

5 A Yes, ma'am. And I can't remember the
6 exact specifics, but typically what Ed and I when we
7 work together on a case, will do is we'll play good
8 cop, bad cop with people. And so I recall having
9 conversations with Dino and saying, "Dino, if they
10 kick this thing out, even if it's a new trial, you
11 know you're never going to ring that bell like that
12 again. You know, you're not going to be trying this
13 case in Clarendon County against Scott Robinson.
14 You're going to be trying it against my firm, and we
15 will go up there, and we will work this thing, and
16 we will do everything it takes. You will not ring
17 that bell again." And then Ed would call and throw
18 a little money on the table. In terms of --

19 Q And from whom was the money -- the
20 authority for the money coming?

21 A I have no idea. You'd have to ask Mr.
22 Buckley. I may -- Ms. Chastain may have passed on
23 to me at one point in time that I had -- that we had
24 50,000, but whether I found that out from her or
25 whether Ed told me he got that from her, I don't

1 know. Or whether Ed told me we got that from
2 Dennis. I don't know. I remember at one point
3 having 50 -- 50 grand, I believe. It may have gone
4 up to 60 at some point to try and resolve -- do you
5 mind if I get coffee while we talk?

6 Q Not at all.

7 A I also believe Mr. Buckley had other cases
8 going with Dino. He usually always has some kind of
9 case going with Mr. Moskos. And so the negotiations
10 would go back and forth. You know, I would call up
11 Dino, and I would be the sort of mean one maybe, and
12 then Ed would come in and say, "But I think I can
13 squeeze so and so out of them, and that's a good
14 deal on this case. You ought to take it."

15 Q What was the most that was offered?

16 A Ed offered the money, so I don't know. I
17 think 60,000, but I don't know. It could have been
18 50. I'd just -- that's a guess on my part.

19 Q What was the lowest demand by Mr. Moskos?

20 A I do not know.

21 Q And then what happened?

22 A We never could get anywhere with Dino. I
23 think Ed had some issues about Dino wanted to see
24 documentation and stuff. I don't think I had any
25 role in that. I don't recall any part of doing

1 anything in relation to providing documentation to
2 Dino. Quite frankly, I just moved on to the next
3 case, the next appeal, and waited and hoped for a
4 good result from the Supreme Court. And then one
5 day my secretary came in and said, "We got this in,
6 and I don't understand it." And it was a 40
7 something page opinion in the case, because usually
8 when we get a case in, you know, she would say,
9 "Ooh, we won" or, "You're not going to be happy."
10 And she said, "I just don't understand this one.
11 It's so big." So I went in my office and went
12 through it and attempted at great length to
13 understand the various groupings of Justices on
14 different issues and how it came out. And for the
15 only time in my life as a practicing lawyer, when I
16 got through reading it -- and we were in our old
17 office. There was a restroom right next to my
18 office. I went in there and threw up. I've never
19 done that in a case, and I've lost big money in lots
20 of other cases. I threw up.

21 Q And why is that with regard to this case?

22 A A couple of reasons. Number one, I found
23 it disheartening that there was such a -- what I
24 thought to be a fundamental lack of understanding of
25 the law by Justice Beatty and his approach to the

1 case. Number two, I take all my cases seriously,
2 but if you and I, for example, are fighting about a
3 \$1,000,000 dollar insurance payment between two
4 insurance companies or Lexington Hospital versus its
5 insurance carrier, you know, I want to win, or I
6 want the right result to be reached, but we know
7 that Lexington's going to keep going, and it's going
8 to keep on operating on people, and my insurance
9 company's going to keep on insuring people. This
10 award by the Supreme Court, I knew, had a very real
11 potential to put somebody out of business and wipe
12 them out, and I don't like that. I don't like
13 having that on my shoulders. That's -- so --

14 Q Did Stokes-Craven Holding Corporation get
15 wiped out and go out of business, to your knowledge?

16 A I have -- I'm assuming they're still in
17 business, but I don't know, but I also don't know
18 that they've had to pay this money yet. So I don't
19 know. And after that, we got on the phone and
20 talked to the client. I think we may have actually
21 went to visit with Dennis. I'm not sure, but we
22 passed the bad news on.

23 Q Did you pass the news on to Charity
24 Chastain?

25 A I'm sure we did. We petitioned for

1 rehearing, because we were really hoping that we
2 could sway Justice Toal -- that was the other
3 reason, to be honest with you, that I threw up. It
4 just seemed so fundamentally unfair to me, and, you
5 know, I love Justice Toal very much, think she's
6 done a lot to modernize and do well for our judicial
7 system, but to cut me off on an issue and then rule
8 against me on that very issue just struck me as just
9 fundamentally -- I know she didn't mean to do it
10 purposefully, or I would assume she'd never mean to
11 do it purposefully, because that's no particularly
12 her style, but it just -- it hurt, you know
13 that's -- it sounds a little goofy, I know, but it
14 just -- it hit -- it hit me wrong to say, "Don't
15 worry about that" and then to go that way. So we
16 did a petition for rehearing, which got us nowhere,
17 and then Mr. Moskos started filing for \$100,000 plus
18 in attorney's fees. I think there was a little
19 headline about this case in that South Carolina
20 lawyer magazine. Not the magazine, but the
21 newspaper, and I think even that article got the
22 votes wrong. They couldn't figure out how they had
23 done it. And after that, after the attorney's fees
24 were denied, my role was basically nonexistent. I
25 got a call from -- I don't know if it's NBI or it

1 was the State Bar, somebody who was doing a CLE and
2 asked if I would come speak on this case and the
3 importance of issue preservation, and I politely
4 declined, because obviously I just didn't want to
5 throw up in front of all those attorneys.

6 Q Now do we understand this outline that
7 you've just given to us in your testimony was what
8 you told Mr. Epting when you met with him?

9 A Essentially. I may have gone into more
10 detail with you than him, but, yes, ma'am. I
11 haven't withheld anything from you that I told him.

12 Q What questions did he ask you or comments
13 did he make?

14 A I think his one question he asked me was
15 was I at the original meeting that took place in
16 November and when Ed was out trying to get the case.
17 And I told him my recollection was I didn't think
18 so. And that's why I actually went and pulled the
19 billing records to make sure, because I didn't
20 recall being at that meeting.

21 Q What other questions were posed to you?

22 A You know, I don't -- I can't -- he really
23 didn't ask many questions. He just asked me what
24 did I remember about the appeal.

25 Q Did he advise you as to any of the

1 activities in the present lawsuit that we're taking
2 your deposition in here today?

3 A He did not tell me one thing about the
4 status of this lawsuit. I have no idea of where
5 y'all are at, what has been done.

6 Q Have you ever had a conversation with Mr.
7 Epting with regard to a legal malpractice action
8 against Scott Robinson?

9 A I believe that at one point either Mr.
10 Epting called me and said he had been approached
11 about the case, or I got a message to return a phone
12 call to him. To my recollection, the only thing we
13 would have primarily discussed in that case and in
14 that particular conversation would have been, "I'll
15 send you" -- you know, "Look at the opinion. Is the
16 way I read the opinion and the way I've had others
17 read the opinion, there are three judges there that
18 said had this valuation issue been properly raised
19 below, the result would be different here today."
20 And to my knowledge, other than -- Mr. Epting is in
21 another case I am in involving the cigar factory,
22 and every blue moon I will see him in a deposition
23 in that case. When y'all were trying to schedule my
24 deposition and he would say, "We'll get to your
25 deposition. We haven't" -- you know, "We understand

1 that you're" -- he will attest that we've been
2 taking depositions. He doesn't attend them all in
3 that case, but basically some of the other parties
4 have been at depositions every day for two or three
5 months going now, but we've never discussed the
6 merits at any of those conversations.

7 Q Have you had any conversations with Mr.
8 Epting, either in that first conversation or any
9 other, about the -- other than what you've just told
10 us about, concerning in any way a claim against
11 Scott Robinson?

12 A Not that I recall.

13 Q Have you received any correspondence from
14 Mr. Epting or provided Mr. Epting with any letters
15 in any way involving substance of one or more
16 potential claims against Mr. Robinson?

17 A Not that I recall.

18 Q You have been named by Mr. Epting in
19 Answers to Interrogatories as -- let me back up. In
20 Answers to Interrogatories Mr. Epting, on behalf of
21 the plaintiff, has listed you as a witness and
22 stated that the plaintiff reserves the right to use
23 you as an expert. Are you aware of that?

24 A I am aware of that.

25 Q How did you become aware of that?

1 A That was a fact that was told to me on --

2 Q You meeting with him this week?

3 A Yes.

4 Q And what are you an expert in?

5 A The Lord only knows. I would assume I've
6 been listed as an expert because of the fact that
7 I'm an attorney. Some of my opinions could go over
8 into the realm of expert testimony. I often do
9 this. For example, when I list my witnesses in a
10 case for example, if my client is a developed, I may
11 list him as a fact witness and a lay -- I mean as a
12 lay witness and an expert to the extent that any of
13 his opinions cross over, because I've been in cases
14 where people have argued, "Well, you haven't listed
15 that person as an expert, and now you're trying to
16 use them in some way as an expert." So I assume
17 that I have not been asked to render opinions in
18 this case as to whether the standard of care was
19 violated.

20 Q What have you been asked to render an
21 expert opinion in?

22 A Not one thing. I've just been asked to
23 come answer questions today on behalf of -- that
24 counsel has of me.

25 Q So you have not been asked by Mr. Epting

1 on behalf of the plaintiff to render any expert
2 opinions; is that correct?

3 A I believe that's correct.

4 Q Do you have any opinions in the matter of
5 Stokes-Craven Holding Corp., Doing Business as
6 Stokes- Craven Ford versus Scott Robinson and
7 Johnson, McKenzie and Robinson, LLC?

8 A I think that that is an over -- I'm going
9 to have to play lawyer here answering for you. I
10 think that's an overly broad question. I have no
11 expert opinions to offer in that case. You know me
12 well enough to know I have opinions about
13 everything, from beautiful color, that Clemson
14 orange shirt you're wearing today to -- but, no,
15 I've not been asked to render, nor do I anticipate
16 rendering, any expert opinions in this case. I was
17 asked to provide factual testimony as to what I did
18 and did not do in this case and why I did and did
19 not do what I did in this case.

20 Q And may we conclude that you have not
21 entered into any retainer agreement or other fee
22 agreement with Mr. Epting or his law firm with
23 regard to serving as an expert?

24 A That's correct.

25 Q There was some discussion earlier in your

1 testimony with regard to negotiations with Mr.
2 Moskos with regard to potential settlement of the
3 matter while the matter was on appeal. I'm going to
4 hand you first what we'll mark as No. 3. Now this
5 is a letter signed by you; is that correct?

6 A Correct.

7 (Letter to Charity Chastain, Defendant
8 Scott L. Robinson's Exhibit No. 3, is marked for
9 identification.)

10 BY MS. WALL:

11 Q Copied to Mr. Buckley in your office, and
12 it goes to Charity Chastain. And it also references
13 Dennis Craven at the bottom, but it's actually
14 addressed to Charity Chastain; is that correct?

15 A Uh-huh.

16 Q And you're giving information to Ms.
17 Chastain with regard to oral argument, and then you
18 go on to say that you've been provided with 50,000
19 in authority in an effort to try and resolve the
20 matter; is that right?

21 A That is correct.

22 Q Does that refresh your recollection that
23 the \$50,000 came from Charity Chastain, since the
24 letter is being written to Charity Chastain?

25 A I can't say one way or the other. The

1 letter's addressed to Charity and Dennis. I do not
2 know. I would assume Charity would have been the
3 one to tell me what authority I had.

4 Q Why do you assume that?

5 A Because Dennis -- Dennis is one of those
6 people who, quite frankly, trusts those people who
7 are around him to do what needs to be done. And in
8 my conversations with Dennis, Charity was typically
9 present, was typically one to be involved in the
10 conversations and, you know, she could very well
11 have been the one I would think who would have given
12 me the 50. Dennis just wanted this lawsuit
13 resolved, settled, dealt with. That's what he
14 wanted his lawyers to do. Charity was more the
15 nitty gritty type. And when I say, "You previously
16 provided me with \$50,000 in authority," I can't say
17 that she gave to me or whether she gave that to Ed,
18 and Ed passed that on back to me, because I have no
19 recollection of her coming straight to me and
20 saying, "Here's 50." I knew we tried to get Dino to
21 talk to us at various times, as you'll see here it
22 says. He just was not willing to engage in any talk
23 whatsoever. As to why the letter's addressed to
24 "Dear Charity," that quite frankly is just an error
25 I think on the part of a secretary. If I write a

1 letter to two people, it should be addressed to
2 both, but if I just wanted Dennis to get a copy, he
3 would have just been copied at the bottom. But I
4 don't know -- I don't know where the money came
5 from. I would assume Charity, but that is an
6 assumption.

7 Q Well, let me hand you what we'll mark as
8 Exhibit 4, which is another letter to Charity
9 approximately a month later from you.

10 A Okay.

11 (Letter to Charity Chastain dated May 27,
12 2009, Defendant Scott L. Robinson's Exhibit No. 4,
13 is marked for identification.)

14 BY MS. WALL:

15 Q Wait a minute. I need to get one more
16 copy. It was sent to me -- let's see where it is.

17 A Can you just let me look at that one?

18 Q That's dated -- I know I have a copy for
19 you, and it will surface here in just a second.
20 That's dated April the 28th, 2009, and you are again
21 writing to "Dear Charity." No, I'm sorry --

22 A April 28th is that one we went over
23 previously.

24 Q I'm sorry. It's May the 27th, 2009.

25 A Correct.

1 Q This is now Exhibit No. 4, and you are
2 again writing to Charity Chastain with no copy
3 visible to Mr. Craven concerning the appeal time and
4 continuing settlement discussions, correct?

5 A Correct.

6 Q And in fact you say that -- and I quote,
7 "I will try to get in touch with Dino Moskos and
8 continue settlement discussions unless I hear from
9 you to the contrary." Does that refresh your
10 recollection that the settlement authority and
11 contact person in the matter of Austin versus
12 Stokes-Craven Holding Corp. was Charity Chastain?

13 A Ms. Wall, I've testified that I believe
14 she was the source of that information. I just
15 cannot 100 percent tell you that that's the case.
16 Whether she gave me that money, whether she went to
17 Dennis and then got permission to give me that
18 money, I have no -- no recollection. I just know I
19 had \$50,000. Where the money was actually coming
20 from was just not all that important to me at that
21 point in time.

22 MS. WALL: Let's take a break.

23 (At this point in the deposition a short
24 break is taken.)

25

1 (Letter dated June 9, 2009 from Young,
2 Clement, Rivers, Defendant Scott L. Robinson's
3 Exhibit No. 5, is marked for identification.)

4 (Letter dated June 9, 2009 from Steven
5 Moskos, Defendant Scott L. Robinson's Exhibit No. 6,
6 is marked for identification.)

7 BY MS. WALL:

8 Q Looking, if you would, to Exhibit number
9 5, this is a letter dated June 9, 2009 written by Ed
10 Buckley, and you were a copy recipient. Do you
11 recall this letter?

12 A I do not recall this letter, but --

13 Q This letter references, "The world economy
14 is strained to the breaking point, and the American
15 auto industry is in dire straits." And then it goes
16 on to make an offer of what appears to be totaling
17 \$60,000; is that correct?

18 A That's correct.

19 Q And does that --

20 A This --

21 Q -- follow with the testimony that you've
22 already given here today that you recalled authority
23 of 60,000?

24 A That is -- that is correct. And a common
25 way to settle cases with Mr. Moskos is to try to

1 sort of drive a wedge between him and his clients..

2 Q And driving a wedge between Mr. Moskos and
3 Mr. Austin was done -- oh, by the two separate --

4 A The split up.

5 Q -- offers, split the money.

6 A Split the money.

7 Q Got it.

8 A That works remarkably well in his cases.

9 Q Now moving on to Exhibit 6 -- No. 6 is a
10 letter of June the 9th, 2009 from Mr. Moskos. And
11 in this he requests that -- he being Moskos --
12 requests that the corporate tax returns for 2008 and
13 a current financial statement from the company's CPA
14 be sent. Did you have any involvement with that at
15 all?

16 A To the best of my recollection, no, ma'am.

17 Q Do you know whether or not that was ever
18 accomplished?

19 A I cannot say.

20 Q Do we understand that Mr. Robinson did not
21 participate in any of the drafting or redrafting of
22 the written materials in this appeal; is that
23 correct?

24 A I don't believe he participated in the
25 drafting. I spoke with Mr. Robinson on several

1 occasions throughout with questions, discussing
2 strategy issues, what have you, but I don't believe
3 he ever actually proposed any -- drafted or
4 redrafted or anything of that nature.

5 Q What discussions do you recall having with
6 Mr. Robinson? At the beginning of your testimony
7 you said that when the matter first came to you you
8 had a discussion with Mr. Robinson. What was that
9 discussion about?

10 A I think the first conversation would have
11 been -- and again, this is just an assumption -- to
12 tell me a little bit about the case and what
13 happened. In follow-up conversations --

14 Q Well, what did he tell you? Do you have
15 an recollection at all?

16 A No. In follow-up conversations it would
17 have been on specific issues, such as, "Can you help
18 me? I've gone through the record, and I cannot find
19 some particular testimony. Do you know whether any
20 testimony was offered on this? Do you know whether
21 any motions were made on that?" And that would have
22 been an ongoing conversation with regard to the
23 various issues throughout the case.

24 Q And do you recall any of the specifics of
25 those conversations, any specific responses?

1 A No, not specifically.

2 (At this point in the deposition there is
3 an off-the-record discussion.)

4 BY MS. WALL:

5 Q Did you have a discussion with either
6 Charity Chastain, Mr. Craven or anyone else on
7 behalf of Stokes-Craven Holding Corporation with
8 regard to the merits of the appeal, the likelihood
9 of success, the weaknesses, the strengths?

10 A We went over the issues that had been
11 raised, both by Mr. Moskos and by our sides on
12 whatever that meeting was in the summer before the
13 oral argument. I think it was, like I said, late
14 May or early June. It'll be reflected in the
15 billing records.

16 Q Why don't we look at what we've marked as
17 Exhibit No. 1.

18 A Just give me one second.

19 Q Was this after the briefing had been
20 completed?

21 A Briefing was completed, and to the best of
22 my knowledge, we were -- this would have been on I
23 think June 9th, 2009. My time entry is, "Travel to
24 Stokes North, meet the client, return travel." Ed's
25 entry for that same day is a little more detailed.

1 "Meet with clients at Stokes to address oral
2 argument, possible outcomes and attempts to resolve
3 case."

4 Q Who was at that meeting?

5 A That is the meeting that Mr. Craven was
6 at, Ms. Chastain and Ed Buckley, myself and the
7 young man with the checkbook for the dealership, the
8 holding company.

9 Q And within Exhibit No. 1, we're referring
10 to Craven 0320 at the bottom, correct?

11 A Yes, ma'am.

12 Q The same page also reflects that Mr.
13 Buckley, on that same day but at a separate point in
14 time, had a telephone conference with Charity
15 Chastain to discuss review of documents for possible
16 transmittal to plaintiff's counsel. Is that a
17 reference to these matters that we've just looked at
18 and marked as Exhibits, I believe, 5 and 6, wherein
19 in the settlement negotiations with Mr. Moskos he
20 asked for financial information on Stokes Holding
21 Corp.?

22 A I can't say, because I was not involved in
23 the request for financial information or the
24 decision as to whether to give them or not give
25 them, provide them, not provide them, so I --

1 Q At the bottom of that page on 6/16/2009,
2 there's an entry by Mr. Buckley regarding settlement
3 negotiations with Attorney Moskos in light of tone
4 of arguments. You've testified already what the
5 tone, as you viewed them, of the arguments were
6 before the Supreme Court, correct?

7 A It shows you what my -- don't trust my
8 view of tone, but yes, ma'am, that's correct.

9 Q I direct your attention also in Exhibit
10 No. 1 toward the very end, the last three pages, to
11 the end, Craven 0329. On April the 13th, 2010, you
12 have an entry of 20 minute -- of .4 for a telephone
13 conference with Drew Epting regarding claims of
14 malpractice. Tell us about that conversation.

15 A I believe that is the telephone
16 conference -- it also follows the next day with the
17 facts of the case -- I believe by that point in time
18 obviously Mr. Epting had been approached and had
19 just called up asking me what was that case all
20 about, what was the opinion, what had happened. And
21 I just basically went through the opinion with him.

22 Q You reference it, though -- your entry is
23 "Regarding claims of malpractice." What claims of
24 malpractice were either discussed with you or did
25 you discuss with Mr. Epting?

1 A I don't think I discussed any claim of
2 malpractice, because malpractice is something that I
3 don't just throw out against someone lightly. I
4 think Mr. Epting was investigating a potential claim
5 of malpractice and asked me for the opinion and my
6 view of the opinion and how I understood the opinion
7 had worked out.

8 Q When you reference "Opinion," for the
9 record, you're talking about the Opinion of the
10 Supreme Court as is set forth in that 30 or 40
11 page --

12 A Forty plus pages, yes, ma'am.

13 Q In looking also at Exhibit No. 1, 7 or 8
14 pages in, Craven 0302, your entry references on May
15 the 29th and May the 30th you are beginning to
16 review the trial transcript; is that correct?

17 A Also it starts actually on May 16th, if
18 you go up above it --

19 Q Oh, exactly. I'm sorry. So there are
20 three entries there, for a total of perhaps nine
21 hours or so reviewing the trial transcript, correct?

22 A That's correct.

23 Q And you've discussed that with us today,
24 correct?

25 A Yes, ma'am.

1 Q When you had your conversation with Mr.
2 Epting on April the 13th, 2010, did you provide him
3 with any opinion that you had with regard to any
4 malpractice of Mr. Robinson?

5 A I did not provide an opinion with regard
6 to any malpractice by Mr. Robinson. I simply would
7 have alerted Mr. Epting that Justice Pleicones wrote
8 an opinion that said, "I believe there's no" -- and
9 I may have my Justices jumbled a little bit, so bear
10 with me, but I think it was Justice Pleicones who
11 wrote an opinion that said, "I don't believe there's
12 any evidence in the record to support this verdict."
13 Judge Beatty wrote the purported lead opinion on
14 certain issues that was the opposite way, and I
15 think Judge -- I believe Justice Waller was still on
16 the Court at that time. I can't recall, but I think
17 Justice Waller was with him. I think then Justice
18 Toal -- I think Justice Kittridge wrote something
19 that Justice Toal joins in that says, "We would
20 agree with Justice Pleicones except for the fact
21 that join with Justice Beatty that the issue wasn't
22 raised." You have to diagram out the opinion to
23 understand on each issue how they were voting.

24 Q But what you were telling Mr. Epting was
25 simply your take on that Order, correct?

1 A My take on that Order was simply -- well,
2 it was my take. It was what the Order said. There
3 were three Justices that said that if the issue had
4 been preserved, the result would have been
5 different.

6 Q But that was not the majority opinion?

7 A No. That was what -- it was the majority
8 opinion in that two people plus another one said the
9 issue wasn't preserved.

10 Q The --

11 A The majority opinion was the issue was not
12 preserved.

13 Q The -- and that's your opinion, correct,
14 in reading it?

15 A Well, I think that's what the Opinion
16 says, but, yes, that's also my opinion in reading
17 the Opinion, but the Opinion would speak for itself
18 with regard to what the Opinion is.

19 Q You have an entry on March the 8th
20 2010 -- at the bottom -- it's in the middle
21 somewhere -- at the bottom it's Craven 0325 -- where
22 you're having a telephone conference with Charity
23 Chastain regarding options? It appears that you're
24 having this conference after you've received and
25 analyzed the Opinion, correct, 3/8/2010?

1 A That's Ed Buckley.

2 Q SLB, is that you?

3 A "Receive and review" -- oh, yeah,
4 telephone conference with Charity. That is me.

5 Q So you, for 2.2, you've received and
6 analyzed the Opinion. You're having a telephone
7 conference with Charity Chastain regarding the
8 options, correct?

9 A Correct. That's correct.

10 Q You did not call Mr. Craven, correct?

11 A No, I did not.

12 Q So your primary contact in this matter was
13 Charity Chastain, correct?

14 A That's correct.

15 Q And if we look down at several entries
16 later, not your entry, but Ed Buckley's entry, he
17 also has a telephone conference with Charity
18 Chastain, correct?

19 A That is correct.

20 Q And on Craven 0313, which is maybe ten
21 pages before, still on Exhibit 1, we have your entry
22 of October the 29th, 2008 wherein you are having a
23 telephone conference with Charity Chastain regarding
24 the status, post judgment interest and attempts to
25 settle, correct?

1 A Correct.

2 Q Other than the meeting that you've told us
3 about that occurred fairly late in your involvement
4 in this matter, all of your contacts with regard to
5 Stokes-Craven Holding Corporation were with Charity
6 Chastain, correct?

7 A I think all of my communications in terms
8 of letters and things of that nature. I had
9 telephone conversations with Dennis, much like I
10 would have conversations with Scott, to ask about
11 issues on the appeal. Where you would typically
12 find those would be on days when I say, "Work on
13 appeal." If I have an issue and I want to ask
14 Dennis, "Dennis, what happened in terms of this
15 meeting?" In other words, I'm reading in the
16 transcript maybe that there was a meeting and --

17 Q So that's when you're -- excuse me.

18 A That's typically when I would call people
19 and ask questions. "What was going on with this?
20 I've read this. I don't fully understand it. Is
21 there any more evidence on this point that you know
22 of? Dennis, this is how they portray what happened
23 in the office that day. Tell me your side of what
24 happened." You know, that type of thing.

25 Q And that's while you're reviewing the

1 trial transcript, and we've seen the entries which
2 begin on Craven 0299 before the page into Exhibit 1;
3 is that correct?

4 A Craven 0299?

5 Q Yes.

6 A Ms. Wall, it could be while I'm reading
7 the transcript, but if you will look, there should
8 be other days when they're just sort of generic
9 large entries for working on appeal or working on
10 brief.

11 Q And we have that on Craven 0302, 5.3 hours
12 on May the 29th and May the 30th of 2007, correct?

13 A Craven what now?

14 Q 0302.

15 A 0302 is still reviewing trial transcript.
16 Let's look past that, because like I said, I
17 typically will go through and just read a transcript
18 start to -- top to bottom, and then I will go back
19 into it in more detail. For example, 8/2/2007 on
20 Craven 0308, there's a 7.8 entry, "Work on -- legal
21 research, work on appeal." On days like that, I
22 just shut my door, get into the appeal, get into the
23 issues, call and follow up with anyone who was
24 involved in the case on anything I want more
25 information on. I wouldn't necessarily break that

1 day out.

2 Q And that would be the same with your
3 earlier entries in reviewing trial transcript for
4 appeal issues, review trial transcript for appeal
5 issues?

6 A There could -- there very well could be
7 calls during that time, yes. If I read something I
8 don't understand, I pick up the phone and call
9 someone and say, "Explain it to me or help me
10 understand or let me know what else is out there."

11 Q Did you have any direct contacts with
12 either of the Stokes brothers with regard to the
13 matter, either -- when I say, "the matter," anything
14 involving Austin versus Stokes-Craven Holding
15 Corporation, whether that be the appeal, the
16 payment, attempts to settle?

17 A No one. No, I've had no contact with
18 anyone, either one of the Stokes, with regard to
19 this case in any capacity.

20 Q This for purposes of the record. Let me
21 hand to you what we'll mark as Exhibit 7. And can
22 you identify this as a copy of the final Appellant's
23 Brief of Appellant Respondent.

24 A Yes, ma'am.

25 Q And No. 8 the Final Reply Brief of

1 Appellant Respondent?

2 A Yes, ma'am.

3 (Final Appellant's Brief of Appellant
4 Respondent, Defendant Scott L. Robinson's Exhibit
5 No. 7, is marked for identification purposes.)

6 (Final Brief of Appellant Respondent,
7 Defendant Scott L. Robinson's Exhibit No. 8, is
8 marked for identification purposes.)

9 MS. WALL: Thank you. That's all I have
10 at this time.

11 E-X-A-M-I-N-A-T-I-O-N

12 BY MR. POWELL:

13 Q Mr. Brown, I'm Warren Powell. I represent
14 the law firm of Johnson, McKenzie and Robinson, LLC,
15 and I have a few questions for you. Is it accurate
16 to say that what you know about this case you've
17 garnered from reading the trial transcript, from
18 reading Mr. Robinson's file, right?

19 A Yes, sir.

20 Q And talking to Mr. Craven, right?

21 A Yes, sir.

22 Q And speaking to Mr. Robinson?

23 A Yes, sir.

24 Q And did you learn anything about the case
25 itself, the underlying case? I'm speaking of the

1 Austin versus Stokes-Craven Ford case from Ms.
2 Chastain?

3 A Not to my knowledge or not that I recall.

4 Q Did she express any opinions of
5 information she'd gotten from any source?

6 A Not that I recall.

7 Q Let me ask you a few questions about the
8 mechanics of your timekeeping. During this period
9 of time, during 2006, 2007 on up through 2010, did
10 you and your partners keep time entries, did you
11 make them directly into the computer, or did you
12 create paper entries which would have been
13 transferred by someone into the billing system? How
14 did that work?

15 A Both ways. Some people enter their time
16 directly. Some people dictate their time as they're
17 doing it. They keep a separate Dictaphone. Some
18 people write their time out. I tend to be a hybrid.
19 If I have an easy entry, I'll type it in myself. If
20 I have a day where I've had extensive telephone
21 conferences or a file for an insurance company that
22 requires 20 lines to explain a .1 letter --

23 Q I understand.

24 A -- then I will not enter that myself.

25 Q And you write that out? Do you enter that

1 yourself or --

2 A Sometimes I enter it myself. It's on our
3 computer, and you just hit it and click the file,
4 and you put a description of what it is your time.
5 I can actually enter time on my iPad now, but not
6 then, obviously. Other times I just have a little
7 form I've created. It's a -- I just drew it myself
8 with a ruler to give myself adequate places to
9 describe what we're doing. I never know file
10 numbers, because I'm somewhat dyslexic on numbers.
11 So I would just call this one Austin v. Stokes,
12 write down, "Work on brief," or something, whatever
13 I did, and put the time. That would go to my
14 secretary who would then enter it.

15 Q This is on a sheet of paper you're giving
16 her?

17 A Uh-huh.

18 Q Are those kept?

19 A No, sir. Once they are -- what I do is at
20 the end of the -- I keep them for the whole month,
21 and then at the end of the month she prints out a
22 calendar that shows the daily totals. And I compare
23 her totals to my totals to make sure that nothing's
24 been transposed. And if they all match up, then I
25 toss them. If they don't match up, I'll say, "We

1 need to look on June 9th, because you've got me down
2 for 6.2 hours, and I show I had 6.7 that day. Let's
3 figure out where that half hour is."

4 Q Are you aware of any -- after Young,
5 Clement, Rivers was engaged by Stokes-Craven as its
6 attorney, were you aware of any substantive
7 communications between Mr. Robinson or anyone in his
8 law firm with Stokes-Craven Ford?

9 A I don't -- I don't know one way or the
10 other. I --

11 Q But you're just not aware of it?

12 A I'm not aware of it. I knew that -- that
13 I was -- Mr. Robinson -- we were retained to be
14 appellate counsel. Mr. Robinson was still to be on
15 the file. He was still available to answer
16 questions. He was available to me to assist in
17 whatever I needed, and so I don't know what he did
18 in terms of his communications with other people,
19 including Stokes-Craven. I just don't know. I
20 wasn't privy to that.

21 Q Really, the question goes to this. Were
22 you ever part of a conference where Mr. Craven was a
23 conferee and Mr. Robinson was also?

24 A Other than perhaps after the oral argument
25 when we all huddled in a corner, I don't think so.

1 I wasn't present -- I believe there was a meeting
2 possibly that he'd been at the Ed Buckley, but I --
3 no, I was not at the meeting.

4 Q Did you ever get the impression of feeling
5 that anyone -- that Mr. Robinson or anyone in his
6 law firm had mislead you in any way?

7 A I never spoke to anyone in Mr. Robinson's
8 law firm but Mr. Robinson. And do I think he in any
9 way mislead me?

10 Q Uh-huh.

11 A Not that I'm aware of, but again, if -- I
12 could have been mislead and not knowing I've been
13 mislead. But, no, I had no reason to doubt that he
14 was honest and truthful with me. I always assume
15 members of the bar are.

16 Q That was my question.

17 A I did not speak to anyone else at his
18 firm, to my knowledge.

19 Q And that is your belief as you sit here
20 today, that you have no information that he mislead
21 you on any issue in this case?

22 A Not that I know of.

23 Q You mentioned earlier that one of the
24 issues that hit you, perhaps prompted you to throw
25 up after the Opinion came out, was that you looked

1 at the Opinion and more than one Justice focused on
2 the issue preservation matter in the case.

3 A Yes, sir.

4 Q And that this hit you the wrong way
5 because when you started to discuss that at oral
6 argument, I think I'm accurate when I say that the
7 Chief Justice shut you down?

8 A Correct.

9 Q In doing that. And then the Opinion comes
10 out, and as a result, what you're reading there is
11 that it appears that they used that very issue to
12 rule against you?

13 A Correct.

14 Q Mr. Brown, does that hit you as
15 fundamentally unfair?

16 A I want to be very careful as how I answer
17 this question, because I don't want it in front of
18 the Supreme Court at some point in time. It was --
19 and -- did it hit me as fundamentally unfair? I
20 don't know. The issues had been briefed, so they
21 had it before them. I knew that issue preservation
22 was going to be an issue. One of the conversations
23 I had with Scott was, "Scott, help me out here. Is
24 there anywhere else I can look on the valuation
25 issue?" I knew it was -- I knew it was going to be

1 an issue, because I will tell you this, we -- I've
2 handled -- I work on lots of appeals, and a lot of
3 them are outside appeals. And the first thing we do
4 when we're trying to uphold something for
5 somebody -- the first thing we do is tear apart and
6 look for issue preservation issues, because we know,
7 especially at the Court of Appeals level, they will
8 punt any chance they get on an issue preservation
9 issue. That's why when the Supreme Court took this
10 as a 204(b) certification, two things. Number one
11 it didn't concern me one way or the other, because
12 Kenrick's Dad had previously told me they get bored,
13 and that's where their 204(b)'s come from. They
14 randomly just will send cases over. Don't ever
15 think the 204(b) has some grand implication in the
16 scheme of your case. And number two, the Supreme
17 Court at times will do what they're going to do. I
18 mean, no ultra means what it means above their head,
19 and I've -- you know, I -- sometimes if you get them
20 right way, it doesn't really matter whether the
21 issue is preserved or not. You can just get them on
22 a tear.

23 Q I think where you're headed with that is
24 that there's not an awful lot of predictability
25 there?

1 A I think it is fair to say that our Supreme
2 Court is made up of very, very fine people who want
3 to do the right thing as often as they can, but I do
4 find them to be at times a bit result oriented. And
5 that's what I advise my clients, but I don't mean
6 that in a disparaging way towards them.

7 Q I understand. This is not -- and I will
8 say this for the record. We're not here talking
9 about personalities.

10 A I understand.

11 Q This is differences of -- because they're
12 fine people, I would submit that they would defend
13 your right to disagree with their professional
14 opinion. And so they way they handle something
15 is -- I would submit to you is perfectly fine. I
16 mean, they're -- to say that they got it wrong. And
17 in fact, I will tender to you the notion that your
18 partner said exactly right in that very chair
19 several weeks -- whenever his deposition was, a week
20 or ten days ago. Mr. Buckley had no problem saying
21 that Justice Beatty got it wrong. Now, having said
22 all that, if you had not been shut down that day on
23 the issue preservation matter, what would you have
24 said?

25 A I believe we put together what I would

1 call -- what we typically call in our office, it's
2 implicitly preserved. And what that means is we
3 can't find where it was really preserved, but we
4 think it's inherent sort of in the briefing. I
5 mean, in the arguments made to the Court, but to the
6 best of my recollection, we had concerns about this
7 issue, because it was a good issue. It was a -- if
8 you go look at the case law that I can't remember
9 the name of, but it's out there, it's a good case.
10 It's a really good case. Somebody got some award
11 off of a car. I think it was a car case, and I'm
12 going to say they got \$5,000, and the -- \$4,000 or
13 whatever it was, and the evidence out there was that
14 the difference between the value of the car that
15 they bought and the value of the car if its full
16 condition had been disclosed, was a difference of
17 \$1,300. And whichever court was looking at -- I
18 can't remember if it was the Supreme Court or Court
19 of Appeals -- said in light of that, there is no
20 evidence to support the award of actual damages. In
21 my opinion, that is exactly what was going on here.
22 They -- Mr. Moskos had a so-called expert, and I
23 say, "so-called" because I had concerns about his
24 qualifications, but I decided our Supreme Court,
25 unless it's a Ford case, is always going to

1 determine people are qualified. Not just our
2 Supreme Court. I reached that conclusion when Danny
3 Martin one time qualified someone who did not have a
4 license as a contractor to be an expert handyman.
5 That's when I decided everybody's an expert, so
6 that's why I giggled a bit when Ms. Taylor Wall
7 asked her question. So, you know, I thought in this
8 particular case here's what we've got. We've got
9 someone who, in my opinion, is probably not
10 qualified as an expert, but that's not going to fly.
11 The fact that he made his examination in the parking
12 lot of a Piggly Wiggly or a Bi-Lo or something along
13 those lines, that's not going to fly. But the
14 Supreme Court -- one thing I've noticed about them
15 is that sometimes if you can keep jabbing at them
16 enough, they can get fed up on a case and say, "You
17 know what, preserved or not, there's no evidence to
18 support this, and this man's getting a heck of a
19 windfall off of a case, okay. And it's a case that
20 he, quite frankly, drove the car" -- the plaintiff
21 just struck me as being too much, you know, and his
22 girlfriend or whatever, about my grandchildren being
23 in that truck. And I don't seem to sound cold
24 hearted, but blah, blah, blah, you know. And so to
25 me that value issue was a winnable issue, because if

1 we went on that, we knock a whole lot, if not all of
2 it, out, or at least we get a chance to redo it.

3 Q And this was the issue -- as you were
4 reading through the transcript -- I think you said
5 earlier, when you were reading through it, this is
6 an issue that jumped out at you?

7 A It did.

8 Q And when you called in -- the issue I'm
9 talking about is the issue preservation issue.

10 A Correct.

11 Q And you called -- after you read that, I
12 think you said -- after you read the trial
13 transcript, to make this clear, you followed that up
14 with a conversation with Mr. Robinson?

15 A Correct. I've had several conversations.
16 I can't tell you that that was on conversation one
17 or conversation three, because we discussed lots
18 of -- every issue in the case Mr. Robinson and I had
19 some discussion about where I would want his take on
20 it, because I find it helpful to understand what the
21 trial attorney was thinking and doing and what have
22 you, so -- but, yes, we did discuss this. I also
23 remember asking Scott, "Are there any other briefs
24 out there or memoranda or any issues that may have
25 been presented to the court that I don't have in

1 your file?" And he said, "No, I think I've sent you
2 everything." And that is one of the reasons why I
3 actually -- at some point in time we went to
4 Clarendon to get the file from the Clerk of Court's
5 Office, just to double check and make sure we have
6 everything.

7 Q And then when you -- I think a fair
8 reading of your earlier testimony was that this --
9 when you read the transcript, this was, if not the
10 only major, one of the more important issues that
11 jumped out at you when you read the transcript?
12 And it did as to -- for me. Now with regard to the
13 Federal Odometer Act issue, I understood Mr.
14 Buckley's concern that you had these -- you know,
15 that Mr. Moskos takes the approach that basically
16 every sale of a used vehicle violates it. And then
17 you get in front of a jury, and you get to argue
18 they're violating the law every time they sell a
19 car. And I know the impact that that can have on a
20 jury. It's funny. I've -- so that issue hit me,
21 but I will be honest, that issue is just not my pet
22 peeve. That's just a Don Quixote like issue for Mr.
23 Buckley. That's just one of his little -- we all
24 have our little perversities in life, and that's one
25 of his.

1 Q And I gather the issue preservation matter
2 was more in your bailiwick --

3 A Correct.

4 Q -- in this case --

5 A Correct.

6 Q -- than the Federal Odometer Act?

7 A Correct.

8 Q And you reviewed -- it looks as though you
9 reviewed the trial transcript in April and May and
10 possibly June 2007; is that --

11 A That is correct, but on any entry that
12 just says, "Work on appeal," that could be drafting.
13 That could be going back and rereading a section of
14 it. That could be talking to people. That could be
15 reviewing case law.

16 Q But where it says -- certainly, where it
17 says --

18 A It's a --

19 Q -- "Begin review of trail transcript for
20 appeal issues," that's --

21 A Primarily, although as Ms. Taylor Wall
22 asked, if I hit an issue, if I read something in it
23 I don't understand or that I want follow up on, I
24 may put down the transcript and pick up the phone.

25 Q Pick up the phone.

1 A But on this case, and I'm sure both of you
2 will understand this, being that this was a
3 non-insurance case, I -- you know, if it was an
4 insured file, I would have to break down every
5 little telephone call I made and read transcript for
6 however long, call Susan Taylor Wall to discuss
7 implications of blah, blah, blah. And this one, I
8 didn't have to do that, so that's why those entries
9 are just rather broad.

10 Q And "block billing," as they would say?

11 A Correct. Well, some block billing. Block
12 billing on working on the appeal. If you see
13 everything else, letters are generally broken out,
14 things of that nature, but, yeah, working on appeal
15 that's just a big block bill, because I close my
16 doors when I'm working on appeal. I don't talk to
17 people outside of what I'm working on. I oftentimes
18 go to a hideaway office that I can just hide from
19 the world and focus.

20 Q You mentioned insurance. Were you part of
21 any discussions with Mr. Craven about any potential
22 insurance coverage he may have had in this case?

23 A That would have been Mr. Buckley.

24 Q Mr. Buckley did only?

25 A Yes, sir.

1 Q Did you and Mr. Buckley speak -- did you
2 have, as my former partner used to call it, a series
3 of bilateral conferences about the merits of the
4 appeal and what the major issues were?

5 A Yes, sir. I mean, with Ed and I, and I've
6 now worked with Ed for 19 years, give or take, we
7 laugh. Ed has a couch in his office, and when we
8 moved his only requirement was that his office be
9 big enough to hold the couch. And it's almost like
10 a therapy couch. Sometimes I will go down there
11 just simply because it's on -- I've had enough, and
12 I need a place to go just sit and fume a little bit,
13 okay. But often when Ed and I are working on a case
14 together, and he and I have worked on many appeals
15 together, I go to that couch, and I'll say, "Ed,
16 here's what I've been digging at, and here's what I
17 found. Here's what's concerned me. Here's where
18 I'm heading." Ed has a phenomenal memory where he
19 can also say, "You know what, I think you're right
20 on that Toyota case or whatever, and you know what,
21 if you look, I think there's another one out there
22 about Aiken Sheet metal or something," or -- so,
23 we'll -- yes, we discuss -- we sit down face to face
24 and work our way through the appeals. And I find
25 that helpful with all my partners, just to get a new

1 perspective on it and make sure I'm not going down
2 the wrong road or that my arguments are making
3 sense.

4 Q Were there -- one of the things that I did
5 not see looking through, were there any status
6 reports to Mr. Craven or to Charity Chastain about
7 your opinion as to where things were going in the
8 case?

9 A No, they did not require status reports.
10 And until the briefing was completed, I don't think
11 I really provided any that I know of.

12 Q Were these sometimes given to Ms. Chastain
13 verbally?

14 A I don't -- I don't recall giving her any
15 verbally. I don't know whether she received copies
16 of the briefs or not. I just don't know.

17 Q Did you express an opinion to her as to
18 the bad parts of the appeal, the good parts of the
19 appeal, where it seemed to be going, what you were
20 doing with the money you were being paid to handle
21 the appeal or anything like that?

22 A We had a big conversation about that.
23 That's the June entry that we discussed earlier
24 where we talked about the issues that had been
25 raised, what we had said in response to them, what

1 could happen, what could not happen, the
2 unpredictable nature of our Supreme Court. And that
3 would have been not just with Ms. Chastain, but with
4 Dennis as well. He was present there for that.

5 Q But none prior to that?

6 A Not that I recall. Now, they very well
7 could have called me and said, "How's it coming,"
8 but I don't -- I just -- I don't recall.

9 Q Mr. Brown, since you have read the trial
10 transcript, and I would suspect more than once
11 throughout this case, true?

12 A Yeah. More than likely, yeah. Maybe not
13 the whole thing more than once, parts of it. For
14 example, I don't that I would read voir dire more
15 than once. I would look at --

16 Q I understand. But having read through
17 that, I'm going to try to solicit from you your view
18 of the more difficult or damaging, I'll say, parts
19 of the case as to Stokes-Craven and see if you would
20 agree on these issues? Would the testimony about
21 the forgery of the signature of Mr. Austin on
22 a form, on an important form in purchasing the
23 vehicle -- would that be one of the more damaging
24 parts of the case against Stokes-Craven Ford?

25 A I cannot answer that question, because you

1 are asking me to get into the mind of what would and
2 wouldn't be damaging in the minds of a juror.

3 Q No, I'm not asking that. I'm asking, in
4 your --

5 A Allegations of forgery are certainly never
6 helpful.

7 Q That would be a crime, too, wouldn't it?

8 A To the best of my knowledge, it is.

9 Q And after reading the transcript isn't it
10 fair to conclude that there was someone at
11 Stokes-Craven Ford that signed this gentleman's
12 name, signed Mr. Austin's name on a form in aid of
13 selling the vehicle?

14 A Without going back and looking, I can't
15 tell you. I have not reread the transcript in
16 preparation for today. I have not reread the
17 Opinion. I cannot specifically even recall -- I
18 knew there was a forgery issue, but as to what the
19 specific part of it was, I can't -- I could not tell
20 you.

21 Q But you would certainly agree that it's
22 your view that when there's forgery in a case,
23 allegation of forgery -- were you aware that Mr.
24 Craven had agreed that it did not look -- that the
25 signature did not appear to be Mr. Austin's

1 signature? Were you aware of that?

2 A If it's in the testimony, I was. It seems
3 to -- it seems to ring a bell, but I'd have to go
4 back and look.

5 Q Do you recall who Mr. Frierson (ph) was,
6 Mr. Brown?

7 A No, sir. Was he the -- well, no. Was he
8 a signature expert or something?

9 Q No. Let's see if I can give you the Bates
10 numbers here. How about Mr. Thornall (ph)?

11 A I -- I'm reading through the brief as you
12 ask this question, so just bear with me for a
13 second.

14 Q Sure.

15 A According to the brief, Mr. Frierson was a
16 sales person on the store lot. I just don't recall
17 the name. I mean, I do now that I've read that, so
18 I apologize. Who's the other person?

19 Q Mr. Thornall.

20 A You're going to have to help me with that
21 one. I don't recall that.

22 Q Do you recall he was the General Manager
23 of the company at one time?

24 A I'm not trying to be uncooperative with
25 you. If he is, he is. I just don't recall the

1 name, and I apologize.

2 Q That's fine.

3 MR. POWELL: Let's go off the record a
4 minute.

5 (At this point in the deposition there is
6 an off-the-record discussion.)

7 BY MR. POWELL:

8 Q Mr. Brown, this issue that you, I think
9 had said, which stood out to you when you read the
10 trial transcript, specifically the issue
11 preservation matter in the case, talk to us a little
12 bit further about what you mean by that.

13 A There is a case -- I was just looking
14 through the brief, and it is Toyota versus Florence,
15 Toyota of Florence versus Sparrow or something along
16 those lines, and it was in fact a \$4,000 verdict.
17 And factually it lines up very neatly with the issue
18 in this case about the so-called zero value by Mr.
19 Raye (ph), the so-called expert in that case. I
20 believe it was the actual car owner who said, "If I
21 had known the car was not new but had been used, I
22 would have paid two or three grand less," something
23 along those lines. And so the Court of Appeals
24 said, "Typically a" -- I think it was the Court of
25 Appeals, but they said a couple of things. First of

1 all, while a property owner can typically testify as
2 to the value of their property, in a case such as
3 this you have to testify as to what the fair market
4 value difference is, not what you would or wouldn't
5 do, but what would happen out in the open market.
6 And therefore, we find no evidence to support this
7 verdict, and we reverse it." And that argument, as
8 I recall in that case, was not in the transcript.
9 And it was not in post trial motions and was not in
10 directed verdicts and was not in JNOVs. And that
11 case just seemed to me so close, as close as you're
12 going to get in South Carolina, to being on point to
13 an issue. And it seemed to me that if we could win
14 on that issue, if you get rid of the actual damages,
15 the punitives as a matter of law are gone. In worst
16 case scenario you get a new trial. Maybe you get
17 the result they got there. So that is what stood
18 out to me on -- as being the issue. That -- you
19 know, that to me is a simple issue to understand.
20 It's not the Federal Odometer Act, okay. And I
21 could see it being an argument that could play well,
22 and I think especially when you considered the zero
23 value number along with the testimony of Mr. Austin
24 that he -- the truck had performed well, and he
25 drove it for a long, long time, et cetera,

1 et cetera, et cetera, and then his crying girlfriend
2 with the children and of life safety issues.

3 Q You're not prepared -- in all fairness,
4 though, you're not prepared to say that if those
5 arguments had been made that you just listed, that
6 more probably than not the case would have come out
7 differently?

8 A In my opinion, based upon the ruling of
9 the Supreme Court, if that --

10 Q I mean, going back now. Not looking back
11 with back with Monday morning quarter backing, but
12 going back --

13 A What would have happened with a jury? I
14 have no clue.

15 Q There's no way to know, is there?

16 A I have no clue whether or not Judge Hayes
17 would have said, "You know what, I can't let this
18 verdict stand, because it's not supported by the
19 evidence." I don't know what the jury would have
20 done, and I don't know what Judge Hayes would have
21 done.

22 Q And given the quite apparent result
23 oriented band of five, truly no one could say what
24 they would have done with it either, true?

25 A All I can go by is what's in the written

1 Opinion that was issued, and in the written Opinion
2 that was issued, as I read it, there are three
3 Justices who said if the issue had been presented
4 and preserved, the result would be different, that
5 they agree with my view of what Toyota of Florence
6 stands for. That is how I read that Opinion. That
7 is how I've had others in my firm read it behind me.
8 That is my opinion based upon that. Now, you ask me
9 to speculate could all of these other things have
10 happened. I don't know. I just know that based
11 upon what they wrote three of them said -- one of
12 them said, "I think you're right." And two of them
13 said, "If the issue had been raised, we'd be right
14 there with you, Pleicones."

15 Q The matter with regard to the value of the
16 vehicle, is it your understanding, is it your
17 testimony here today, that other than the zero value
18 that the plaintiff gave to the vehicle -- and we're
19 talking now about salvage values, or that's one
20 nomenclature to put on it, salvage or the resulting
21 value of the vehicle -- is it your testimony that
22 there was no evidence in the record as to that value
23 other than zero?

24 A As I recall, the expert had started off
25 with some number that he then withdrew at trial,

1 okay. And he gave -- if you don't mind me -- I'm
2 going to use the brief to help refresh my
3 recollection.

4 Q Sure.

5 A He testified at trial that it had zero
6 retail value because Mr. Austin had said he would
7 not buy the vehicle. And our Supreme Court has said
8 with regard to these issues, you have to determine
9 the difference in fair market value. Fair market
10 value being the price a seller is willing to accept
11 and a buyer is willing to pay in an arm's length
12 transaction with everything known, okay. There was
13 no testimony in the record as to fair market value.

14 Q Well, the gentleman that you just spoke
15 about that was cross examined, wasn't the prior
16 opinion he gave \$14,000 or something in that area?

17 A He -- 13 or 14, but he specifically said,
18 "I withdraw that" --

19 Q Well --

20 A -- or he withdrew that at trial, and said,
21 "It has zero value."

22 Q Well, a witness doesn't -- I mean,
23 technically a witness doesn't withdraw that.
24 There's two opinions of his in the record, though,
25 right?

1 A Well --

2 Q If, for example, in your deposition -- if
3 you want -- if you say one thing today, and then you
4 change it -- you know, a witness can read and sign,
5 you know, his testimony -- and he changes it later,
6 both testimony comes into the record; does it not?

7 A I don't know that they both come in as his
8 opinion. It comes in that he said this at one day,
9 but he now believes that, but --

10 Q Right. Let me ask you another way, Mr.
11 Brown.

12 A Well, hang on. Give me one second,
13 because I want to --

14 Q I mean, just because a witness says, "I
15 withdraw that," doesn't mean it's withdrawn, true?

16 A Let's -- let me respond by saying this.
17 The jury in this case -- if I recall, on -- okay.
18 Wholesale value is not an issue. Our Supreme Court
19 said it has to be fair market value, okay. And he
20 testified to retail value. This gentleman never
21 testified to fair market value at trial. Now, the
22 jury -- Mr. Austin paid \$26,000 and some change for
23 this vehicle, correct? And the jury awarded actual
24 damages of -- I thought the whole amount, but I
25 could be wrong. Well, he paid \$32,000 for the

1 vehicle is what this says, okay. No, no, no.
2 That's a different -- that's different. That's a
3 different thing. He paid 20 some thousand dollars,
4 okay. And, yeah, Mr. Austin, \$26,371, and if I
5 recall correctly, the jury came back and awarded --
6 I can't remember the exact award of actual damages.
7 Okay. The total was 242, and I can't recall what
8 the breakdown was.

9 Q Let me ask you another way. Just say in
10 round numbers if the gentleman paid \$26,000 for the
11 car.

12 A Okay.

13 Q And under the record that you reviewed,
14 the trial transcript that you reviewed -- and you've
15 handled a lot of appellate cases, correct?

16 A Correct.

17 Q And that would comprise most of your
18 practice?

19 A No. It's about 50 percent of my practice.

20 Q Half of -- a large part of your practice,
21 right?

22 A Yes.

23 Q Under the record that exists in this case,
24 the gentleman paid \$26,000 for the car, and if the
25 jury had concluded in this case that his damages

1 were 26,000 less 14,000, and found in essence that
2 the truck was worth \$14,000, does that, in your
3 opinion -- do you believe that that verdict gets
4 affirmed?

5 A I can't say, because you haven't said
6 whether the value is established as fair market
7 value. Fair market value is the criteria
8 established by our court, the difference in fair
9 market value. You just used the term "value."

10 Q My question is, under this record -- as
11 you see it, under the record that you read in this
12 case, does that verdict get affirmed on appeal?

13 A The record as presented?

14 Q Yes, sir.

15 A I don't think it does.

16 Q And why?

17 A Because I don't think there's been
18 evidence presented as to the fair market value of
19 what was purchased as compared to what was believed
20 to be purchased. The fair market value of both, the
21 difference between the two, is the allowable measure
22 of damages.

23 Q But the Supreme Court affirmed a value of
24 zero, right?

25 A Yes, sir. Justice Beatty affirmed a value

1 of zero, and I think Justice Waller joined in with
2 him on that value of zero. I don't think that Chief
3 Justice Toal or Justice Kittridge affirmed the value
4 of zero. They just simply said, "The issue is not
5 preserved." So two people affirm a value of zero.

6 Q Well, the Opinion of the Court -- sir, you
7 would agree, though that the Opinion of the Court is
8 the Opinion that is filed, the majority -- not
9 necessarily the majority Opinion, but the Opinion
10 that prevails is the one in which decides the case;
11 you agree with that?

12 A I would agree with that, but subject to
13 this --

14 Q Well, let me follow that up with this
15 question.

16 A Okay.

17 Q The dissenting opinions and concurring
18 opinions do not have any value with respect to what
19 the Court as a whole is saying in the case; do you
20 agree with that?

21 A Absolutely not.

22 Q And what is your authority for that?

23 A My authority for that is, number one, 19
24 years of practice. You have to look at each issue
25 that has been appealed, and you have to look, how

1 are those five Justices voting on that particular
2 issue. And just because Justice Beatty wrote what
3 purports to be a majority Opinion, it's a majority
4 Opinion because ultimately it affirmed the result.
5 Justice Toal and Justice Pleicones were in agreement
6 with affirming the result, because they believe the
7 issue wasn't preserved. If you read their Opinions,
8 they do not go along with him on other parts of it.
9 So in actuality Justice Beatty has a majority
10 Opinion on certain issues, a parallelity (ph)
11 Opinion on certain issues, and quite frankly doesn't
12 have the votes on other issues.

13 Q Concurring Opinions and dissenting
14 Opinions, you agree, have no precedential value?

15 A Well, to the extent they -- they have no
16 precedential value?

17 Q Yeah.

18 A They have the same value that Justice
19 Beatty's Opinion has that only got his vote and one
20 other.

21 Q Is it your testimony that the dissenting
22 Opinion has precedential value?

23 A It's my opinion that you have to have
24 three Justices in agreement on an issue for it to
25 have value.

1 Q Again, I think I'm entitled to the answer
2 to my question. Is it your opinion that a
3 dissenting -- is it your view that a dissenting
4 opinion has precedential value in the law?

5 A I think a dissenting opinion that doesn't
6 have three votes, absolutely not. I think a
7 concurring opinion has some value, because it can
8 show how they got there on a particular issue.

9 Q Other than Steve Brown, do you know any
10 authority for that, that a dissenting opinion or a
11 concurring opinion has precedential value?

12 A Well, I think you can go and read Justice
13 Beatty's Opinion, for example in this case, that
14 allows for the smorgasbord of collections, including
15 attorney's fees, and find that the other Justices
16 didn't go along with that. So that when a Petition
17 for Attorney's Fees was presented to them, it came
18 back stamped, "Denied." Yet, if you read Beatty's
19 Opinion, it should have been granted absolutely
20 right there. You have to have a majority of the
21 members sitting on the Court for the Opinion to
22 count for something, okay. On certain issues,
23 Justice Beatty got three. He did not get three
24 votes for zero value. He got three votes for not
25 preserved. And my question as to who would

1 understand that, who can tell you that, as a
2 starting point I'd be glad to go get you Bill Howard
3 who sat on the Court of Appeals for years. And I
4 think any lawyer who practices up there will tell
5 you you have to have the three votes on each issue.

6 Q Do you know of any appellate case which
7 gives precedential value to a dissenting opinion or
8 another concurring opinion? Can you cite one?

9 A No. But I can also not cite to any case
10 where an opinion with two Justices ruling a certain
11 way had precedential opinion.

12 Q Well, under your view, would Justice
13 Beatty's -- the Opinion of the Court as penned by
14 Justice Beatty, is it your view it has no
15 precedential value?

16 A On the areas where it has some other
17 Justice agreeing with him and Waller?

18 Q Uh-huh.

19 A Those areas where there's agreement,
20 there's a third vote, has precedential value.

21 Q But otherwise not, that's your view?

22 A Otherwise, no.

23 MR. POWELL: I think that's all I have.

24

25

1 R-E-E-X-A-M-I-N-A-T-I-O-N

2 BY MS. WALL:

3 Q I just have a couple of follow-up. Let me
4 make sure I understand. In your briefing which you
5 prepared and your office signed and you argued as
6 you've testified to, a portion of it with your
7 partner, Mr. Buckley arguing the other portion, you
8 would agree with me, would you not, that the burden
9 of proof in the underlying suit to establish fair
10 market value was on the plaintiff, not on the
11 defendant, correct?

12 A I believe that is correct.

13 Q And that the defendant Stokes-Craven was
14 not under any obligation to introduce evidence of
15 the fair market value of the vehicle, and in effect,
16 make Mr. Austin's case for him?

17 A I would have to go back and look at the
18 various affirmative defenses raised by
19 Stokes-Craven.

20 Q Why don't you let's do it real quickly by
21 simply looking at your firm's Reply Brief, footnote
22 9, page 9? And you would certainly not present to
23 the court or argue anything that you did not believe
24 had merit, would you?

25 A No. I wouldn't argue anything that

1 doesn't have merit. I do agree the plaintiff has
2 the burden of proof in the value.

3 Q And you also would agree with me that the
4 record reveals that Stokes-Craven cross examined Mr.
5 Austin and Morris with regard to their valuation,
6 but was under no obligation to introduce evidence of
7 the fair market value of the vehicle and in effect
8 make Mr. Austin's case for him, correct?

9 A I agree that that's an argument we tried
10 to make.

11 Q You did make the argument.

12 A Yes, we --

13 Q It's right here, correct?

14 A -- did I just not say it's an argument we
15 did try to make.

16 Q And in fact --

17 A It didn't carry the day, but we tried to
18 make it.

19 Q Exactly. And you did make it, and you
20 made it in good faith, correct?

21 A Absolutely. But I will point out, Ms.
22 Wall, the argument here on that footnote is that Mr.
23 Robinson or Stokes-Craven didn't have to put it up
24 in terms of making the case for the plaintiff. But
25 I do think they have to make the argument to the

1 judge at the appropriate time as directed verdict to
2 JNOV that there is no evidence of fair market value.

3 Q And would you agree with me that in the
4 Reply Brief you did state to the Court that
5 Stokes-Craven did move for a directed verdict -- I'm
6 looking on page 1 of your Brief -- as to all the
7 causes of action that were ultimately submitted to
8 the jury, and in so doing, Stokes-Craven challenged
9 the sufficiency of the evidence presented by Mr.
10 Austin to establish the elements of his causes of
11 action; is that correct?

12 A Yes, ma'am. Yes. And let me tell you
13 that is what I called the implicit preservation
14 argument earlier, which is what you throw out there
15 when you simply cannot find the specific issue has
16 been addressed. I wanted to do everything in my
17 power ethically to try and overturn this verdict,
18 but in my telephone calls to Mr. Robinson and review
19 of the record, when I would ask, "Is there anything
20 else out there on an issue." He said, "You have
21 everything I've got."

22 MS. WALL: That's all I have. Thank you.

23 (The deposition concludes at 12:30 p.m.)
24
25

1 CERTIFICATE OF REPORTER

2 I, Beth Walters Kornuta, Court Reporter and
3 Notary Public in and for the State of South
4 Carolina, do hereby certify that the aforementioned
5 deposition of STEPHEN L. BROWN was recorded by me
6 and transcribed through computer-aided transcription
7 by me to the best of my ability.

8 I FURTHER CERTIFY that the foregoing transcript
9 is a true and correct transcript of the testimony
10 given by the said deponent at the time and place
11 specified.

12 I FURTHER CERTIFY that I am neither attorney
13 nor counsel for, nor related to nor employed by any
14 of the parties to the action in which this
15 deposition is taken, neither am I financially
16 interested in this action.

17 IN WITNESS WHEREOF, I have set my hand and seal
18 this 30th day of APRIL, 2012.

19

20

21

22

23

24 Beth Walters Kornuta, CR
25 Notary Public for South Carolina
Commission Expires: 06/18/2013

EXHIBIT G

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP
d/b/a STOKES-CRAVEN FORD,

Plaintiff,

vs.

CASE NO. 10-CP-14-457

SCOTT L. ROBINSON and JOHNSON,
McKENZIE & ROBINSON, LLC,

Defendants.

DEPOSITION OF: STEVEN MCKENZIE

DATE: MAY 26, 2011

TIME: 9:57 A.M.

LOCATION: CLARENDON COUNTY COURTHOUSE
3 W. Keitt Street
Grand Jury Room
Manning, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: G. MICHAEL ALEXANDER, Registered
Professional Reporter, CSR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
 3 STOKES-CRAVEN HOLDING CORP
 4 d/b/a STOKES-CRAVEN FORD:

5 ANDREW K. EPTING, JR., LLC
 6 BY: ANDREW K. EPTING, JR.
 7 3 State Street
 8 Charleston, SC 29401
 9 (843) 377-1871
 10 ake@epting-law.com

11 ATTORNEYS FOR THE DEFENDANT
 12 SCOTT L. ROBINSON:

13 PARKER POE ADAMS & BERNSTEIN, LLP
 14 BY: SUSAN TAYLOR WALL
 15 200 Meeting Street, Suite 301
 16 Charleston, SC 29401
 17 (843) 727-2640
 18 susanwall@parkerpoe.com

19 ATTORNEYS FOR THE DEFENDANT
 20 JOHNSON MCKENZIE & ROBINSON:

21 BRUNER POWELL WALL & MULLINS, LLC
 22 BY: WARREN C. POWELL, JR.
 23 1735 St. Julian Place, Suite 200
 24 Columbia, SC 29260
 25 (803) 254-5719
 wpowell@brunerpowell.com

ALSO PRESENT:

DENNIS CRAVEN
 SCOTT ROBINSON
 RHONDA MCCREW

(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and among
3 Counsel that this deposition is being taken in
4 accordance with the South Carolina Rules of Civil
5 Procedure, Rule 30; that all objections as to
6 Notice of this deposition are hereby waived; that
7 all objections except as to form are reserved
8 until the time of trial; and that the deponent
9 waives reading and signing of this deposition.

10 * * * * * * * * * *

11 STEVEN McKENZIE

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. EPTING:

15 Q. Good morning, Mr. McKenzie.

16 A. Good morning.

17 Q. Thank you for being here with us this
18 morning.

19 A. I didn't have much of a choice.

20 Q. I think that's right. I tried to be
21 accommodating in serving you with a notice of
22 deposition. And let me just make sure that that
23 is the notice pursuant to which you appear here
24 today?

25 A. That is.

1 MR. EPTING: If you would mark that as
2 Plaintiff's 1, Michael, I would appreciate it.

3 (PLF. EXH. 1, Amended Notice of
4 Deposition of Steven McKenzie, was marked for
5 identification.)

6 BY MR. EPTING:

7 Q. Mr. McKenzie, you do know that this is
8 all together an uncomfortable situation. I do
9 get that. And regretably Mr. Craven finds
10 himself in a pretty difficult position. And so
11 I'm sorry to have to ask you to come here and
12 testify but I'm not going to be long.

13 A. Okay.

14 Q. I believe I'll have you out of here in
15 an hour.

16 A. Okay.

17 Q. Tell me a little bit about yourself.

18 A. Well, do you want to start at the
19 beginning?

20 Q. Where are you from?

21 A. Year one?

22 Q. Yes. Where are you from?

23 A. From Kingstree. Born and raised in
24 Kingstree. April 9th, 1963 is my birthday. I
25 graduated from Williamsburg Academy in 1982.

1 Graduated from The Citadel in 1986. Graduated
2 from law school in 1994.

3 Q. And law school would have been
4 Carolina?

5 A. University of South Carolina, yes.

6 Q. All right. And when you graduated
7 from South Carolina what then did you do?

8 A. I went to work for, at that time it
9 was -- I believe it was just Coffee and Chandler,
10 P.A. in Manning.

11 Q. And how long did you stay there?

12 A. From '94 until the year 2000. January
13 1st of 2000.

14 Q. And what did you do then?

15 A. Myself and William Johnson opened up
16 Johnson and McKenzie, LLC, which is a law firm at
17 16 North Brook Street here in Manning.

18 Q. And how long did you stay with that
19 firm?

20 A. Until May of 2000 when Scott Robinson
21 joined our firm at my request.

22 Q. All right. And how long were you with
23 that firm?

24 A. Then that firm, we changed that name
25 of that firm, obviously, to Johnson McKenzie and

1 Robinson, LLC. And I was with that firm until
2 July of 2009. And I left that firm I went back
3 to work with, at that time, then it was Coffee
4 Chandler and Kent, P.A.

5 Q. Okay. And is that where you reside
6 now?

7 A. That's where I work now, yes.

8 Q. Right. And do you have family in the
9 county?

10 A. I do have family in the county. I
11 have three boys -- well, one's at the College of
12 Charleston. And then I have two boys here that
13 are 16 and one will -- I'm sorry, just turned 17
14 in April. My middle son and my youngest son will
15 be 15 in June.

16 Q. Okay. And do you have any other
17 family, extended family?

18 A. In Clarendon County?

19 Q. Right.

20 A. Not that I'm aware of. Very extensive
21 family in Williamsburg County. My grandmother,
22 when she passed away, had 51 grandchildren when
23 she passed away. So I have at least that many
24 first cousins.

25 Q. All right. How would you describe the

1 type of work that you have done in the decade
2 that you have been in Manning?

3 A. General litigation.

4 Q. And when you say general litigation
5 what does that mean?

6 A. Any type of litigation work, whether
7 it be criminal, domestic. A small town practice
8 is a little bit different than a big town
9 practice. Somebody walks in the door, they may
10 have a magistrate's court case, I could be
11 litigating it. I've facilitated everything from
12 someone's possession of a street sign, I'm
13 talking about one you stick in the yard, in
14 magistrate's court to, you know, to faulty
15 construction cases. Personal injury cases. You
16 name it. I mean, criminal cases. I've tried
17 murder cases. So it just depends on the case.

18 Q. When you were with Johnson McKenzie
19 and Robinson, how would you describe their field
20 of work, the firm?

21 A. We did a little bit of everything.
22 When I say that, William and Scott, mainly. I
23 did probably maybe one or two real estate
24 closings a year, and it had to be a particular
25 client wanting me do that closing. Scott and

1 William would do the majority of the real estate
2 work. I would and Scott would do the majority --
3 well, Scott was a public defender for a number of
4 years. And he's still doing that. He's still a
5 public defender now.

6 While we were at Johnson McKenzie
7 Robinson he was a public defender. So he did
8 that criminal work and I did paying clients'
9 criminal work. So he was doing the public
10 defender work and I had a private practice in
11 criminal work in litigation.

12 And Scott also did domestic work, and
13 he also did or still does domestic work. He also
14 does litigation. So he could do -- Scott's was
15 -- Scott's field of practice was a little bit
16 more broad than mine because he did real estate
17 and I didn't do that.

18 But depending on if it was a probate
19 case if it was litigated. I've taken a probate
20 case all the way up to supreme court that was
21 litigated. So it depends on litigation. If it
22 was litigation then that was mainly my field.

23 Mr. Johnson's field was mainly probate
24 transactional type work, real estate type work,
25 where Mr. Robinson was litigation and

1 transactional work.

2 Q. Was Mr. Robinson's litigation work
3 mostly on the criminal side or the divorce side?

4 A. Mostly.

5 Q. Let me ask you about a few policy
6 issues. When you were at the firm, and let's
7 just say that we're in the period '03 to '06, did
8 y'all have any kind of policy about opening files
9 and having agreements, retention letters with
10 clients?

11 A. Depending on the case. Every case was
12 different. Every fact -- I mean every client
13 that walked in the door was different. In a
14 small town we know most of our clients that walk
15 in the door. We've either been out with them or
16 seen them or are friends with them. So depending
17 on the client. Of course, personal injury cases,
18 we're required to have one. And we did that
19 according to the rules.

20 Domestic cases, it really depended on
21 the situation. In this county, it's a small
22 county, you have a lot of times people will walk
23 in the door. They don't have a lot of assets.
24 They've been married one or two years and want
25 what we call -- what I call a simple divorce.

1 Those kind of cases we charge a flat fee for or
2 would charge a flat fee for. Probably would not
3 do a retainer agreement, because it wouldn't be
4 more than going over, simply having a hearing
5 scheduled, going to courthouse and getting them
6 divorced.

7 So it really depends on the situation.
8 Complex litigation cases, I would say, yes, we
9 had retention letters on those.

10 Q. All right. Let me ask you this. No
11 matter, and maybe it was inartfully worded, but
12 no matter what the type of work, whether it was
13 simple or complex, was there an agreement reached
14 with the client in advance as to how the fees
15 were going to be charged, for example, a flat fee
16 or by the hour or contingency?

17 A. Yes. And that was each lawyer's
18 responsibility to do that.

19 Q. How would that be memorilized?

20 A. Sometimes it would be in writing and
21 sometimes it would be no more than a receipt.

22 Q. And a receipt meaning that it was a
23 flat fee and somebody --

24 A. Somebody wrote a check or gave us the
25 cash and we wrote them a receipt, and the money

1 was put into the firm account, and we handled the
2 case.

3 Q. So in other words you're, I think,
4 saying here that in these kinds of cases, where
5 it was a receipt, there's literally an agreement
6 on the front end that the fee is going to be \$500
7 for a simple divorce?

8 A. Right.

9 Q. The check is written and there's a
10 receipt.

11 A. Right.

12 Q. In the case in which the work is going
13 to be ongoing into the future --

14 A. Right.

15 Q. -- and it's going to be billed into
16 the future, was it the firm's policy to have
17 something in writing memorializing how that fee
18 was to be paid and what that fee was?

19 A. It was generally my policy to do. Now
20 whether it was the firm's policy -- we
21 didn't -- I don't remember a discussion with
22 Scott and William, and if I can use those names,
23 it probably would help me out.

24 Q. That would be easier.

25 A. I don't remember a meeting where

1 Scott, William, and I sat down and said okay, we
2 need to do a generalized agreement regarding each
3 case. We pretty much, you know -- there were
4 cases that we handled together. Scott and I
5 handled a large divorce case in this county
6 together. It was probably a five- or six-day
7 trial. And he was representing -- a mother was
8 actually suing her son and her husband for --
9 suing her husband for divorce, but the son owned
10 part of the property that the family owned or the
11 marital estate, and so she had to name him as a
12 defendant. So Scott represented the son, I
13 represented the husband. And so in that
14 situation I'm pretty sure we had an agreement
15 that -- because it was pretty complex.

16 Q. Let's just go back to it was your
17 policy. You had a policy that if there was a
18 client, for which you were going to do work into
19 the future, on an hourly basis, it was your
20 policy to have something in writing memorializing
21 that agreement.

22 A. Yes. And I can also tell you, for
23 example, in criminal cases, and Scott probably
24 would not have this, because he does public
25 defender work. A lot of times I'll get criminal

1 clients that will come in and they will pay a
2 basic retainer up front and then they will make
3 monthly installment payments on their case.
4 Because, generally, in criminal court it takes
5 awhile for the case to come up. And they don't
6 have all the money up front. So what we do is
7 charge them so much, and they will come in and
8 they will sign a fee or contract that says I
9 agree to pay X number down and then I'll pay you
10 so much a month until this amount of money
11 is -- this flat fee is paid.

12 Q. Do you think it's good policy to have
13 a clear understanding with a client about what
14 the fee agreement is going to be and how it's
15 going to be paid?

16 MS. WALL: Object to the form.

17 THE WITNESS: Yes. I think that would
18 be a -- it's always a good policy for your client
19 to understand what he's going to have to pay you.

20 BY MR. EPTING:

21 Q. All right. Would it be your policy or
22 the firm's policy, in this same period of time,
23 to define what the scope of the representation is
24 going to be? And let me just give you an example
25 of what I'm talking about. I imagine y'all do a

1 lot of different work for one client, meaning
2 there may be a house closing, there might be a
3 divorce, there might be some land dispute going
4 on. Is it your policy or the firm's policy to
5 define the scope of the work being undertaken
6 when you're entering into a fee agreement with
7 the client?

8 MS. WALL: Object to the form.

9 THE WITNESS: And I guess what -- and
10 let me just try to figure out what you're
11 trying -- the question you're trying to ask. Are
12 you saying I've got a client with multiple
13 issues?

14 BY MR. EPTING:

15 Q. Or maybe multiple cases.

16 A. Multiple cases. Okay. I would say
17 that if that client came in to me, I would
18 probably want to do a separate fee agreement for
19 each one of the cases, because each case is
20 unique and different, and every case may require
21 different types and levels of work. So I would
22 say depending on the case. One case, one
23 scenario you gave me may result in a flat fee.
24 Another one may be that we had to bill an hourly
25 rate. And so it really depends on -- it would

1 depend on whatever the issues and the case
2 involved, if it was multiple cases, that came in.

3 And a flat fee may not require a
4 contract. It may be something as simple as going
5 over to magistrate's court and handling a
6 speeding ticket. And we do that a lot in this
7 county. Because I-95 runs the length of the
8 county, so we get a lot of speeding tickets. And
9 we don't do fee contracts, we just charge them a
10 flat fee. Because we get into a fee contract, we
11 would spend more time getting the fee contracts
12 and all than the case is worth. So it's just
13 not, you know, it's just that the cost benefit
14 analysis of that is not worth it.

15 Q. Right.

16 A. So ...

17 Q. Do you believe that it's a lawyer's
18 responsibility, as law is practiced here in
19 Manning, to keep a client informed of the
20 significant developments that are occurring in
21 his case?

22 A. Certainly.

23 Q. And is it your policy or do you think
24 it's good policy to send and copy clients with
25 important documents that affect their case?

1 A. I do. And I need to qualify that
2 statement by saying that it really depends,
3 again, on the client. Because a lot of our
4 clients, I have this cell phone in my pocket,
5 they will call me, they have my cell phone number
6 on my card. And they will call me all hours of
7 the day and night and sometimes to my detriment.
8 I really don't want to talk to them. I keep them
9 informed that way. And I don't run back to the
10 office and follow up with a letter saying
11 pursuant to our conversation. Because if I did
12 that I would probably be writing five or six
13 letters to each one of my clients every day.

14 Q. Right.

15 A. But the significant events, like say
16 someone made an offer to settle a case, I may
17 want to call that client and say we've got an
18 offer to settle the case. What do you think?
19 And then send that in writing to them saying that
20 I think we should take the offer, I think that we
21 should reject the offer. Based on my experience
22 and expertise, I think this is the way we should
23 handle the case. That probably would be a
24 different scenario.

25 Q. Suppose you have sat down with a

1 client and have worked on preparing answers to
2 interrogatories or request for admissions or an
3 answer to a complaint and you have prepared that
4 document. Do you think it's good policy, is it
5 your policy to take a copy of the document, that
6 the client has assisted you to produce, that
7 you're going to send to your opposing counsel, to
8 provide a copy of that to the client for his
9 files?

10 A. It's probably good policy to do that.
11 Do I do it all the time? No. Simply because
12 most of the time my clients go over the
13 interrogatories with me and they have the copy
14 that I've sent off already there. So as far as
15 putting it in the mail? I'm not sure that
16 would -- if they already have it.

17 Q. No, I do understand that. Let me just
18 rephrase the question.

19 Do you think it would be good policy
20 to make certain that if you answer
21 interrogatories, on behalf of a client, that a
22 copy is either left with them, and if they don't
23 have it that it's mailed to them?

24 A. Yes. I think they should probably be
25 provided. And, really, again, I'm getting back

1 to the more complex cases. I think there's some
2 cases that when you get -- for example, your
3 \$2,000 wreck case, and we have a ton of those
4 here. I don't send copies of interrogatories
5 back to the client even though they may have
6 assisted. Because, like I said, at some point in
7 time, and we tell the client this, there's a cost
8 benefit analysis of this thing that you have to
9 worry about. We're trying to keep costs down in
10 your file. And then we leave that up to the
11 client. Do you want to be copied with everything
12 that we send out? Because we may have to charge
13 you for those things. And at the end of this
14 case it's going to come out of your settlement.
15 And so I don't, you know ... a lot of times --
16 every client that walks in the door, like I said,
17 is different. And every situation is different.
18 So if the client comes in and says listen, just
19 keep me informed of the big stuff. I'm paying
20 you to handle the small stuff. And a lot of
21 times we just answer the interrogatories, send
22 them out. Because, again, if we had to send
23 everything that we did to a client, some of their
24 bills would be enormous, and this is a small
25 town, and they just can't afford it.

1 Q. When you write letters, for example,
2 to other lawyers is it your policy to copy your
3 client if there's anything significant going on?

4 A. Significant.

5 Q. Right.

6 A. Now, the everyday correspondence like,
7 for example, hey, I received your
8 interrogatories. Can I get a ten-day extension?
9 I probably wouldn't copy that to the client.

10 Q. Right.

11 A. You know, something to that effect.
12 That probably would not be copied.

13 But if something came in, like I said,
14 a major event happened in the case, yes, I would
15 send a copy of that to the client. And generally
16 I make that call. I go into my secretary's
17 office and say, okay, make sure you send a copy
18 to the client when you mail this out to the
19 attorney.

20 So it really depends on the situation
21 and I make the call. Because, again, like I
22 said, a lot of times I'll write three- or
23 four-page letters, and those are the kind of
24 letters I want to go to the client. I want him
25 to see what we're talking about and make sure

1 they agree with it. So ...

2 Q. Is it your belief, Mr. McKenzie, that
3 you understand the law better than your clients?

4 A. It's my belief that I do.

5 Q. And is it your belief that generally
6 clients really do not understand how the
7 litigation process works?

8 A. They do not.

9 Q. All right. And because of that do you
10 find that clients typically are going to rely on
11 lawyers to walk them through the litigation
12 process and explain what's to be done and how
13 it's to be done?

14 A. If we -- yes. The answer is yes.
15 Because if we didn't have lawyers then -- I have
16 a case right now where the client -- it's in my
17 office, it's an adoption, in family court. And
18 they tried to do it pro se. Judge McFadden, the
19 family court judge here in the third circuit,
20 sent them a letter saying adoptions are too
21 complicated for you to handle pro se. You have
22 to have -- this is a -- even though it's a
23 relative adoption, they still have to have
24 consent, for purposes of adoption, from the
25 parents of the child. And those things have to

1 be certified by an attorney.

2 So all these things have to be done in
3 the right format. There's a code statute on
4 that. So these people would not know that and it
5 would be too complicated for them to do it. And,
6 basically, I read Judge McFadden's letter to the
7 client. They filed a pro se. And he said, you
8 know, guys, you're not going to be able to handle
9 this yourself. You need to really hire a lawyer
10 to do it. And so they brought that letter to me.

11

12 To make the answer as short as I can,
13 there are issues out there that cannot be handled
14 pro se. There are some issues that can be.

15 And if a client walks in, and I think
16 it's not going to be cost benefit -- cost benefit
17 is not going to be, you know, it's going to
18 greatly outweigh or -- or his benefit is -- he's
19 not going to benefit enough by hiring me to go
20 over and handle this case, I say you can handle
21 this yourself. This may be what you want to do.
22 I will do that for clients.

23 I don't necessarily want to charge
24 people fees, and go over there -- charge them
25 \$500 and they get a \$200 result. It just doesn't

1 make any sense.

2 Q. In cases in which, in the former case,
3 the case in which a lawyer's services really are
4 needed, do you want your client to rely on you
5 and to be able to trust in the advice that you're
6 giving them?

7 A. I would like to say that that would be
8 a perfect scenario. I'm not saying that always
9 happens. But, yes, I would like for that to
10 happen.

11 Q. Do you think that it's important for a
12 lawyer to be thorough and accurate in the work
13 that he does for a client?

14 A. Yes.

15 Q. Do you think that a lawyer should give
16 to his client his best efforts given the facts
17 that he's having to deal with?

18 A. Yes.

19 Q. Do you think it's important for a
20 lawyer, in representing a client, to make
21 certain, or as certain as he can, that a client
22 understands the scope of the case that is being
23 brought against him and the risk that he
24 confronts?

25 MS. WALL: Object to the form.

1 THE WITNESS: Yes. I think that a
2 client should be told that, you know, the
3 lawyer's opinion regarding what the potential
4 risk would be, and the potential downfalls of his
5 case, as well as potential upsides to his case or
6 potential benefits to his case. So, you know, I
7 think a lawyer should, yes, keep a client very
8 well informed. In some circumstances, you know,
9 say, hey, you have got a great case, this is my
10 opinion. In other cases you may say, I don't
11 think you have such a good case, and you may want
12 to resolve this case.

13 And then, you know, that's when you're
14 talking about the correspondence, earlier,
15 generally that's when I follow up with a letter
16 and say, you know, hey, this is the problem and
17 we need to address those things.

18 BY MR. EPTING:

19 Q. Have you ever had a situation in which
20 a client didn't want to take your advice about
21 something that was significant, in your view
22 significant?

23 A. Wow. Yes. I mean I've had that.
24 I've had clients that have said to me I don't
25 care what it costs, it's the principle, and let's

1 go to court. And sometimes they don't like the
2 results.

3 Q. Right.

4 A. And they don't like the fact of what
5 it costs. But I've been up front with them about
6 it and let them know that this is what I believe.
7 And they said okay. And then I give it my best
8 effort and it may not -- and I've had cases, I
9 know we all are lawyers sitting around this
10 table, and all of us have lost cases. And if we
11 haven't one of us needs to walk out of this room.
12 But I've lost my share of cases. And I've had
13 clients that have been that way.

14 Q. Well, let me ask you a follow-up
15 question. In situations in which, and I'll just
16 take what I think is your example. You have told
17 a client this is going to be very expensive, and
18 that he's saying I don't care what it costs, it's
19 the principle of the thing. Perhaps you're
20 trying to get him to take an early settlement and
21 move on with his life --

22 A. Right.

23 Q. -- whether he wants to move forward.

24 A. Right.

25 Q. And so in that way he's not following

1 your advice. And I assume the implication
2 is -- your concern is it will go and happen
3 exactly the way you said it will, and he's going
4 to be looking at a \$20,000 bill with a \$500
5 recovery. Am I more or less onto the way --

6 A. Yes. And then the other thing, and
7 I'll just give you just two recent examples. I
8 have a family court case, where I have a client
9 who is, and you get this in family court, they
10 are so upset with the other party that they
11 cannot think rationally sometimes. And so my job
12 is to think rationally for them. Because I'm
13 supposed to be the neutral detached party that
14 can give them the advice. Well, I may give them
15 that advice, and they still don't, because
16 they're irrational, they're so involved in the
17 emotions of the case that they still don't listen
18 to my advice.

19 And I just had a case that I thought I
20 had an agreement on, that we were going to put on
21 the record over in Kingstree, and it fell apart
22 at the hearing, because my client wouldn't listen
23 to my advice. And so now we're going to have to
24 try the case. And I have sent that client a
25 letter saying it was my advice that you settle

1 this case.

2 Q. And my question is in situations in
3 which clients might not take your advice, or you
4 think they're getting ready to do something that
5 is not going to work out for them, are those
6 situations in which you most certainly are going
7 to send the client something --

8 A. Yes.

9 Q. -- in writing?

10 A. Yes. I'll give you another example
11 but with a different twist. I had a situation in
12 magistrate's court, where it was a violation of a
13 city ordinance, and my client wasn't worried
14 about winning the case. What he needed was time
15 to get in compliance with the city ordinance. So
16 we had to ask for a jury trial. The city
17 expedited it. And so we had to end up going to
18 try the case. All I was trying to do was buy him
19 time so he could basically get his business in
20 compliance with the city ordinance.

21 So there are different, you know,
22 answers to that question. What is the result
23 that the client is looking for? They never
24 expected to win, because they were in clear
25 violation of the city ordinance, but they were

1 looking for time. So my job wasn't to win the
2 case, my job was to try to delay it, and give
3 them as much time as I could, and then after the
4 case negotiate even a little bit more time for
5 them to get in compliance.

6 So there are all kinds of different
7 objectives to different cases.

8 Q. And when you have unusual objectives,
9 for example, in a situation like that, that's
10 something that you would want to confirm with the
11 client in writing about what your representation
12 is.

13 A. In that case I did not confirm it
14 because that was a magistrate's court case. That
15 was, again, another one of those cost benefit
16 kind of cases. And I didn't confirm it in
17 writing to them, because we were both clear, and
18 it was somebody I know pretty well.

19 And then that takes me back to, again,
20 the type client you're talking about as to
21 whether or not you send them correspondence or
22 you talk to them or you go sit down and talk to
23 them. It depends on who the client is.

24 Q. Let me ask you a couple of questions.
25 In litigation, and I guess as a threshold for the

1 use of discovery in depositions, and so let's
2 just assume that the threshold is exceeded. Is
3 it your policy, in a litigation, a civil
4 litigation case, to use interrogatories as a way
5 to determine who the witnesses are against you
6 and what they might say?

7 A. And I would like to give you a yes
8 answer but not always.

9 Q. Okay.

10 A. And the reason being sometimes I have
11 clients that come in and say, again, I can't
12 afford a lot of litigation expenses or I can't,
13 for whatever reason, I don't want to engage in
14 discovery. And, you know, that happens. It
15 doesn't happen often but it does happen.

16 And so the answer to your question is,
17 you know, on a general, 99 percent of the cases,
18 yes, I would use it as a tool. But there are
19 times that we don't send out interrogatories
20 because we don't want the interrogatories coming
21 back to us.

22 For example, like in a domestic case,
23 where my client was committing adultery. He may
24 say, I don't want to divulge the name of the
25 person that I'm having the affair with.

1 Therefore I don't want to engage in any
2 discovery, unless it's been ordered by the court,
3 or I have to, I am forced to do that.

4 And so it really depends on the scope
5 of the representation and what kind of case we're
6 dealing with.

7 Q. Okay. If the client's instructions
8 were because of cost, that they didn't want you
9 to you engage in discovery, is that something
10 that you -- and let's say that this is not a
11 \$2,000 fender bender, but this is a case, maybe
12 not a \$100,000 case, but a serious case, and your
13 client says, I don't want to spend the money to
14 engage in discovery. Is that something that
15 you're going to confirm with the client in
16 writing?

17 A. If it's a significant case, I probably
18 would do that, yes.

19 Now, let me back up a second. Say it
20 was a personal injury case where we were
21 advancing the costs. We would send out the
22 interrogatories. Now, just say it's a litigation
23 where Joe is suing Bill or Smith versus Jones,
24 then it really depends on the client on client or
25 client to client situation as to what happens.

1 Q. So let me just make sure. In other
2 words, in the standard litigation case, when
3 y'all are advancing costs, since the costs are
4 yours, you're going to send out discovery, use
5 the routine discovery tools.

6 A. Right. Because we have a -- you know,
7 in a personal injury case, we are on a
8 contingency fee. Or if we take the case or say
9 even if it's a general litigation case and we
10 take it on a contingency fee. And I've done this
11 in other cases. If we're suing, and we're the
12 plaintiff, and we're trying to get a recovery,
13 then we will advance those costs and take it out
14 at the end of the case, because even though the
15 client doesn't continue the case, or just that,
16 they don't have the money to front their own
17 costs and we do that for them.

18 But if someone comes in and hires me,
19 and I'm billing them at this rate, they
20 understand that things have to be done in the
21 case, yes, I would bill them, send them the --
22 send out interrogatories, do everything I'm
23 supposed to do to make sure the case is advanced.

24 Q. Okay. And in that case that you just
25 described, if the client did not want to serve

1 interrogatories, or take depositions, would you
2 confirm in writing that you're not doing that
3 because that's his instruction?

4 A. Yes. That would not be discoverable
5 by the other side, that would be attorney/client
6 information. Yeah, I probably would.

7 Q. And do you find, Mr. McKenzie, that
8 things like interrogatories, request for
9 admissions, request for production, are helpful
10 tools in trying to understand the other side's
11 case, and trying to get a quicker settlement for
12 your client and, therefore, they're worthwhile
13 tools available to a lawyer in the litigation
14 context?

15 A. They are worthwhile to some extent. I
16 don't think that they are -- I think, you know,
17 in today's climate, that a lot of people -- a lot
18 of lawyers on the other side of cases, you know,
19 you may not get all the information that you ask
20 for. I see a lot of objections in interrogatories
21 anymore. And you can either fight that battle in
22 court and ask the judge within the -- require
23 them to answer the interrogatory or you can let
24 it go. So if they don't like your interrogatory,
25 nine times out of ten they're going to object to

1 it.

2 So it gives me -- what I find
3 interrogatories give me is the names of the
4 witnesses, any expert witnesses that are out
5 there, and basically that's probably about it.
6 Anything else they pretty much object to anymore.
7 You may see that also. But I usually use it as a
8 witness list from interrogatories. Maybe a
9 synopsis of their case, you know, what they're
10 looking for.

11 In a personal injury case I may get to
12 find out the limits of the liability coverages,
13 so I know what costs I should be in for, or
14 should I sue a UIM carrier. Those things are
15 useful in that regard.

16 Q. Do you think in a case of moderate
17 exposure, fifty to a hundred thousand dollars,
18 that a competent attorney is going to make use of
19 interrogatories, production requests, request for
20 admissions, in advance of his case and his
21 client's case?

22 MS. WALL: Object to the form.

23 THE WITNESS: Yes.

24 BY MR. EPTING:

25 Q. You have tried a good many cases in

1 your 20 years?

2 A. Seventeen in November.

3 Q. Seventeen years.

4 A. Uh-huh.

5 Q. When you are preparing for a case, and

6 I know every case is different, and I'm less

7 interested in the magistrate's court case, in

8 which you know the only witness is the police

9 officer, and you have cross-examined him 27

10 times, and you know what his story is, what he's

11 going to say. I'm more interested in something

12 like, you mentioned a construction law case,

13 something that has some meat on it. You're

14 getting ready for trial. What, at a minimum, are

15 you going to do in order to prepare for trial?

16 A. Well, I'm going to depose the

17 witnesses. That's what that witness list you're

18 talking about, interrogatories, is for.

19 Q. All right. And what's the reason to

20 depose witnesses?

21 A. To know what they're going to say.

22 Q. And you want to know what they're

23 going to say for what reason?

24 A. For cross-examination purposes.

25 Q. At trial?

1 A. Right. Because a lot of times, you
2 know, as well as I do, that what they testify to
3 on the stand may not be what they testified to in
4 the deposition.

5 Q. Right.

6 A. And I need to know in advance what
7 they're going to say.

8 Q. All right. So you're to take the
9 depositions.

10 A. Right.

11 Q. What else are you going to do?

12 A. I may send out requests to admit and
13 try to pigeonhole them into certain testimony. I
14 know that, like I said, we've already talked
15 about interrogatories. I'm assuming those have
16 been sent out. We're talking about the moderate
17 case.

18 Q. Yes.

19 A. That the client may have the potential
20 of losing 50- or \$60,000. We will have done
21 discovery. We will have, hopefully, depending on
22 what side of the V I'm on, hopefully we'll have
23 entered into some kind of negotiations to either
24 settle the case or not.

25 Q. What about production requests?

1 A. Oh, I'm sorry. Yes. When I'm talking
2 about discovery, generally, discovery, that would
3 be part of that, yes.

4 Q. All right. And would it be the
5 average -- in your opinion would the average
6 competent lawyer prefer to have his
7 interrogatories and his production of documents
8 before he begins taking depositions?

9 MR. POWELL: Object to the form.

10 THE WITNESS: Yes. But that's not
11 always what we get. You know that. I mean it's
12 just one of those things that a lot of times you
13 go into a deposition, and that's why depositions
14 sometimes take so long, because you have no
15 knowledge of the other person and what they know.

16 BY MR. EPTING:

17 Q. So let me move you forward. Let's
18 just say that you have got this general civil
19 litigation case coming to trial. And you've done
20 your discovery, the interrogatories are answered,
21 request for production, the documents are in,
22 you've taken a few depositions, you've deposed
23 the expert. And the case is going to be tried.
24 And so we're two weeks out from trial, let's say.
25 And let's assume that you have got a fair judge

1 and competent counsel on the other side. What do
2 you begin doing in order to be ready on Monday
3 morning to start that trial?

4 A. Two weeks out?

5 Q. Yes.

6 A. I make sure that my witnesses are
7 tight. And what I mean by that is that they have
8 copies of their depositions if they've taken
9 depositions. And that they know what they said
10 in the deposition. They would review that. And
11 we would go over their testimony. I usually
12 prepare a general list of questions that I'm
13 going to ask them in trial. So witness
14 preparation, I think, is probably the most
15 important part of getting the case ready for
16 trial. Go over their responses, if we have
17 discovery, of what they've said in discovery.
18 Been over their depositions, their discovery
19 responses. We've discovered what they're going
20 to say in discovery. And, you know, again, try
21 to settle the case again before we go to trial.

22 Q. And what about, for example, there are
23 going to be witnesses against you. How do you
24 approach preparing yourself for
25 cross-examination, if at all, before the trial?

1 A. Well, I read their depositions and try
2 to ferret that out with other witnesses'
3 testimony in depositions, or other witnesses'
4 statements that I may have, to try to see where
5 the differences lie in those -- in depositions or
6 statements.

7 Q. And as a rule are you developing notes
8 along?

9 A. Yes. I'm developing notes for my
10 cross-examination. I am, you know, making sure
11 that I have in my mind my what I call theme for
12 the case. You know, what is my theme? What's my
13 overall goal? Where am I trying to get to and
14 where are my witnesses and I'm aligning my
15 witnesses to achieve that goal.

16 Q. What about opening statement? Do you
17 prepare an outline of your opening statement
18 before you --

19 A. I do but I end up never using it. I
20 like to do it simply because I like to organize
21 my thoughts. And a lot of times I'll sit down at
22 the computer and just write out an opening
23 statement. I'll have it with me. But I
24 generally, when I get into trial, I usually get
25 into that mode and I never usually even look at

1 it.

2 Q. Okay. What about voir dire request
3 for charges, plea trial briefs? Do you prepare
4 those?

5 A. I generally don't do a pretrial brief
6 to the judge unless the judge requests it. And
7 some judges do, some judges don't.

8 Voir dire? Generally I do voir dire.
9 A lot of times judge's charges usually or judge's
10 instructions or questions to the jury usually
11 suffice in most cases.

12 But, again, depending on the case.
13 Again, if the case is unique. Most judges, you
14 know will say do you know any of the parties? Do
15 you know -- you know, they will go through that
16 whole litany of questions, and they're pretty
17 standard. And they usually suffice in most
18 cases.

19 If there's something specific to the
20 case, like a wreck case, for example, judges
21 generally ask has anybody ever been involved in a
22 motor vehicle accident? Ever been a plaintiff or
23 defendant? Ever sued anyone with regards to
24 motor vehicles? They will ask those questions.
25 I generally do put those in a voir dire.

1 Q. Okay. How do you approach getting
2 your research together in anticipation or do you
3 do your research in advance of trial to prepare
4 for directed verdict motions or how you want the
5 case to go?

6 A. Again, it depends on the case. If
7 it's a complex case, that I'm not as familiar
8 with the law on, then I will research the law and
9 make sure I have the law ready to go, in
10 anticipating those directed verdict motions. Or
11 if I make the directed verdict motion, I need to
12 have that research available and ready to go.

13 So I would have, you know, I would
14 have that research done. And I would have a file
15 in my box that said research, and then particular
16 issues, and then I would have it, those issues,
17 or case law, all ready to go.

18 Q. Do you know that in order to make a
19 JNOV motion on a particular ground that you can
20 only do that if you have made a directed verdict
21 motion on that same ground?

22 A. Yes.

23 Q. Do you think that that is generally
24 known amongst competent counsel in Manning?

25 MR. POWELL: Object to the form.

1 THE WITNESS: I don't know. I've seen
2 some lawyers that have not done that in cases,
3 yes.

4 BY MR. EPTING:

5 Q. Let me ask the question this way.

6 A. Okay.

7 Q. Should someone who holds himself out
8 as competent counsel know that?

9 MR. POWELL: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. EPTING:

12 Q. Tell me, you know Dennis Craven, and
13 have for many years.

14 A. Yes.

15 Q. The two of you are friends.

16 A. Best of friends.

17 Q. How do you know about this case, the
18 underlying case of Mr. Austin against
19 Stokes-Craven?

20 A. This case was tried in 2006 I believe.

21 Q. 2006.

22 A. Okay. And I'll just, you know, tell
23 you what I told you earlier. Best friends.
24 Scott is best of friends too. I was the one who,
25 and just to give the general background on this

1 whole friendship issue, I was the one who brought
2 Scott onto the law firm, whenever William and I
3 went out on our own, because I've seen Scott,
4 tried cases against Scott, and believed that he
5 was a very good lawyer.

6 Now, having said that. I have known
7 Dennis Craven since I've been in Manning, and
8 bought every vehicle, in fact the vehicle I'm
9 driving right now I brought from Dennis Craven.
10 The house I'm living in right now I brought from
11 Dennis Craven. So ... we have all been on
12 hunting trips together. We have all been out
13 socially together. So these are my friends.

14 So when I found out about this case,
15 going back to your question, it was -- I think
16 that I found out about this case when Scott came
17 in the office, and our general practice, and when
18 we were together, the three of us were together,
19 and Scott and I are the same way still, is that
20 we bounce things off each other. What I mean by
21 that is if we get a case in we'll come in and
22 we'll say, hey, this case just came in. This is
23 what's going on? What do you think?

24 You know, I think Scott and I had a
25 conversation, when he first got this case with

1 Dennis, about that. As far as the details of
2 what that conversation would be? Five years ago.
3 As you know, these cases kind of blend together
4 after awhile, after the years.

5 But I know that it was a case where
6 someone was claiming that Dennis had sold them a
7 bad automobile. In regards to the details of the
8 case, I learned bits and pieces of it, as Scott
9 would bounce those things off of me, before the
10 trial. And then I learned more of the case after
11 the trial. So I guess what I knew before and
12 what I knew after I really couldn't tell you. I
13 do know that he would bounce things off of me.

14 Q. Well, just take me, as you can best
15 recall it, through the chronology of your
16 education in this file. And I hear you, what
17 you're saying is some of this you may actually
18 have learned sooner or later in time, but just
19 sort of walk me through your exposure to this
20 case.

21 A. I don't recall having a conversation
22 with Dennis about this case before the trial. I
23 had conversations with Scott about the case
24 before the trial. And, again, my recollection
25 is, and I've had conversations with Scott about

1 this case, you know, since this litigation began.
2 And I know that he and I -- we don't have the
3 same recollection about some events.

4 One event was that Scott came into my
5 office and, of course, concerned about the case,
6 just like he would be any case. This was a
7 friend of his, this was one of his best friends.
8 Scott was up at that dealership almost every day.
9 You asked me earlier about writing clients and
10 keeping clients informed. I assumed that Scott
11 was not up at that dealership every day just
12 hanging out. I think he was probably up there
13 talking to Dennis about the case.

14 By the same token Scott came in, I
15 just, like I said, this is just something that
16 stands out in my mind. He and I were talking
17 about the case, and the facts were not great,
18 were not good facts in this case. And I don't
19 remember if I knew about the forgery issue before
20 or after the case. I think I knew about it
21 before. But I don't recall. But anyway I
22 trusted Scott's opinion.

23 So I said, Scott, what do you believe
24 your exposure in this case to be? And I recall
25 him saying that he believed it to be no more than

1 the value of the vehicle. That Dennis may have
2 to buy the vehicle back. He does not have that
3 recollection of that. And that's where friends
4 can differ on recollections.

5 The chronology of the case was that I
6 had little to do with the case other than
7 bouncing ideas off of me prior to it. And, like
8 I said, what those ideas were I don't know,
9 except I do have that, for some reason, I have
10 that in my mind as a memory of what we discussed.

11 Q. Let me just ask you one question,
12 going back to something you said. And I may not
13 have your exact words, but you said something
14 like they weren't great facts.

15 A. Uh-huh.

16 Q. What led you, with your years of
17 experience, to conclude these were not great
18 facts or this was not a great case?

19 MS. WALL: Object to the form.

20 THE WITNESS: I understood that the
21 vehicle had been wrecked and that the -- that it
22 was disclosed to the client or to the customer of
23 Dennis or Dennis's customer that it was not,
24 there was no -- like you get a Carfax report now
25 saying what the condition of the car was. This

1 was relayed to the customer that it was not.
2 And that was concerning to me. And that's why I
3 would have asked that question, I think, of
4 Scott.

5 I think this is why this is coming
6 back in my mind. Because I knew that fact.
7 That's why I'm saying I don't know if I knew the
8 forgery beforehand or not, I think I did.
9 Because I think there was two issues in this
10 case, if I recall. And I don't know, like I
11 said, whether I learned this before or after the
12 fact. One was the fact that the vehicle was
13 wrecked. And the other was that a document had
14 been forged in the case. And not by Dennis. I
15 mean, listen, Dennis has employees, and I know
16 Dennis wouldn't do that. I'm just saying I think
17 it's one of those situations where he had an
18 overzealous salesman that wanted to make a sale.
19 And, you know, those things happen.

20 And so that's why the conversation
21 came up about the exposure. And what I mean by
22 exposure, what are you looking at as damages?
23 And I trusted Scott's opinion. And he said to me
24 that he didn't think -- now, of course, we never
25 know what a jury is going to do, but he didn't

1 think that there would be any more exposure than
2 the cost of the vehicle.

3 Q. Well, is the context here,
4 Mr. McKenzie, you're obviously a more seasoned
5 lawyer, you're looking at this case, I assume
6 that you didn't think that this was -- that a car
7 dealer selling a used car was a favorable fact.

8 A. Right.

9 Q. And by that I would mean that you're
10 going to have a lot of car owners on the jury but
11 you're not going to have a dealer on the jury.

12 A. Right.

13 Q. But I gather that maybe your knowing
14 that this vehicle had been wrecked, the issue is
15 was the plaintiff told that, and the question of
16 forgery, you were questioning whether or not
17 Scott's assessment of the danger here was
18 realistic and was the exposure greater?

19 A. Right. And, again, you know, in this
20 situation, it did concern me that, you know, it
21 was going to be Stokes-Craven on the other side
22 of the V. Because, as you know, as well as I do,
23 you're going to have a lot of people sitting on
24 that jury that have bought bad cars. Everybody
25 has bought a bad car. And so that concerned me.

1 That's why I think we had that discussion, you
2 know, is what is your exposure? What do you
3 think you're looking at? Because the facts just
4 don't sound good to me. And he gave me his
5 assessment. That's how I recall it. He recalls
6 it differently.

7 Q. All right.

8 A. I don't ...

9 Q. Let me just ask you this. You
10 mentioned that this was Stokes-Craven.

11 A. Uh-huh.

12 Q. And would you in this case have had
13 some voir dire, intending to try to figure out if
14 there were people in that voir dire who had had
15 bad experiences with Stokes-Craven, is that
16 something you would have sought to have obtained
17 through voir dire?

18 A. That would be a good question to ask.

19 Q. Okay. So you have related one
20 conversation that you remember with Mr. Robinson
21 about it. And I would imagine there were others
22 perhaps just general knowledge.

23 What other conversations did you have
24 with Mr. Robinson? Let's just stop before the
25 verdict.

1 A. Okay.

2 Q. Before the verdict what other
3 conversations, if any, do you recall?

4 A. I recall that we went, myself and
5 William, went to watch, and I didn't recall this
6 until after the fact, someone actually told me
7 that I went over there, and now that I think
8 about it we did, we went and sat and watched a
9 little bit of the trial. Thought Scott was doing
10 a great job in the trial. I mean, it seemed to
11 me -- and we didn't watch much, we may have
12 stayed an hour or two, just to watch what was
13 going on. And, you know, what was going on, at
14 that time, I just remember thinking that Scott
15 was doing a good job. And then I left. I
16 remember that during the trial, Scott was very
17 confident during the trial. It was not one of
18 these situations where he was coming back
19 reporting that he was losing, or that he felt
20 like he was losing, or he felt like he didn't
21 have the jury. Because it was -- I don't recall
22 how many days' trial.

23 Q. Three.

24 A. Three days. Okay. I knew it was a
25 number of days, but I just don't recall, didn't

1 know if it was three or four. But anyway.

2 And I remember him coming back and,
3 you know, you get in trial mode, what I call
4 trial mode, you feel confident about it. And I
5 think he felt like things were going his way.
6 And so he -- I don't recall, during the trial,
7 hearing him coming in bouncing any questions off
8 of me at that time. Of course we all were busy
9 doing our own stuff too. But it seemed to me
10 that I thought he was doing a great job, and I
11 thought the trial was going to go well for him.
12 I thought his client knew of the exposure. And
13 I'm not sure if I said to Scott as long as your
14 client understands the exposure, you know, then
15 you do what you've got to do, if he wants you to
16 try the case.

17 Because I do remember Scott being very
18 adamant that Dennis wanted to try this case,
19 because he wanted to send a message, you know.
20 You just can't, you know ... and I said, well,
21 these facts aren't great. What do you think your
22 exposure is? And that's where all this came
23 about was the fact that Dennis wanted to send a
24 message and a very strong message. And I'm not
25 sure if that was coming from Dennis or from

1 somebody higher up in the Stokes part of the
2 situation. But I remember that that was talked
3 about.

4 Q. That's the conversation you had with
5 Scott.

6 A. Yeah. I don't know if it was that
7 same time about the exposure question, but it was
8 that they needed to defend this case, because it
9 needed to stop. I don't know this guy, the
10 plaintiff's lawyer. But I understand that he had
11 sued a number of the Stokes dealerships in the
12 Charleston area. And I don't even know how many
13 dealerships they have down there but whatever.
14 And it seemed like he was moving up the state
15 with the Stokes people.

16 Q. Did you ever have any conversation
17 with Dennis about him understanding the exposure
18 or that --

19 A. I've had conversations with Dennis
20 subsequent to the trial.

21 Q. Okay. Well, let's hold those. Did
22 you have any conversations with him before the
23 trial about him understanding --

24 A. Never.

25 Q. -- the exposure, wanting to try this

1 case?

2 A. This was Scott's case.

3 Q. All right.

4 A. I did not go and talk to Dennis about
5 his case.

6 Q. Okay.

7 A. Because my understanding was that, and
8 Scott had handled other work for Dennis before
9 too. And so this was Scott's client.

10 Q. Right.

11 A. Okay?

12 Q. What about conversations with
13 Mr. Robinson after the verdict?

14 A. Yeah. I had a very candid conversation
15 with Scott after the verdict.

16 Q. When was this?

17 A. Immediately after the verdict.

18 Q. Tell me about that conversation.

19 A. Well, it was at the Yucatan, which is
20 a Mexican restaurant, and Scott was there. We
21 heard about the verdict. I think it came in
22 about four o'clock in the afternoon, three or
23 four o'clock, somewhere in that time frame. And,
24 of course, it was a large verdict, it was
25 \$200,000 plus I believe. And, you know, to be

1 honest with you, I was a little stunned. Not a
2 little stunned, I was stunned. Because I had not
3 expected it to be anywhere near that. Obviously,
4 I mean, I thought probably Scott -- like I was
5 relying on Scott's judgment, and he thought it
6 was a verdict that was going to be -- the
7 exposure was going to be limited.

8 When I got to the Yucatan, Scott was
9 devastated. Not only was he devastated that he
10 lost the case, he was devastated because he lost
11 the case for his friend. And this is probably
12 why friends should not try their friend's cases.
13 But to him that was the most devastating part of
14 it. But it was that, you know, that he lost the
15 case for his very good friend. And was upset.
16 And I was trying to console him saying, listen,
17 we all lose cases. We all are going to have bad
18 days. And I've had bad days too. I've had
19 terrible days. I've lost cases, and I've won
20 cases, and it's just -- that's the kind of
21 conversation I was giving him. And I was trying
22 to say, Scott, you're a great lawyer, and he is a
23 great lawyer. But I was just saying that, you
24 know, you can't control what juries do, and you
25 can't control the facts that come out on the

1 stand.

2 Q. Did he have any explanation for what
3 went wrong? Anything to say to you?

4 A. I recall he didn't want to talk about
5 the case. I mean the case was over. I mean it
6 just -- it was just like picking your best friend
7 up off the floor. I liken it to a divorce. Your
8 friend's going through a divorce, you're going
9 over there just to console him, do whatever you
10 can. Because it was that devastating to him. He
11 was that upset about it, about losing the case.
12 I think he was shocked that he lost the case.

13 Q. Did you have any subsequent
14 conversations with him about the case?

15 A. Yes.

16 Q. When was this or these?

17 A. Oh, it would have been, you know,
18 ongoing. I mean I can't recall. We talked about
19 the case numerous times. Because I didn't know
20 beforehand that the discovery was not done, like
21 we had talked about, that you talked about
22 earlier. And Scott's explanation of that was
23 that Dennis didn't want him to do any discovery,
24 Dennis had limited it or wouldn't let him do any
25 discovery in the case. And so that's Scott's

1 explanation of it.

2 And I've talked to Dennis about the
3 case. And Dennis's explanation is he thought he
4 was hiring Johnson McKenzie and Robinson, which
5 puts me in this predicament where, you know, that
6 he thought he was hiring the law firm, that's
7 what he tells me, and he got Scott at trial, and
8 he was wondering where we were? And I say we,
9 myself and William. And, like I said, my
10 understanding was that Scott, that he came in and
11 -- he may have hired the law firm, but Scott was
12 representing him in the case.

13 Q. Have you ever heard Mr. Craven say
14 that he put some limitation on Mr. Robinson about
15 doing discovery or that he wanted to try this
16 case to send a message? Have you ever heard
17 anything like that from Dennis?

18 A. No, I didn't hear that from Dennis. I
19 heard that from Scott.

20 Q. All right.

21 A. And I can tell you the exact words
22 that Scott told me, and I hate to be crude, but
23 this is what Dennis said to him, we need to break
24 it off in him. Meaning talking about the other
25 attorney.

1 Q. Okay.

2 A. Just meaning that we need to be as
3 ruthless as we can. Meaning we needed to
4 be -- we don't need to give him an inch. We need
5 to be -- we need to fight every issue. That's
6 what I took that to mean. But that came from
7 Scott. I never heard Dennis ... like I said, I
8 never talked to Dennis about the case prior to or
9 until after the case was over with.

10 Q. Right.

11 A. And then the time that I did talk to
12 Dennis about the case was when I was with -- I
13 had left Johnson McKenzie and Robinson and joined
14 the other firm. I got a call from Dennis one day
15 and he said, I need to talk to you. And he was
16 upset, visibly upset. So I dropped what I was
17 doing. Like I said, this is my friend. And I
18 went to his office. And he was -- this was after
19 the supreme court opinion had come down. And I
20 was actually there the day the court, that this
21 case was argued in front of the supreme court,
22 because I had the case, I don't know if it was
23 before or after, but I had State versus Edwards,
24 a criminal case that I had appealed on facts and
25 issues. But I won that case.

1 They were actually sitting in the
2 gallery waiting on the case or either -- I can't
3 recall if I was first or they were first. But
4 anyway. So ... and I was actually working for
5 the other firm at that time. And so Scott was
6 there. I mean Scott was
7 so -- Scott was so interested in hoping that the
8 supreme court would do the right thing, and
9 overturn the case, right thing being the right
10 thing for Dennis, and the right thing for him,
11 that he was physically present. I mean, he went
12 there, even though he was not involved in the
13 appeal.

14 I guess I lost myself. Tell me what
15 the question was.

16 Q. I think I had just asked you if
17 Mr. Craven had ever said anything to you about
18 wanting to break it off in him?

19 A. Right.

20 Q. Or full speed ahead, whatever.

21 A. Right. And I was telling you about
22 the day that Dennis called me up. I don't
23 recall, I know it was after I left Scott and
24 William, and before Scott came to work with my
25 current law firm. So it was in between that time

1 frame. I get a call from Dennis and he's upset.
2 He's visibly upset. I assumed something happened
3 to one of his children, maybe something was going
4 on with his marriage. I didn't know what the
5 issue was. So I dropped what I was doing
6 because, like I said, this is one of my very best
7 friends. And I go and I go to his office and he
8 says, you know, you know the verdict came down
9 from the supreme court, and I think they may have
10 just received the verdict from the supreme court
11 or the ruling from the supreme court.

12 And he says that to me that his
13 attorney advised him that Scott had made some
14 errors in the case. And that they felt like that
15 he needed to make a claim against the E and O
16 policy or the malpractice carrier in regards to
17 the claim. And Dennis wasn't there just to tell
18 me. He told me that just to let me know why he
19 was upset. It was more of, you know, I hate to
20 do this to my friend. This is my friend first,
21 you know, but I'm being told by other people that
22 this is what I've got to do. And, like I said,
23 you know, we talked about that.

24 And, you know, of course, you know, I
25 think my name is on that caption. And so I

1 didn't know my name was on the caption, I just
2 saw it. I may have been served but my name is on
3 that caption.

4 And I said to Dennis, you have the
5 advice of lawyers that are advising you. I said,
6 I don't know, I didn't try this case. I don't
7 know anything about the facts of the case except
8 what I've been told afterwards. And I said, you
9 have lawyers. If they're telling you that Scott
10 made errors, then you need to do what you need to
11 do. I said, I can't tell you not to do that.

12 I said, Scott is your friend. I know
13 he will be your friend when this is all said and
14 done. I said that's what friends are. I mean,
15 it's not that -- I guess I was trying to tell him
16 that I didn't think this was going to -- that
17 Scott was going to hate him for it. He was
18 afraid that Scott was going to hate him for doing
19 this. And I don't think Scott has that in him.
20 I don't think Scott is that kind of person.

21 Q. When you were having the conversation
22 with Mr. Robinson, about him being told by Dennis
23 that he wanted his case defended, and that they
24 needed to teach Moskos a lesson --

25 A. And that's the guy's name, Moskos?

1 Q. Moskos.

2 A. Okay. I knew it was some lawyer that
3 was particularly going after the Stokes-Craven
4 name. Not necessarily the Craven name, because
5 Dennis has one dealership, but it's the Stokes'
6 name.

7 Q. Right. Did you know, at that time,
8 that there was no discovery that had been done of
9 any kind?

10 A. No, I did not.

11 MS. WALL: Object to the form.

12 THE WITNESS: I did not talk to Scott
13 about what he had done and what he had not done.
14 This was Scott's case. I know Dennis thought
15 that we all were involved in it. But, you know,
16 this was a file that Scott kept in his office. I
17 never looked in his file. I never asked him
18 those questions. Did I assume those things had
19 been done? I mean it never crossed my mind to
20 assume they were or were not done. Does that
21 make sense?

22 Q. Well, let me ask the question this
23 way. If you have instructions from a client that
24 this case needs to be defended vigorously,
25 because we want to break it off in him, or words

1 to that effect --

2 A. Right.

3 Q. -- do you view it as inconsistent with
4 that marching order to serve no interrogatories,
5 serve no production requests, take no
6 depositions, submit no voir dire, no request for
7 charge, no trial brief. Is that vigorously
8 defending the case, in your opinion?

9 MS. WALL: Object to the form.

10 THE WITNESS: No. But I would like to
11 qualify that answer. I don't think that's
12 vigorously defending the case. But in the same
13 token, since this litigation has started,
14 Mr. Robinson has informed me that there was a
15 reason that the litigation was not or the
16 discovery was not vigorously pursued.

17 BY MR. EPTING:

18 Q. And what was that reason?

19 A. According -- Moskos was going after
20 the Stokes' name, as we talked about. And
21 Moskos, my understanding from Scott was that
22 Dennis was afraid that Moskos would get his
23 customer list if they had to answer
24 interrogatories. That that would be one of the
25 interrogatories that they would answer. And I

1 think I've learned since then that Scott, I think
2 interrogatories were sent by Moskos, Scott just
3 didn't answer them. And that if Scott sent out
4 interrogatories he would have to answer Moskos's
5 interrogatories. I believe I'm correct on that.
6 But I don't know that. I mean I haven't seen the
7 interrogatories. I'm just telling you what I
8 think I've been told.

9 And, like I said, again, my memory,
10 you know, unfortunately, is not perfect, but ...

11 BY MR. EPTING:

12 Q. Do you think, Mr. McKenzie, that if
13 you, counsel here in Manning, in this period of
14 time, had been given instructions that we don't
15 want to do discovery, for whatever reason, and
16 you have also been given instructions that we
17 want to defend this case to the max, and you
18 realize that the discovery mechanisms have been
19 taken away from you, would you have written the
20 client and put that in writing?

21 MS. WALL: Object to the form.

22 THE WITNESS: I've got to go back to
23 the relationship that Scott and Dennis had and I
24 have. And, again, why you probably should not be
25 trying your best friend's cases. But the

1 relationship would have been I may have gone to
2 Dennis, and sat down across the table from him,
3 like I did that day that we talked, and said,
4 Dennis, you need to settle this case. These are
5 bad facts, this could go very wrong in a jury
6 trial. A jury could absolutely hate you because
7 you're Stokes-Craven versus the little guy. This
8 is a David and Goliath situation. I would
9 probably have that conversation with him. I may
10 have followed it up with a letter or may not have
11 because it was Dennis.

12 So it really, you know, I can't say
13 that in every -- you know, if it would have been
14 probably anybody else, yes. But I'm not saying a
15 hundred percent sure I would have followed that
16 up with a letter to Dennis, because simply of the
17 relationship that Scott and Dennis have.

18 I mean, you have to understand, Scott,
19 I mean, and Dennis, and myself, and another
20 individual in town, named Ron Wall, who works at
21 the Bank of Clarendon, we hunted together a lot
22 of weekends. We went off on hunting trips
23 together. We socialize, our wives socialize
24 together. We were friends, best of friends.

25 So I'm not sure that that would be a

1 yes or no answer with Dennis. I would probably
2 have gone to Dennis and sat across the table from
3 him and said, Dennis, this case needs to be
4 settled.

5 Q. Well, let me ask you this. So the
6 issue here really is in the situation, and let's
7 take your example, you said, I think, Dennis,
8 this is a complicated case. This is a dangerous
9 case. You've got some exposure here. Whether you
10 put it in writing or not, you would have sat
11 across the table from him, in clear and uncertain
12 terms, and explained to him do you really
13 understand the decision that you're making here?
14 Because we need to understand what this case is
15 about and what your exposure is about. That
16 would have happened.

17 MS. WALL: Object to the form.

18 THE WITNESS: That would have
19 happened.

20 BY MR. EPTING:

21 Q. And would you expect that if that
22 happened that Dennis Craven is of a character and
23 integrity, that if it happened in the way you
24 envision it happening, that he would clearly have
25 understood, would clearly admit that that

1 conversation did occur?

2 MR. POWELL: Object to the form.

3 THE WITNESS: I think Dennis would

4 admit to that conversation having occurred.

5 However, I don't think Dennis was driving this

6 train. I think this train was being driven by

7 people that he's in partners with. And so I

8 don't think that he was giving -- the

9 instructions were coming to quote break it off in

10 Moskos.

11 BY MR. EPTING:

12 Q. And do you say that because of

13 anything Dennis said or because of what

14 Mr. Robinson said to you?

15 A. Because of what Dennis said to me.

16 And that was that conversation we had subsequent

17 to that. And when he called me over, and I was

18 telling -- and he was talking about his

19 friendship with Scott, and about how he felt like

20 this was going to be a nail in the coffin of that

21 friendship. And I was trying to reassure him

22 that, you know, that Scott is the kind of person

23 that, yes, he is -- it's going to hurt him,

24 there's no doubt. When you question someone's

25 ability in their profession that it's going to

1 hurt them, especially when it comes from your
2 friend, it's going to hurt. But I also felt like
3 that Scott was the kind of person that it would
4 not be the end of their friendship. And that's
5 what Dennis was concerned about. And so in that
6 conversation Dennis said, I'm not pushing this
7 issue.

8 Q. Meaning filing the lawsuit.

9 A. Right.

10 Q. Right.

11 A. I'm not pushing this issue. This
12 issue is being pushed from, and he did not name
13 any names, I'm assuming from his partners. And
14 so Dennis was as upset about having to do this as
15 Scott was as upset at losing the case the night
16 he lost the case. That's how distraught he was
17 over it. And I liken the two events to two very
18 similar, you know -- it was heart wrenching for
19 both of them.

20 Q. Back to the issue of sitting down with
21 the client and explaining things to them. If you
22 were instructed to try a case, and vigorously
23 defend it, and that you were likewise instructed
24 to serve no discovery, request no documents,
25 retain no expert, take no depositions. Would you

1 have sat down with that client, in a complicated
2 case, and explained that the two of those are
3 pretty much exclusive of each other?

4 MS. WALL: Object to the form.

5 THE WITNESS: I don't know that I
6 would have explained it that way to Dennis.

7 BY MR. EPTING:

8 Q. How would you have explained it?

9 A. I would have said that this is, again,
10 you are the big -- you've got the big brand new
11 dealership on the hill, and you're going to have
12 twelve people sitting in that jury, that are
13 going to see that your company forged a document,
14 and that your company sold a vehicle that had
15 been previously been wrecked, damaged, and had
16 stated that the vehicle had not been wrecked.
17 And I would have said, those twelve people on
18 that jury are not going to be happy with those
19 events. Now, this is knowledge that I got after
20 the fact.

21 Q. Right.

22 A. Okay? So I would have had that
23 conversation.

24 Q. Right. And I think you explained that
25 and I didn't mean to interrupt you if you have

1 not finished.

2 A. No, I'm fine.

3 Q. But I was really going back toward
4 some other event, which I understood that Scott,
5 in essence, told you, over time, two things.
6 One, that he was instructed not to do discovery
7 for whatever reason.

8 A. And that was told after the fact.

9 Q. All right. But, just hypothetically,
10 assuming that it had been told to you before
11 trial, that we don't want to do any discovery,
12 but we want to defend this case to the max, would
13 you have had a conversation with the client about
14 there being some contradiction between doing no
15 discovery and defending this case to the maximum
16 because they want to teach somebody a lesson?

17 MS. WALL: Object to the form.

18 THE WITNESS: Yes. I would have had
19 to say yes on that. I would have to say that,
20 and I don't know what discussions that Scott and
21 Dennis had --

22 BY MR. EPTING:

23 Q. Right.

24 A. Because, like I said, Scott and Dennis
25 probably, you know -- leading up to this trial

1 Scott was, as I said, I would go to lunch, and I
2 would say where is Scott? They would say, he's
3 at Stokes-Craven. And I would call him, and he
4 would say, just pick me up in the dealership and
5 we'll go get something to eat. That happened
6 once or twice a week. Because he was up there
7 talking to Dennis about this case. So I don't
8 know that those discussions did not occur.

9 Q. I'm not asking if they did or did not.

10 A. Right.

11 Q. Do you think if they did occur that
12 Dennis would admit them? Is he of that kind of
13 character?

14 A. Yes. And I want to tell you
15 something. You know, you're talking about
16 character. If I had a wife, I used to have one
17 for 24 years, but if I had one, I would trust
18 these two guys with my life and my wife. Okay?
19 That's how I feel about these two guys. So, you
20 know, if you're asking me are you going to say do
21 I think one of them would lie under oath or would
22 not admit something? I don't think either one of
23 them would. Now, do I think that they have
24 different perceptions about what happened?
25 Probably. And so if you're asking my opinion, I

1 don't think Scott would lie, I don't think Dennis
2 would lie. I think they -- and I don't, you know
3 -- everybody, you know -- it's human nature, I
4 think, to remember things that you think benefit
5 you. I think that's just human nature to
6 remember that. I mean we all do that.

7 It's not necessarily meaning that
8 you're lying, it just means you're just trying to
9 protect your ownself. And when you're attacked,
10 or whenever you're hurt, or you lose a case such
11 as this, and Dennis's reputation has been
12 damaged, and Scott's reputation has been damaged,
13 then you tend to, I think, circle the wagons and
14 defend your position on it. And I think that
15 that may be what's going on here. But I don't --
16 do I think either one of them would lie
17 intentionally under oath? No. No.

18 MR. EPTING: Why don't we take a
19 breather here. I think I'm about finished.

20 (A recess transpired.)

21 MR. EPTING: Let me mark what will be
22 Exhibit 2 to your deposition. I have copies of
23 these for you. We can get them.

24 (PLF. EXH. 2, Deposition work
25 performed, was marked for identification.)

1 BY MR. EPTING:

2 Q. This is a document, Mr. McKenzie, that
3 came out of the Craven/Austin file. Do you
4 recognize the form of that document?

5 A. Austin is the plaintiff in this case?

6 Q. Right.

7 A. Okay. I didn't know the last name.

8 Sorry. Do I recognize --

9 Q. In other words this is a billing
10 entry. And I'm just asking you --

11 A. And I see JMR file number. It's not a
12 form I use.

13 Q. Okay. So there is no particular form
14 that the firm uses in order to record time.

15 A. No.

16 Q. All right. In cases such as this was
17 there a firm policy about recording time in order
18 to bill clients by the hour? How was that done,
19 if at all?

20 A. Each attorney did it differently.
21 Mr. Johnson did it his way, I did it my way,
22 and -- I have not seen this form before.

23 Q. Okay.

24 A. But apparently Scott did it his way.

25 Q. All right. How did you record time in

1 cases such as this?

2 A. Like point-five hours. I would have
3 it understood in a V contract about I would bill
4 what my hourly rate would be and how I would bill
5 based on that hourly rate.

6 Q. But mechanically, so at the end of the
7 day, do you have a form like this for each
8 client?

9 A. No. What I do is I give my time to my
10 secretary. She generates a bill and sends it
11 off. And it could be in the form of an
12 attachment to a letter. I normally don't use
13 columns like that. I usually say that, for
14 example, and I tell them in the V contract that I
15 may bill them in 30-minute increments. And I
16 know this is bad practice, probably throwing a
17 lot of money away, but I generally don't bill for
18 phone calls, unless they're an hour long or 30
19 minutes long. I don't bill for a five-minute
20 phone call, anything like that. Does that say
21 point-five hours?

22 Q. Right.

23 A. I'm not sure what point-five is. Is
24 point-five hours five minutes? What is that?

25 Q. I think that's probably 30.

1 A. Thirty minutes? Okay.

2 Q. But my question to you --

3 A. I don't bill like that so I don't
4 know.

5 Q. What is it that you give to your
6 secretary in order to keep your time as you're
7 working through? Do you do it at the end of the
8 day? What's the process?

9 A. I will go into my secretary's office,
10 her name is Jennie, and I will say, Jennie, today
11 I worked on this file for this many hours, and I
12 did -- this is what I did in the file.

13 Q. I've got you.

14 A. She will then generate me a bill and
15 let me look at it and see if that's what I did.
16 Okay? I don't or I might send her an e-mail
17 saying make sure you bill the client for two
18 hours in court for whatever case I did that day.
19 And it could be in any manner. It's not a
20 set -- I don't do it like that. I had to ask you
21 what point-five meant. I would probably have
22 said 30 minutes. I wouldn't have said point-five
23 hours.

24 Q. Okay.

25 A. But, again, everybody does it a

1 different way. And I'm not saying that's wrong,
2 that's just the way he did it.

3 Q. One last line of questions,
4 Mr. McKenzie. Do you oftentimes, when clients
5 come in to you, turn matters over or their matter
6 over to an insurance company?

7 A. Usually I wouldn't say I -- I don't
8 have those kind of cases. I'm just thinking back
9 the last time I've done it. Is it often I do
10 that? If there is coverage available, and my
11 client let's me know there's coverage available,
12 I probably would. But it depends on the
13 situation. I don't normally have those kind of
14 cases.

15 When I'm defending a case, and I'll
16 give you an example, I had a client come in that
17 had a dog that bit somebody on his own property.
18 He had no homeowners insurance. So the insurance
19 wasn't in question. We had to defend that case,
20 because they were going to take the guy's house,
21 where his children were living, and put him out
22 if he lost. So that wasn't even a question. So
23 when I get a case it's usually that drastic.
24 Okay? Insurance is usually never an issue when
25 it comes up.

1 Q. But let's just assume that we're
2 neighbors, and I've been in an automobile
3 accident, and I come to you and I say,
4 Mr. McKenzie, I've been in a wreck.

5 A. Right.

6 Q. What do I do? And I've been sued and
7 here's a copy of the complaint.

8 A. Right. That's a different scenario.
9 Someone comes in with a summons and complaint,
10 and it's like a car accident or something, or
11 somebody slips and falls at somebody's house, I
12 say, take this immediately to your insurance
13 company. And put them on notice that you have
14 been sued.

15 Q. And what is the advantage of doing
16 that?

17 A. Because they would have no personal
18 liability in it. The insurance company will
19 handle it. I say personal liability. They only
20 have liability after the limits have been
21 exhausted.

22 Q. Right.

23 A. But they also get a defense because,
24 as we both know, in an insurance contract there's
25 two duties that an insurance company has, that's

1 the duty to defend and duty to pay. And so they
2 get an attorney, that they don't have to pay for,
3 and if they get a judgment rendered against them,
4 then the insurance company has a duty to pay that
5 judgment.

6 Q. And in cases of, for example,
7 negligence, if someone walked in, and had been
8 sued in negligence, is that something that you
9 would advise the client to do if there was, in
10 your estimation, coverage available, to turn it
11 over to the insurance company?

12 A. Yes.

13 MS. WALL: Object to the form.

14 THE WITNESS: Yes, I would. And, like
15 I told you before, about with this dog bite case.
16 The first question I ask is who's your homeowners
17 coverage with? They said I don't have any. I
18 say, well, what do you do if your house caught on
19 fire? It would just have to burn down. Well,
20 then, we've got nothing to defend this case.
21 Again, the question is, yes, I would advise them
22 to take it to their insurance company if there
23 was coverage available. And then that way they
24 wouldn't have to pay me.

25 BY MR. EPTING:

1 Q. Right. And they would have somebody
2 to pay the judgment if they lost.

3 A. If they lost they would be there.

4 MR. EPTING: Thank you for appearing
5 here with me for about an hour and 40 minutes. I
6 know it's not comfortable, but I appreciate your
7 time.

8 THE WITNESS: Thank you.

9 EXAMINATION

10 BY MR. POWELL:

11 Q. Mr. McKenzie, your departure from the
12 old Johnson McKenzie Robinson, LLC firm, which, I
13 believe, I actively represent to you, the name
14 was later changed to Johnson and Robinson --

15 A. That's correct.

16 Q. -- LLC.

17 A. That's correct.

18 Q. That occurred when?

19 A. That occurred in July of 2009.

20 Q. Okay. And that was your -- after that
21 you were no longer a member of that firm of
22 Johnson McKenzie and Robinson.

23 A. I withdrew as a member of the firm.

24 Q. Okay. And your discussion with
25 Mr. Craven, when he called you, and you went by

1 the dealership and had a discussion with him,
2 that was approximately when?

3 A. That was between the time that I
4 departed the old firm, which was in July 2009,
5 and the time that Scott came to work for the firm
6 that I am in now, which I think would have been
7 May of 2010.

8 Q. And so at the time you were having
9 that discussion with him at the dealership, that
10 you spoke about earlier --

11 A. Right.

12 Q. -- about this case, you were not, at
13 that time, a member of Johnson McKenzie Robinson,
14 LLC/Johnson and Robinson, LLC.

15 A. I was not a member of the LLC
16 although I still was a shareholder in the
17 property of the LLC. But I was not a member of
18 the practice that was still ongoing.

19 Q. Right. But you were no longer a
20 member of that firm.

21 A. Of the law firm.

22 Q. Of that LLC.

23 A. Not that LLC. We had a separate LLC,
24 J&R Properties LLC, that I was still -- I still
25 had a third partnership in.

1 Q. Right. But the purpose of that LLC
2 was to hold title to the real estate?

3 A. Hold title to the real estate and
4 personal property, yes.

5 Q. And other than perhaps being a lessor
6 to the law firm --

7 A. Right.

8 Q. -- of the property I assume that owned
9 the law office.

10 A. It did.

11 Q. Other than that, that had nothing to
12 do with the practice of law.

13 A. No, nothing to do with the practice of
14 law.

15 Q. So the LLC that was the law firm, at
16 the time of this discussion you had with
17 Mr. Craven, you were not a member of that LLC?

18 A. Was not a member.

19 MR. POWELL: That's all I have.

20 MS. WALL: No questions.

21 MR. EPTING: Thank you, sir.

22 THE REPORTER: Read and sign or waive?

23 THE WITNESS: Waive.

24 (The deposition was concluded at
25 11:47 a.m.)

1 CERTIFICATE OF REPORTER
2

3 I, G. Michael Alexander, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the foregoing transcript is a true,
7 accurate, and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 2nd day of June,
13 2011 at Charleston, Charleston County, South
14 Carolina.

15
16
17
18
19
20 G. Michael Alexander
21 Registered Professional
22 Reporter, CSR
My Commission expires
May 24, 2016
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Page	Line
3	1
3	11
3	13
76	9
79	1

REQUESTED INFORMATION INDEX

(No Information Requested)

EXHIBITS

Page	Line
4	3
69	24

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A No.: 2010-CP-14-457

**DEFENDANT SCOTT L. ROBINSON'S
MOTION FOR SUMMARY
JUDGMENT**

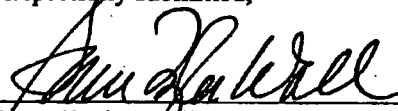
TO: ANDREW K. EPTING, JR., ESQ. AND MICHELLE ENDEMANN, ESQ.,
ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT Defendant Scott L. Robinson ("Robinson"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, hereby moves the Court, by and through his undersigned counsel, for an Order granting summary judgment to Robinson on the claims asserted by Plaintiff in the Amended Complaint. The specific grounds for this Motion include, without limitation, that the Amended Complaint should be dismissed under Rule 56, SCRPC, because Plaintiff's claims are barred by the applicable statute of limitations and Plaintiff cannot, as a matter of law, prove the elements necessary in a legal malpractice action, including proximate cause.

This Motion is based upon the pleadings, deposition testimony and exhibits, the controlling law, a Memorandum of Law to be filed, and such other and further material as the Court may deem appropriate.

WHEREFORE, Robinson respectfully requests that the Court issue an Order granting its Motion for Summary Judgment and dismissing Plaintiff's Amended Complaint and the claim asserted against Robinson therein, with prejudice.

Respectfully submitted,



Susan Taylor Wall

Email: swall@mcnair.net

Amanda C. Williams

Email: awilliams@mcnair.net

MCNAIR LAW FIRM, P.A.

100 Calhoun Street, Suite 400

Charleston, SC 29401

Phone: 843-723-7831

Fax: 843-722-3227

ATTORNEYS FOR DEFENDANT
SCOTT L. ROBINSON

November 26, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A No.: 2010-CP-14-457

**DEFENDANT SCOTT L. ROBINSON'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Defendant Scott L. Robinson ("Robinson") has moved, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for summary judgment in his favor. Robinson specifically restates, adopts, and incorporates the Memorandum in Support of Motion for Summary Judgment filed in this case by Defendant Johnson McKenzie & Robinson, LLC ("Johnson McKenzie"). In addition, Robinson files the within memorandum in further support.

Summary judgment for all Defendants is clearly warranted because the statute of limitations ran before Plaintiff filed the within action for legal negligence and breach of fiduciary duty. As to both causes of action, the three year statute of limitations applies as set forth in S.C. Code Ann. § 15-3-530. Plaintiff waited four years to file suit even though its principal, Dennis Craven, knew or through the exercise of reasonable diligence, should have known he might have a claim against these Defendants. The analysis of the accrual of the statute of limitations is based upon an objective standard, that is, what a reasonable person under the same or similar circumstances would know. Where reasonable minds cannot differ, the Court must grant summary judgment. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

I. FACTS AND ADMISSIONS

Facts¹

- 12/1/99 Bailey purchases new truck from Stokes-Craven dealership for \$32,000
- 9/28/01 Truck is in serious accident, repair cost is \$20,398
- 4/17/02 Bailey trades in truck, tells Stokes-Craven of wreck
- 6/01/02 Austin purchases same truck from Stokes-Craven for \$26,371 and is not told of previous wreck; told truck has warranty
- 9/13/02 Austin learns of wreck and forgery of his signature; meets with Dennis Craven (principal of Stokes-Craven)
- 9/16/02 Austin meets again with Craven who refuses to give him his money back or to take the truck back
- 2/18/03 Austin's attorney sends Craven demand letter to settle: Craven refuses to settle. (Offer of Compromise, Ex. 2.)
- 3/15/04 Austin files suit against Stokes-Craven for fraud, among other causes of action.
- 8/14-8/16/06 Trial: *Austin v. Stokes-Craven* (Robinson counsel for Stokes-Craven)
- 8/16/06 Jury verdict against Stokes-Craven: \$26,371.190 actual; \$216,600 punitive Appeal/Cross Appeal (Young Clement Rivers counsel for Stokes-Craven)
- 3/8/10 Supreme Court issues opinion: *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010).
- 8/16/10 Stokes-Craven files suit against Scott L. Robinson, Esq. and Johnson McKenzie & Robinson, LLC.

Admissions

Craven, as principal in Stokes-Craven, participated in the trial and believed there was a serious problem when he received the jury verdict. (Craven 5/19/11 Dep. pp. 61, 74, Ex. 3.)

Craven, as principal in Stokes-Craven, believed at time of verdict that the reputation of Stokes-Craven was injured. (Craven 5/19/11 Dep. p. 80, Ex. 3.)

¹ Support for these facts are found in the Supreme Court's opinion in the underlying appellate court opinion, *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010), attached as Ex. 1.

Craven, as principal in Stokes-Craven, believed that Robinson did not keep him informed before trial and did not prepare him or his employees adequately for trial. (Craven 5/19/11 Dep. pp. 33, 34, 37, 38, 41, 43, 53-54, Ex. 3.)

Craven, as principal in Stokes-Craven, believed that he should have seen the answers to interrogatories prepared by Robinson. During trial in August 2006, he realized for the first time that he had not seen the interrogatory responses before. (Craven 5/19/11 Dep. pp. 45-46, Ex. 3.)

II. DISCUSSION

The Three Year Statute of Limitations Ran Before This Malpractice Suit was Filed.

It is well settled in South Carolina that claims for negligence and breach of fiduciary duty must be brought within three years. See S.C. Code Ann. § 15-3-530. The statutory period begins to run when the claimant could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his favor, rather than when the claimant obtains actual knowledge of either the potential claim or the facts giving rise thereto. *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987) (quoting *Rogers v. Efrid's Exterminating Co.*, 284 S.C. 377, 379, 325 S.E.2d 541, 542 (1985)). The discovery rule focuses upon whether the complaining party acquired knowledge of *any* facts "sufficient to put said party on inquiry, which, if developed, will disclose" the alleged conduct. *Burgess v. American Cancer Soc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989) (quoting *Walter J. Klein Co. v. Kneece*, 239 S.C. 478, 484, 123 S.E.2d 870, 874 (1962)).

It is not necessary that the claimant acquire precise information of the alleged wrongful conduct for the statute to begin to run, but merely acquire "such facts as would have led to the knowledge thereof, if pursued with reasonable diligence." *Grayson v. Fidelity Life Ins. Co. of Philadelphia*, 114 S.C. 130, 103 S.E. 477, 478 (1920). South Carolina law requires a party to exercise reasonable diligence once he is on notice that some right of his has been affected. See *Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996); *Snell v. Columbia Gun*

Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). “The fact that the injured party may not comprehend the full extent of the damage is immaterial.” *Epstein v. Brown*, 363 S.C. 372, 382, 610 S.E.2d 816, 821 (2005).

The South Carolina Supreme Court reiterated that the exercise of reasonable diligence means:

that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. **The statute of limitations begins to run from this point, and not when advice of counsel is sought or a full-blown theory of recovery developed.**

Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d at 818 (emphasis in original) (citing *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997)).

The standard as to when the limitations period begins to run is objective, rather than subjective. *Kelly v. Logan, Jolley & Smith, LLP*, 383 S.C. 626, 682 S.E.2d 1 (Ct. App. 2009); *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995); *Burgess v. American Cancer Soc’y*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989).

In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (2010) (citing *Young v. SC Dept. Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999)).

Stokes-Craven knew or should have known it might have a claim against Defendants during or immediately following the trial in August 2006. Plaintiff’s allegations center around Defendants’ alleged failings before and during the trial, including Scott Robinson’s alleged failure to: conduct discovery, prepare a pretrial brief, prepare trial exhibits, prepare voir dire, notify Plaintiff’s insurance carrier, preserve certain issues for appeal or settle the case before

verdict. (Am. Complaint, Ex. 4.). Stokes-Craven contends that as a result of these alleged failings, an adverse jury verdict was returned against the dealership, the dealership was forced to pay \$60,000 in appeal expenses, and Stokes-Craven suffered lost revenues as a result of the bad publicity from the trial.

The case of *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816 (2005), is on point and serves to defeat this lawsuit on the statute of limitations. In *Epstein*, after a jury awarded an adverse verdict (including punitive damages) against a surgeon in a wrongful death and survival action, the surgeon appealed the verdict. *Id.* at 374-75, 610 S.E.2d at 817. Though the surgeon's attorney in the underlying action remained counsel of record, he hired other attorneys as well for the appeal. *Id.* at 375, 610 S.E.2d at 817. The appellate court affirmed the verdicts. *Id.* Thereafter, the surgeon filed a legal malpractice action against his trial attorney alleging breach of fiduciary duty, negligence, and breach of contract. *Id.* The trial court held that the surgeon's claims were barred by the statute of limitations which began to run, at the latest, on the date of the jury's verdict and the claims were not tolled pending the appeal. *Id.* Just as in this case, in *Epstein*, the surgeon alleged his trial attorney was negligent in numerous particulars, including failing to conduct an adequate investigation, failing to advise the surgeon to settle, and forgetting to call expert witnesses. *Id.* at 376, 610 S.E.2d at 818. The Supreme Court held that the surgeon knew, or should have known, he might have some claim against his trial attorney at the conclusion of trial, particularly since the claims he raised were primarily related to alleged trial and pre-trial errors. *Id.* at 382, 610 S.E.2d at 821.

Like the surgeon in *Epstein*, there is no question that Stokes-Craven knew, or through the exercise of reasonable diligence, should have known that it may have some claim against Robinson and his firm more than three years before this action was filed. As in *Epstein*, the particulars of Stokes-Craven's claims center around Defendants' alleged pre-trial and trial errors

(failure to conduct discovery, failure to advise to settle, failure to prepare for trial and failures at trial), which led to an adverse verdict. In addition, the alleged adverse impact on Stokes-Craven's reputation would have occurred, if at all, immediately following the verdict. Craven, Plaintiff's principal and 30(b)(6) witness, admits he knew there was a serious problem when he received the jury verdict and that the reputation of Stokes-Craven was injured at the time of the verdict. (Craven 5/19/11 Dep. pp. 61, 74, 80, Ex. 3.) Because Stokes-Craven's principal admits he knew, and applying the objective standard he should have known, of Robinson's alleged pre-trial and trial errors at the time of the adverse jury verdict in August 2006, Plaintiff's claims are barred by the statute of limitations because the legal malpractice action was not filed until August 2010 (four years after the trial verdict).

Plaintiff cannot claim the statute of limitations was tolled during the pendency of the appeal. South Carolina courts have specifically declined to adopt the continuous representation rule, which tolls the statute of limitations during the period an attorney continues to represent a client on the same matter which forms the basis of a legal malpractice action. *Epstein*, 363 S.C. at 818, 610 S.E.2d at 377. In *Epstein*, plaintiff argued that the statute of limitations was tolled during the pendency of the appeal because defendant-attorney remained counsel of record during the appeal. *Id.* The court held the statute of limitations was not tolled during the appeal "in light of the Legislature's declaration that an action 'must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.'" *Id.* at 820, 610 S.E.2d at 380.

As our courts have found, the statute of limitations is grounded on important public policy considerations.

Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy concerns as they stimulate activity,

punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his [or her] rights. Another purpose of statute of limitations is to protect potential defendants from protracted fear of litigation. Statutes of limitations are, indeed, fundamental to our judicial system.

Kelly v. Logan, Jolley, & Smith, LLP, 383 S.C. 626, 682 S.E.2d 1, 4 (Ct. App. 2009) (internal citations and quotations omitted).

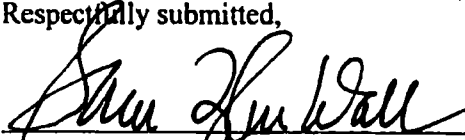
Accordingly, any argument by Plaintiff that the statute of limitations was tolled during the pendency of the appeal because Defendants arguably remained counsel of record must be rejected as a matter of law.² *See Epstein*. Therefore, Plaintiff's claims must be dismissed because they were not timely brought within the three-year statute of limitations.

III. CONCLUSION

For all of the reasons set forth herein and in Johnson McKenzie's Memorandum and any others in the record, Defendant Scott L. Robinson, Esq. respectfully requests that the Court issue an Order GRANTING his Motion for Summary Judgment and dismissing Plaintiffs' Complaint and the claims asserted therein, with prejudice.

² Young Clement Rivers, LLP served as appellate counsel for Stokes-Craven in the underlying matter. Though Scott Robinson's name appears on the pleadings, he did not research, draft the brief or argue the appeal.

Respectfully submitted,



Susan Taylor Wall

Email: swall@mcnair.net

Amanda C. Williams

Email: awilliams@mcnair.net

MCNAIR LAW FIRM, P.A.

100 Calhoun Street, Suite 400

Charleston, SC 29401

Phone: 843-723-7831

Fax: 843-722-3227

ATTORNEYS FOR DEFENDANT
SCOTT L. ROBINSON

January 4, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
)

) C/A No.: 2010-CP-14-457
)

) **CERTIFICATE OF SERVICE**
)
)

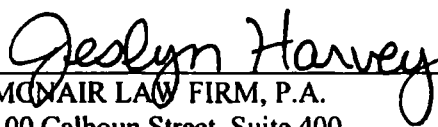
I certify that a copy of the foregoing **DEFENDANT SCOTT L. ROBINSON'S**
MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT has been
served upon the following counsel of record by mailing a copy of the same to them, postage
prepaid and addressed as shown below this 4 day of January, 2013:

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
Andrew K. Epting, Jr., LLC
3 State Street
Charleston, SC 29401

Attorneys for Plaintiffs

Warren C. Powell, Jr., Esq.
Bruner, Powell, Robbins, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260

Attorney for Defendant Johnson McKenzie &
Robinson, LLC


MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 723-7831

387 S.C. 22
Supreme Court of South Carolina.

Donald C. AUSTIN, Respondent/Appellant,
v.
STOKES-CRAVEN HOLDING CORP., d/b/
a Stokes Craven Ford, Appellant/Respondent.

No. 26784. | Heard June 11,
2009. | Decided March 8, 2010.
| Rehearing Denied April 21, 2010.

Synopsis

Background: Buyer of used pickup truck brought action against dealership for revocation of acceptance, breach of contract, negligence, constructive fraud, common law fraud, violation of the South Carolina Motor Vehicle Dealer's Act, violation of the South Carolina Unfair Trade Practices Act (UTPA), and violation of the Federal Odometer Act after discovering that truck had been in an accident. The Circuit Court, Clarendon County, John C. Hayes, III, J., entered judgment on jury verdict for buyer on fraud and negligence claims and granted buyer's post-trial motions in part seeking costs and attorney's fees, and both parties appealed.

Holdings: The Supreme Court, Beatty, J., held that:

- [1] dealership was not prejudiced by the admission of auto body repair expert's testimony that truck had extensive repairs and could be a safety issue "in the right circumstances,";
- [2] consultant was qualified as an expert witness to testify as to the concept of retail value;
- [3] testimony provided evidence of value for jury's consideration of fair market value;
- [4] dealership did not act with the intent to defraud with respect to mileage for purposes of Federal Odometer Act claim;
- [5] verdicts were not inconsistent;
- [6] punitive damages award of \$216,000 was not excessive; and

[7] a plaintiff who elects to receive damages awarded under a common law theory may also be entitled to recover statutory costs and attorneys fees.

Affirmed in part, reversed in part, and remanded.

Pleicones, J., concurred in part and dissented in part with opinion.

Kittredge, J., concurred in part and dissented in part with opinion in which Toal, C.J., joined.

West Headnotes (45)

[1] Appeal and Error

➤ Review Dependent on Whether Questions Are of Law or of Fact

In an action at law, on appeal of a case tried by a jury, the Supreme Court may only correct errors of law.

[2] Appeal and Error

➤ Sufficiency of Evidence in Support

The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings.

[3] Appeal and Error

➤ Competency of witness

Reversal of a trial judge's qualification of an expert witness requires the complaining party to prove both an abuse of discretion and prejudice.

[4] Appeal and Error

➤ Abuse of discretion

An abuse of discretion occurs when the decision of the trial judge is unsupported by the evidence or controlled by an error of law.

[5] Appeal and Error

➤ Rulings as to Evidence in General



In order to demonstrate prejudice based on an evidentiary ruling, there must be a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.

[6] Evidence

— Necessity and sufficiency

All expert testimony must satisfy the criteria set forth in the relevant rule, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration. Rules of Evid., Rule 702.

[7] Evidence

— Knowledge, experience, and skill in general

The test for qualification of an expert witness is a relative one that is dependent on the particular witness's reference to the subject. Rules of Evid., Rule 702.

[8] Evidence

— Knowledge, experience, and skill in general

To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he or she is better qualified than the jury to form an opinion on the particular subject of his or her testimony. Rules of Evid., Rule 702.

[9] Appeal and Error

— Necessity of timely objection

Auto dealership failed to preserve challenge to the admissibility of auto body shop owner's expert testimony in pickup truck buyer's action against dealership on grounds that he was not qualified as an expert, as dealership did not question shop owner's qualifications when buyer moved to qualify shop owner as an expert witness in the field of auto body repair. Rules of Evid., Rule 702.

[10] Appeal and Error

— Appellant or Plaintiff in Error

Auto dealership failed to preserve any challenge to the admissibility of auto body shop owner's expert testimony as to how "anyone" could tell pickup truck sold to buyer had been repaired, as trial judge sustained the objection interposed by counsel during shop owner's testimony.

[11] Appeal and Error

— Opinions and conclusions

Auto dealership was not prejudiced by the admission of auto body repair expert's testimony in fraud, negligence, and breach of contract action that used pickup truck sold to buyer had extensive repairs and could be a safety issue "in the right circumstances," where the testimony was innocuous given it was extremely limited in duration and general in nature, dealership extensively cross-examined expert regarding his qualifications and the fact that only someone with significant training or experience in the auto body repair industry would have discovered the extent of the repairs to the truck, and, through cross-examination, dealership established expert could not say "with a reasonable degree of certainty" that the prior damage would create a safety issue. Rules of Evid., Rule 702.

[12] Evidence

— Personal property

Automotive consultant was qualified as an expert witness to testify as to the concept of retail value in used pickup truck buyer's action against dealership which allegedly failed to disclose prior damage to truck, where witness had extensive experience in several sectors of the automotive industry which included the appraisal of vehicles, and witness had been qualified as an expert witness on four or five other occasions. Rules of Evid., Rule 702.

[13] Appeal and Error

— Opinions and conclusions

Appeal and Error

↪ **Particular cases**

Any error by trial court in qualifying automotive consultant as an expert witness did not prejudice dealership in used pickup truck buyer's action based on dealership's alleged failure to disclose prior damage to truck, where dealership thoroughly cross-examined witness regarding his lack of experience and qualifications, testimony that dealership primarily challenged regarding establishment of truck's retail value was produced by dealership's own cross-examination, and that testimony was cumulative to other testimony. Rules of Evid., Rule 702.

[14] Appeal and Error

↪ **Extent of Review Dependent on Nature of Decision Appealed from**

Appeal and Error

↪ **Appeal from ruling on motion to direct verdict**

When reviewing a trial judge's grant or denial of a motion for directed verdict or judgment notwithstanding the verdict (JNOV), the Supreme Court reverses only when there is no evidence to support the ruling or when the ruling is governed by an error of law.

4 Cases that cite this headnote

[15] Damages

↪ **Injuries to personal property**

The measure of damages for the sale of a defective vehicle is the difference in fair market value between the car, having been wrecked, and the value of the car had it not been wrecked at time of sale.

[16] Damages

↪ **Weight and Sufficiency**

Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy.

[17] Damages

↪ **Weight and Sufficiency**

While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required.

[18] Evidence

↪ **Value in general**

Ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert.

1 Cases that cite this headnote

[19] Evidence

↪ **Value**

Unless the property owner's lack of knowledge of the value of his property is so complete so as to render it worthless, it is for a jury considering damages to assess the probative value of his testimony.

[20] Fraud

↪ **Weight and Sufficiency**

Testimony by pickup truck owner that truck was worth "nothing," and testimony by expert witness that truck had "zero retail value," provided evidence of value for jury's consideration of fair market value of the truck for purposes of award of \$26,371.10 in damages in owner's action against dealership which allegedly failed to disclose prior damage to truck. (Per opinion of Beatty, J., with one justice joining and three justices concurring in part separately.)

[21] Antitrust and Trade Regulation

↪ **Sale**

Antitrust and Trade Regulation

↪ **Odometers and mileage**

Dealership did not act with the intent to defraud with respect to mileage when it allegedly failed

to disclose pickup truck's title to buyer, as required for violation of the Federal Odometer Act; buyer's claim did not arise out of a dispute regarding the truck's mileage but rather was based on dealership's failure to disclose the title to the truck, which would have listed a different previous owner, and buyer claimed that, had he been aware of that previous owner, he would have been able to discover the extensive prior damage to the truck. 49 U.S.C.A. § 32710; 49 C.F.R. § 580.5(c).

[22] Antitrust and Trade Regulation

↪ Odometers and mileage

The purpose of the Federal Odometer Act is to inform a car buyer of a vehicle's actual odometer reading prior to purchase. 49 U.S.C.A. § 32701(b).

[23] Antitrust and Trade Regulation

↪ Odometers and mileage

The Federal Odometer Act does not restrict the mileage disclosure solely to the title of the vehicle. 49 U.S.C.A. § 32701 et seq.

[24] Action

↪ Statutory rights of action

Antitrust and Trade Regulation

↪ Private entities or individuals

The Federal Odometer Act provides for a private cause of action where a defendant violates the Act with intent to defraud. 49 U.S.C.A. § 32710.

[25] Trial

↪ Defective, immaterial, and inconsistent counts and issues

Jury verdicts in favor of used pickup truck buyer on his claims for fraud in and in favor of dealership on his unfair trade practices claim were not inconsistent, as different proof was required to recover under each cause of action; jury could have found that dealership committed a deceptive act when failing to disclose truck's

accident history, but found that act did not affect the public interest. Code 1976, § 39-5-10.

[26] Appeal and Error

↪ New Trial or Rchearing

New Trial

↪ Discretion of court

Whether to grant a new trial is a matter within the discretion of the trial judge, and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law.

[27] New Trial

↪ Inconsistent findings

Trial

↪ Defective, immaterial, and inconsistent counts and issues

Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge should not be required to guess as to what a jury sought to render.

[28] Trial

↪ Defective, immaterial, and inconsistent counts and issues

It is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found.

[29] Antitrust and Trade Regulation

↪ Nature and Elements

Antitrust and Trade Regulation

↪ Public impact or interest; private or internal transactions

To recover in an action under the Unfair Trade Practices Act (UTPA), the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce, (2) the unfair or deceptive act affected public interest, and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive acts. Code 1976, § 39-5-10 et seq.

1 Cases that cite this headnote

[30] **Fraud**

➤ Elements of Actual Fraud

Fraud

➤ Weight and Sufficiency

To establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: (1) a representation of fact, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.

[31] **Fraud**

➤ Elements of Actual Fraud

The failure to prove any element of fraud or misrepresentation is fatal to the claim.

[32] **Appeal and Error**

➤ Arguments and Conduct of Counsel

Any complaint by dealership on appeal in fraud action that award of \$216,000 in punitive damages was based on improper closing argument by used pickup truck buyer's counsel was inconsequential given both the jury and the trial judge relied upon the sealed statement of dealership's net worth, which reflected net worth of \$1,444,561, in assessing whether dealership had the ability to pay.

[33] **Fraud**

➤ Amount awarded

Punitive damages award of \$216,000 to used pickup truck buyer in fraud action against dealership which failed to disclose truck's accident history was not excessive, although harm to buyer was economic, where dealership procured the sale through affirmative

misrepresentations and apparently forged buyer's signature on "Buyer's Guide" in an effort to legitimize the lack of a power train warranty, 8.21 to 1 ratio of punitive damages to actual damages, although high, was a single-digit ratio, dealership had ample ability to pay the damages, award would serve as a deterrent to future misconduct, and award was consistent with those of comparable cases. (Per opinion of Beatty, J., with one justice joining and two justices concurring in part separately.)

1 Cases that cite this headnote

[34] **Constitutional Law**

➤ Punitive damages

Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[35] **Damages**

➤ Nature of act or conduct

In terms of reprehensibility, the court reviewing an award of punitive damages should consider whether: (1) the harm caused was physical as opposed to economic, (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others, (3) the target of the conduct had financial vulnerability, (4) the conduct involved repeated actions or was an isolated incident, and (5) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

1 Cases that cite this headnote

[36] **Damages**

➤ Actual damage or compensatory damages; relationship and ratio

In determining the reasonableness of the ratio of punitive damages to actual damages the court may consider the likelihood that the award will deter the defendant from like conduct, whether

the award is reasonably related to the harm likely to result from such conduct, and the defendant's ability to pay.

2 Cases that cite this headnote

[37] Election of Remedies

↪ Nature and grounds in general

Election of remedies involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of action.

1 Cases that cite this headnote

[38] Damages

↪ Nature and theory of compensation

Election of Remedies

↪ Nature and grounds in general

The basic purpose of election of remedies is to prevent double recovery for a single wrong.

[39] Election of Remedies

↪ Necessity and time for election

When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both.

[40] Election of Remedies

↪ Causes of action and remedies subject to election

A plaintiff who elects to receive damages awarded under a common law theory may also be entitled to recover statutory costs and attorneys fees to which he is entitled under a separate verdict, without running afoul of the public policies underlying the doctrine of election of remedies.

[41] Interest

↪ Contract and sales matters

Used pickup truck buyer's damages from purchase from vehicle of truck with prior accident

damage were not liquidated at the time his tort and statutory claims arose as required for award of prejudgment interest, as damages could not have been ascertained without evidence of the retail value of the truck. Code 1976, § 34-31-20(A).

[42] Interest

↪ Liquidated or unliquidated claims in general

Interest

↪ Demand for Payment of Principal

The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. Code 1976, § 34-31-20(A).

2 Cases that cite this headnote

[43] Interest

↪ Liquidated or unliquidated claims in general

Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute. Code 1976, § 34-31-20(A).

[44] Interest

↪ Liquidated or unliquidated claims in general

The fact that the amount due is disputed does not render the claim unliquidated for purposes of awarding prejudgment interest; rather, the proper test is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. Code 1976, § 34-31-20(A).

1 Cases that cite this headnote

[45] Damages

↪ Nature of act or conduct

Dealership's failure to disclose used pickup truck's title to buyer prior to sale to buyer did not support finding that dealership's conduct was reprehensible for purposes of award of punitive

Damages in light of determination that buyer's Federal Odometer Act claim, based on failure to disclose title, failed as a matter of law. (Per opinion of Pleicones, J., with two justices joining in part.) 49 U.S.C.A. § 32710.

1 Cases that cite this headnote

Attorneys and Law Firms

****139** Scott L. Robinson, of Johnson & Robinson, of Manning, Stephen L. Brown, Russell G. Hines and Edward D. Buckley, all of Young, Clement Rivers, of Charleston, for appellant-respondent.

C. Steven Moskos, of Charleston, and Brooks R. Fudenberg, of Mt. Pleasant, for respondent-appellant.

Opinion

Justice BEATTY.

***31** Donald C. Austin (Austin) filed suit against Stokes-Craven Holding Corporation d/b/a Stokes-Craven Ford (Stokes-Craven), an automobile dealership, after he experienced problems with his used vehicle and discovered the vehicle had sustained extensive damage prior to the sale. A jury found in favor of Austin and awarded him \$26,371.10 in actual damages and \$216,600 in punitive damages.

Stokes-Craven challenges the verdict alleging the trial judge committed several errors which warrant a new trial. In his appeal, Austin contends the trial judge erred in requiring him to elect between his verdict for common law fraud and the violation of the ****140** South Carolina Dealer's Act.¹ Additionally, Austin claims the trial judge erred in declining to award him prejudgment interest. This Court certified this case from the Court of Appeals pursuant to Rule 204(b), SCACR. We affirm ***32** in part, reverse in part, and remand for entry of judgment consistent with our decision.

FACTUAL/PROCEDURAL HISTORY

On December 1, 1999, Gary Bailey purchased for \$32,000 a 2000 Ford F-250 Super Duty Lariat 4X4, extended cab, eight-cylinder, turbo-diesel truck from Stokes-Craven, a Manning automobile dealership. Because Bailey maintained a business

relationship with Kenny Craven (Kenny), the brother and employee of one of the owners of Stokes-Craven, Bailey dealt solely with him.

After the purchase, Bailey and his son, Kerry, used the truck primarily for their construction business. On the night of September 28, 2001, Kerry was involved in a single-vehicle accident during which "something broke in the front end, the truck flipped over, spun around the road, and slammed into a guardrail." As a result of this accident, the truck, which had logged approximately 30,000 miles, underwent repairs from October 1, 2001 to March 27, 2002. According to Bailey, his insurance company paid William Norton, an owner of the Norton and Richardson Body Shop, \$20,309.38 to repair the vehicle.

After the repairs were completed, Bailey continued to drive the truck until he noticed an oil leak in the front axle. Because he needed a dependable truck for his business operation, Bailey made the decision to trade in the truck and purchase a new one from Stokes-Craven. In April 2002, Bailey contacted Kenny Craven and asked him to locate another truck. During this conversation, Bailey informed Kenny that his original truck had been "wrecked" and repaired by Norton and Richardson's Body Shop, a body shop for which Kenny knew had a good reputation. Bailey also told Kenny of the oil leak in the front axle.

On April 17, 2002, Bailey traded in his old truck for \$28,714.50 and purchased a new truck from Stokes-Craven. At the time of the trade in, the truck had an odometer reading of approximately 57,000 miles.

On June 1, 2002, Austin and his girlfriend went to the Stokes-Craven dealership in search of a truck. After circling the dealership lot, Austin focused his attention on the truck ***33** that had been traded in by Bailey. Because this truck appeared to meet Austin's desired specifications, he used his training as a mechanic to examine the outside and the underside. When he emerged from underneath the vehicle, Austin was met by William Frierson, a salesman for Stokes-Craven. Austin then asked Frierson a series of questions about the vehicle including the truck's warranty, whether the truck had been "wrecked," and information regarding the prior owner. According to Austin, Frierson informed him the warranty was a "5-year, 100,000 miles powertrain warranty." Austin also claimed Frierson denied that the truck had been "wrecked." In terms of the prior owner, Frierson indicated it was someone who operated a construction company in

Summerville. When Austin inquired whether this previous owner was Bud Knight, someone whom Austin knew had the reputation of taking "immaculate" care of his vehicles, Frierson apparently responded "Yeah, I believe that is his truck." Austin was never shown the title to the truck.

Ultimately, Austin agreed to purchase the truck for \$26,371.10. During the process of signing the purchase agreement, Austin questioned one of the forms indicating that he was buying the truck "as is." According to Austin, Frierson indicated this was a formality and that the truck had a "5-year, 100,000 mile powertrain warranty." Austin also claimed the finance manager confirmed the existence of the warranty and "talked **141 [him] out of" purchasing an extended warranty.

Although the truck operated without incident initially, Austin discovered an oil leak in August 2002. Upon discovering the leak, Austin contacted another Ford dealership located near his residence in Moncks Corner to see if the rear-seal leak could be repaired under warranty. This dealership informed Austin that the repair was not covered by the truck's warranty and that he should contact Stokes-Craven regarding the repair.

According to Austin, he spoke with "Jim," an assistant service manager at Stokes-Craven, who told him that the repair was under warranty. When Austin inquired further about the warranty, Jim told him that he would check on it and call him with an answer. Subsequently, Jim informed Austin that the repair was not covered by the warranty and *34 advised him to contact Dennis Craven, one of the owners of Stokes-Craven.

The next day, Austin called Dennis and explained the problem. Because he was unfamiliar with the specifics of Austin's purchase, Dennis spoke with his staff and called Austin several days later. According to Austin, Dennis told him that his staff denied they had represented that the truck was covered under a five-year, 100,000 mile power train warranty. Dennis, however, offered to fix the leak with the stipulation that any additional repairs would have to be paid by Austin. Hearing this response, Austin asked to return the truck for the purchase price and rejected Dennis's offer to "trade [him] out of the truck." When Dennis denied his request, Austin indicated that he was not satisfied with this offer but still intended to have the oil leak fixed by Stokes-Craven. Following this conversation, Austin scheduled the repair for September 13, 2002.

Prior to his scheduled appointment, Austin discovered a warranty book in the truck which indicated that the truck was only covered by a five-year, 100,000 mile warranty limited to the engine. Austin also discovered that the truck had been registered to Gary Bailey and had sustained extensive damage prior to his purchase. Austin inadvertently discovered the "wreck" damage when he came in contact with William Norton, the owner of the repair shop where Bailey had taken the vehicle following his son's accident. During this discussion, Norton gave Austin the list of repairs made to the truck.

On September 13, 2002, Austin brought his truck to Stokes-Craven for the scheduled repair. After he dropped off his truck, Austin met with Dennis Craven and Barry Thornall, a used car manager at Stokes-Craven. Austin again requested that he be allowed to return the truck for the purchase price given his new discoveries regarding the prior ownership, the "wreck" damage, and the lack of a power train warranty. During the course of the conversation, Austin found out that Thornall, a neighbor of Bailey's, most likely was aware of the truck's history. Several minutes later, Dennis produced a "Buyer's Guide" document purportedly containing Austin's signature which stated that the truck was covered by a warranty "up to 100,000 on diesel engine." Austin denied that *35 he had signed the document and informed Dennis and Thornall that he had not received this document at the time of purchase.

Austin returned to Stokes-Craven approximately a week later to retrieve his truck which had been repaired. Austin then met with Dennis Craven to discuss the situation with his truck. During this meeting, Austin again denied he had signed the warranty document and requested the return of the purchase price in exchange for the truck. In response, Dennis compared the signed document with Austin's driver's license and then denied Austin's request.

On March 15, 2004, Austin filed suit against Stokes-Craven alleging the following causes of action: revocation of acceptance, breach of contract, negligence, constructive fraud, common law fraud, violation of the South Carolina Motor Vehicle Dealer's Act (the "Dealer's Act"), violation of the South Carolina Unfair Trade Practices Act (UTPA), and violation of the Federal Odometer Act.² Based on these claims, Austin sought actual **142 damages, punitive damages, prejudgment interest, and attorney's fees and

costs. Stokes-Craven answered and denied each of Austin's allegations.

At the conclusion of a three-day trial, the jury found in favor of Austin and awarded damages on the following causes of action: (1) negligence with an award of \$26,371.10 actual damages and \$144,000 punitive damages; (2) fraud with an award of \$26,371.10 actual damages and \$216,600 punitive damages; (3) constructive fraud with an award of \$26,371.10 actual damages; and (4) a violation of the Dealer's Act with an award of \$26,371.10 actual damages. The jury also found Stokes-Craven had violated the Federal Odometer Act. Additionally, the jury found in favor of Stokes-Craven regarding Austin's claim under the UTPA.³

Subsequently, both parties filed timely post-trial motions. Specifically, Stokes-Craven moved for judgment notwithstanding ^{*36} the verdict (JNOV), a new trial, and a new trial *nisi remittitur*. Stokes-Craven filed a detailed memorandum in support of these motions. By order dated August 30, 2006, the trial judge denied each of Stokes-Craven's motions with the exception of the challenge to the jury's award of punitive damages. In a separate order, the trial judge affirmed the award of punitive damages finding evidence to support each of the requisite factors outlined in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991).

Austin filed post-trial motions in which he sought the following relief: (1) an award of damages under the Federal Odometer Act given the jury found a violation but was not instructed to award damages under this cause of action; (2) an award of attorney's fees and costs under the Dealer's Act and the Federal Odometer Act; and (3) an award of prejudgment interest. Additionally, Austin challenged the trial judge's decision requiring him to elect between the jury's award of damages under his claims for fraud, negligence, and the violation of the Dealer's Act.

By order dated September 14, 2006, the trial judge granted in part and denied in part Austin's post-trial requests. In this order, the trial judge ruled that: (1) Austin was required to elect between his remedies; (2) the jury's finding that Stokes-Craven violated the Federal Odometer Act entitled Austin to a statutorily-authorized award of \$1,500 plus attorney's fees and costs limited to those incurred in presenting the claim under the Federal Odometer Act; (3) Austin was entitled to recover \$4,500 in attorney's fees, as opposed to the requested \$49,936.50, based on the violation of the Federal Odometer Act; (4) Austin was entitled to taxable costs in the amount

of \$602.26; and (5) Austin was not entitled to prejudgment interest.

Both parties appeal from the trial judge's orders. Pursuant to Rule 204(b), SCACR, this Court certified this case from the Court of Appeals.

STANDARD OF REVIEW

[1] [2] In an action at law, on appeal of a case tried by a jury, this Court may only correct errors of law. ^{*37} *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976). The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings. *Id.*

DISCUSSION

I. Stokes-Craven's Appeal

A. Expert Witnesses

Stokes-Craven argues the trial judge erred in qualifying John Disher and Ray Morris as expert witnesses.

[3] [4] [5] Reversal of a trial judge's qualification of an expert witness requires the complaining party to prove both an abuse of discretion and prejudice. *See Jenkins v. E.L. Long Motor Lines, Inc.*, 233 S.C. 87, 94, 103 S.E.2d 523, 527 (1958) (recognizing that the trial judge's ruling on the qualification of an expert would not be disturbed in the absence of an abuse of discretion); ^{**143} *Ellis v. Davidson*, 358 S.C. 509, 526, 595 S.E.2d 817, 826 (Ct.App.2004) (demonstrating that there must be both error on the part of the trial judge, as well as prejudice to the complaining party to warrant reversal). An abuse of discretion occurs when the decision of the trial judge is unsupported by the evidence or controlled by an error of law. *Lelford v. Pa. Life Ins. Co.*, 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976). In order to demonstrate prejudice, there must be a "reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

[6] "All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in

ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). Rule 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by *38 knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE.

[7] [8] "The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject." *Wilson v. Rivers*, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004). To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he or she is better qualified than the jury to form an opinion on the particular subject of his or her testimony. *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997); see *State v. Guode*, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Cl.App.1991) ("There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge.").

Austin presented Disher, the owner and general manager of an auto body shop, as an expert in the field of auto body repair. Disher, who had thirty-five years' experience in auto-body repair, testified Austin's counsel hired him to inspect Austin's truck. After his inspection, Disher confirmed that the truck had been in an accident and had sustained "extensive mechanical and body repairs" to correct the damage. Due to the condition of the vehicle, Disher opined that "in the right circumstances that could very definitely be a safety issue." When Disher explained his safety concerns, Stokes-Craven's counsel requested the trial judge "clarify" the scope of Disher's qualifications. The trial judge asked Austin's counsel to rephrase his question and limited Disher's testimony to any safety issues that resulted from "body collision repair" or "body repair." Disher then testified that the "only big issue that I would have would be the frame alignment issue

and the wheel alignment." Disher believed that "anybody that had their eyes open and was looking ... could tell that there'd been a massive amount of repairs done to the vehicle." Counsel for Stokes-Craven objected to Disher's testimony regarding the ease with which someone could have *39 assessed the damage on the ground such testimony constituted speculation. The trial judge sustained the objection and counsel then began his cross-examination of Disher.

On appeal, Stokes-Craven contends Disher was not qualified to: (1) give an opinion as to any potential safety issues that may have been created by the prior accident, and (2) testify as to how "anyone" could tell the vehicle had been repaired.

[9] [10] Initially, we find Stokes-Craven failed to preserve any challenge to the admissibility of Disher's testimony. First, when Austin moved to qualify Disher as an expert witness in the field of auto body repair, counsel for Stokes-Craven did not question Disher and made no objection to his qualifications. Secondly, the trial judge sustained the objection interposed by counsel during Disher's testimony. Accordingly, we hold this argument was not properly preserved for **144 appellate review. See *Cogdill v. Watson*, 289 S.C. 531, 537, 347 S.E.2d 126, 130 (Cl.App.1986) ("The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object."); see also *State v. Sinclair*, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (recognizing that when a trial judge sustains an objection there is no issue for the appellate court to decide given the objecting party received the relief he sought).

[11] Even if properly preserved, we find Stokes-Craven cannot establish that it was prejudiced by the admission of Disher's testimony. First, the testimony was innocuous given it was extremely limited in duration and general in nature. Secondly, Stokes-Craven extensively cross-examined Disher regarding his qualifications and the fact that only someone with significant training or experience in the auto body repair industry would have discovered the extent of the repairs to the truck. Through cross-examination, Stokes-Craven's counsel also established Disher could not say "with a reasonable degree of certainty" that the prior damage would create a safety issue.

As his second expert witness, Austin sought to introduce Ray Morris as an expert in the automotive industry who would testify to the appraisal and valuation process regarding Austin's truck. In terms of his training, Morris testified that he *40 began in the automotive industry in 1973 when

he was hired at a Honda motorcycle dealership. After a year, Morris became employed as a salesman at another automotive dealership. Subsequently, Morris then worked at Champion Spark Plug Company for six years during which time he worked directly with automobile dealerships. After Champion's sales dropped, Morris was forced to change jobs. At that point, Morris became employed with Rick Hendrick Honda where he worked as a salesperson as well as a finance and insurance manager. After he left Rick Hendrick Honda, Morris remained in the automotive industry in different capacities, primarily in sales of accessories, within Isuzu motors. For the next ten years, Morris worked at his family's business which was not within the automotive industry. When Morris and his wife retired to Charleston, Morris resumed his automotive interests through employment with the Rick Hendrick Jeep/Chrysler dealership. Due to health reasons, Morris left this position for a year. In 2000, Morris established a consulting business in which he "provid[ed] assistance with buying cars and understanding the process."

Following his cross-examination, Stokes-Craven's counsel objected to Morris being qualified as an expert. Over the objection of counsel, the trial judge found Morris qualified to testify regarding the value of Austin's truck.

In terms of assessing the value of Austin's truck, Morris testified that he inspected the truck and identified parts on the truck that had evidently been damaged and repaired. He characterized the damage as "extensive." Following his inspection, Morris discussed his assessment with Disher. Based on these data points, Morris ultimately testified to a reasonable degree of certainty that Austin's truck had a "zero retail value" on June 1, 2002, the day that Austin purchased the vehicle. Morris explained that this value was based on the damage that had been done to the vehicle plus potential safety issues that were created by this damage.⁴

⁴¹ After this testimony, Austin sought to question Morris regarding his opinion as to whether a used car manager could have easily seen the "wreck" damage. The trial judge sustained Stokes-Craven's counsel's objection to this testimony.

When questioned on cross-examination as to how he determined the retail value of Austin's truck, Morris testified that Austin, as the retail buyer, would not have purchased the vehicle had he known it had been "wrecked." Based on this assessment, Morris stated that the vehicle "was worth nothing" to Austin. Although Morris acknowledged the truck

had a salvage value, he ⁴² discounted this value as to Austin given he would not have purchased a damaged vehicle.

[12] On appeal, Stokes-Craven contends Morris was not qualified to testify as to the "concept of retail value" and his testimony did "nothing" to assist the jury. Thus, Stokes-Craven claims the trial judge abused his discretion in qualifying Morris and that this error warrants a new trial.

We find the trial judge did not abuse his discretion in qualifying Morris as an expert witness. As his direct examination testimony revealed, Morris had extensive experience in several sectors of the automotive industry which included the appraisal of vehicles. Notably, Morris had also been qualified as an expert witness on four or five other occasions. Thus, any defects in Morris's experience regarding the valuation of automobiles went to the weight and not the admissibility of his testimony. See *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 399, 618 S.E.2d 903, 907 (2005) ("Defects in an expert witness' education and experience go to the weight, not the admissibility, of the expert's testimony.").

[13] However, even if the trial judge erred in qualifying Morris as an expert witness, we find Stokes-Craven was not prejudiced by the admission of his testimony. As previously stated, Stokes-Craven thoroughly cross-examined Morris regarding his lack of experience and qualifications. Furthermore, it appears that the testimony that Stokes-Craven primarily challenges on appeal was that produced by its own cross-examination of Morris. Finally, the testimony provided by Morris regarding the retail value was cumulative to other testimony. Specifically, Austin testified he believed the truck was "worth nothing" given he would not have bought it had he ⁴² known that it had been "wrecked." Additionally, Disher testified regarding the extensive damage to the vehicle and the potential safety issues created by this damage.

B. Fair Market Value

Stokes-Craven asserts the trial judge erred in failing to grant its motions for a directed verdict, JNOV, or new trial given Austin offered no evidence as to the fair market value of the actual condition of the truck. Stokes-Craven contends Austin's testimony that the truck was not worth anything to him and Morris's testimony that the truck had a "zero retail value" was insufficient to satisfy Austin's burden of proving his entitlement to actual damages.

[14] When we review a trial judge's grant or denial of a motion for directed verdict or JNOV, we reverse only when there is no evidence to support the ruling or when the ruling is governed by an error of law. *Creech v. South Carolina Wildlife & Marine Res. Dep't*, 328 S.C. 24, 29, 491 S.E.2d 571, 573 (1997).

As a preliminary matter, Austin contends this issue was not preserved for appellate review for several reasons, including the fact that Stokes-Craven never used the term "fair market value" during its presentation of its directed verdict motion or JNOV motion. Admittedly, Stokes-Craven only used the term "fair market value" on one occasion during Austin's testimony. However, we believe the lack of reference to this term is not fatal to Stokes-Craven's appellate argument. Given Stokes-Craven's counsel moved for a directed verdict and filed a detailed memorandum on its post-trial motions, we find this argument was sufficiently preserved for this Court's review. *1'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (acknowledging that an issue raised to and ruled upon by the lower court is preserved for appellate review). Having concluded this issue is properly before this Court, we now address the merits.

This Court has stated:

A plaintiff induced to enter a contract by fraud must elect between two remedies: he can elect to affirm the contract and bring an action to recover damages sustained by reason of the fraud or, alternatively, he may elect to rescind the *43 contract and recover the consideration paid plus incidental damages which were foreseeable and were incurred in reliance on the fraudulent misrepresentation.

**146 *Fields v. Yarbrough Ford, Inc.*, 307 S.C. 207, 211, 414 S.E.2d 164, 166 (1992).

[15] "The measure of damages for the sale of a defective vehicle is the difference in fair market value between the car, having been wrecked, and the value of the car had it not been wrecked at time of sale." *Barton v. Superior Motors, Inc.*, 309 S.C. 491, 494, 424 S.E.2d 524, 526 (Cl.App.1992); see *Mazloom v. Mazloom*, 382 S.C. 307, 321, 675 S.E.2d 746, 753 (Cl.App.2009) (recognizing the following definitions of "fair market value": (1) "[t]he price that a seller is willing to accept

and a buyer is willing to pay on the open market and in an arm's length transaction"; (2) "the price which a willing buyer will pay a willing seller, neither being under compulsion to buy or sell").

[16] [17] "Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.*

[18] [19] "Ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert." *Barton*, 309 S.C. at 494, 424 S.E.2d at 526; *Whisenant*, 277 S.C. at 13, 281 S.E.2d at 796 (noting that ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert); *Abercrombie v. Abercrombie*, 372 S.C. 643, 647, 643 S.E.2d 697, 699 (Cl.App.2007) (recognizing general rule in South Carolina that a property owner is competent to offer testimony as to the value of his property); *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 598, 493 S.E.2d 875, 881 (Cl.App.1997) ("The rule that a property owner is competent to present an opinion as to the property's value is well recognized."). "Unless the property *44 owner's lack of knowledge of the value of his property is so complete so as to render it worthless, it is for a jury to assess the probative value of his testimony." *Barton*, 309 S.C. at 494, 424 S.E.2d at 526.

[20] Turning to the merits of this issue, we find there is evidence to support the jury's award of actual damages in the amount of \$26,371.10, the purchase price of the vehicle retained by Austin.

Initially, we note the unique facts of the instant case. Normally, a property owner who seeks damages for a defective vehicle rescinds the contract, i.e., returns the vehicle, and files suit to recover damages. See *Sparrow v. Toyota of Florence, Inc.*, 302 S.C. 418, 421-22, 396 S.E.2d 645, 647 (Cl.App.1990) ("In an action for fraud in the sale of goods, the plaintiff may elect to return the goods and recover the consideration paid or retain the goods and sue for damages. If he retains the goods, the measure of actual damages is the difference between the value the purchaser

would have received if the facts were as represented and the value the purchaser actually received.”).

Here, Austin repeatedly offered to return the truck to Stokes-Craven in exchange for the purchase price. Given Stokes-Craven adamantly declined Austin's offers, we do not believe Austin should be penalized or limited in his ability to recover damages due to the fact that he has retained the vehicle. Thus, the question becomes whether Austin offered sufficient proof to establish the fair market value of the truck to support the jury's award of actual damages in the amount of \$26,371.10.

Austin, who was indisputably familiar with the truck, testified that the value of the vehicle was worth “nothing” on the date of sale given he would not have bought it had he known that it had been “wrecked.” Morris similarly testified that the vehicle had a “zero retail value” on June 1, 2002, the date of sale. In light of this testimony, it is evident the jury accepted Austin's and Morris's valuations and assessed the fair market value of the truck when it awarded Austin actual damages in the amount of \$26,371.10, the differential of the purchase price less the “zero” retail value. See **147 *45 *South Carolina State Highway Dep't v. Grant*, 265 S.C. 28, 32, 216 S.E.2d 758, 759–60 (1975) (“The basis for allowing a landowner to testify as to the value of his property is that he should not be deprived of his property without an opportunity of expressing his own view to the jury ... The jury is the tribunal to determine the weight to be accorded to the testimony of the witnesses and accept or reject the valuations placed thereupon.”); *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 181, 463 S.E.2d 636, 640 (Ct.App.1995) (affirming trial judge's award of actual damages for fair market value of plaintiff's lost tools where plaintiff testified to the amount it would cost to replace them and the amount awarded was comparable to the testimony). Based on the foregoing, we find the amount of actual damages awarded by the jury was supported by the testimony.

Because Austin offered sufficient evidence to support the award of actual damages through his own testimony and expert witness testimony, we find the cases cited by Stokes-Craven to be distinguishable in that in those cases the plaintiff failed to offer specific evidence as to the value of the vehicle.

C. Federal Odometer Act

[21] Stokes-Craven contends the trial judge erred in failing to grant its motion for a directed verdict or JNOV as to

Austin's claim under the Federal Odometer Act. Initially, Stokes-Craven asserts there was no “technical” violation of the Federal Odometer Act because: (1) the truck was not titled in Stokes-Craven's name, and (2) the odometer disclosure was properly made on a document used to reassign the truck's title to Austin. Even if its failure to disclose the odometer reading to Austin constituted a violation of the Act, Stokes-Craven claims this violation was not sufficient to support a recoverable claim given there was no specific “intent to defraud” Austin with respect to the truck's mileage.

As a preliminary matter, we question whether Stokes-Craven's first argument was properly preserved for this Court's review. At trial, Stokes-Craven's counsel appears to admit that the truck was titled in Stokes-Craven's name at the time Austin purchased the vehicle. Secondly, Frierson, the Stokes-Craven salesman involved in Austin's purchase, admitted that he had never shown a title to a customer in his twenty-five years of experience. Thus, any argument regarding the lack of title in Stokes-Craven's name or its failure to *46 disclose the title to Austin would not be preserved for appellate review. See *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) (“An issue conceded in a lower court may not be argued on appeal.”).

[22] [23] However, even if Stokes-Craven's failure to disclose the truck title to Austin constituted a violation of the Act,⁵ we find Austin did not prove Stokes-Craven violated the Act with the requisite intent to defraud.

[24] The Federal Odometer Act (“the Act”) provides for a private cause of action where a defendant violates the Act with intent to defraud. 49 U.S.C.A. § 32710.⁶ Thus, the question becomes whether Austin proved Stokes-Craven violated the Act with the requisite intent to defraud.

To satisfy this burden, Stokes-Craven claims Austin was required to establish that it violated the Act with a specific intent to defraud regarding the truck's mileage. In contrast, Austin construes the Act broadly and believes that a general intent to defraud is sufficient to satisfy this element in a civil **148 action. In order to answer this question, we believe a review of the legislative history of the Act is instructive.

The purpose of this Act has been explained as follows:

In passing the Odometer Act, and its predecessor, Congress sought “(1) to prohibit tampering with motor vehicle

*47 odometers; and (2) to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers." 49 U.S.C. § 32701(b). To accomplish these express goals, the Act imposes various requirements on persons transferring motor vehicles. In addition to flat prohibitions on tampering with odometers, a transferor "of a motor vehicle [must] give the transferee a written disclosure (A) of the cumulative mileage registered by the odometer; or (B) that the mileage is unknown if the transferor knows that the mileage registered by the odometer is incorrect." 49 U.S.C. § 32705(a)(1). Transferors are prohibited from making false statements in these disclosures. See 49 U.S.C. § 32705(a)(2). Furthermore, Congress provided for criminal and civil penalties for violations of the Act, including a private civil action. See 49 U.S.C. §§ 32709–32710. Section 32710 states: "A person that violates this chapter or a regulation prescribed or order issued under this chapter, *with intent to defraud*, is liable for 3 times the actual damages or \$1,500, whichever is greater." 49 U.S.C. § 32710(a).

Based on a Congressional delegation of authority in § 32705, the National Highway Traffic Safety Administration ("NHTSA") promulgated regulations which "provide the way in which information is disclosed and retained under" the Act. 49 U.S.C. § 32705. The scope of these regulations is limited to "rules requiring transferors ... of motor vehicles to make written disclosure to transferees ... concerning the odometer mileage and its accuracy as directed by [the Act]." 49 C.F.R. § 580.1. Further, the purpose of the regulations "is to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title...." 49 C.F.R. § 580.2. Accordingly, "each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred...." 49 C.F.R. § 580.5(a). Additionally, transferors are required to disclose the mileage to the transferee in writing on the title. See 49 C.F.R. § 580.5(c).

Nabors v. Auto Sports Unlimited, Inc., 475 F.Supp.2d 646, 649–50 (E.D.Mich.2007).

*48 With respect to the question of whether the "intent to defraud" requirement for a civil action involves a specific intent to defraud as to mileage of the vehicle or a general intent to defraud, "[t]here is a split of authority on this issue, with the vast majority of courts concluding that the

intent to defraud for the purposes of the Odometer Act is a specific intent to defraud as to mileage." *Nabors*, 475 F.Supp.2d at 650; see *Ioffe v. Skokie Motor Sales, Inc.*, 414 F.3d 708, 711 (7th Cir.2005) (analyzing the Federal Odometer Act and concluding "[s]ection 32710 does not create a private right of action for all violations of the Act and regulations that are accompanied by any 'intent to defraud.' Rather, where a plaintiff alleges a violation of 49 C.F.R. § 580.5(c), he must prove intent to defraud as to a vehicle mileage."); see generally Ann K. Wooster, Annotation, *Validity, Construction, and Application of Odometer Requirement Provisions of Motor Vehicle Information and Cost Savings Act* (49 U.S.C.A. §§ 32701 to 32711), 198 A.L.R. Fed. 255 (2004 & Supp.2009) (analyzing cases involving the Federal Odometer Act and discussing requisite elements including the "intent to defraud").

Applying the foregoing to the facts of the instant case, we hold the trial judge erred in failing to grant Stokes-Craven's motion for a directed verdict or post-trial motion for JNOV. At trial, Austin's counsel conceded the claim under the Act did not arise out of a dispute regarding the mileage. Significantly, Austin never asserted that Stokes-Craven misrepresented the mileage of the truck or tampered with its odometer. Instead, Austin's claim under the Act was essentially **149 based on Stokes-Craven's failure to disclose the title to the truck prior to Austin's purchase. Throughout the trial, Austin maintained that he would not have purchased the truck had he seen the title listing Bailey, not Bud Knight, as the previous owner. Had he been aware that Bailey was the previous owner, Austin claimed he would have been able to discover the extensive "wreck" damage.

In view of this evidence and Austin's arguments, we find his claim under the Act failed as a matter of law because he did not establish that Stokes-Craven's violation of the Act was coupled with a specific intent to defraud him regarding the truck's mileage. Thus, we find the trial judge should have *49 granted Stokes-Craven's motions for a directed verdict or JNOV with respect to this cause of action. See *Bodine v. Graco, Inc.*, 533 F.3d 1145 (9th Cir.2008) (holding purchaser of used vehicle failed to state a claim under the Act when she alleged that the vehicle's sellers violated the Act by deliberately withholding the vehicle's title to conceal that the vehicle had been severely damaged in an earlier collision given the absence of the requisite allegation that the sellers intended to defraud her as to the vehicle's mileage); *Nabors*, 475 F.Supp.2d at 653–54 (finding used automobile dealer was entitled to summary judgment on purchaser's claim under

the Act where purchaser failed to present evidence indicating the dealer intended to defraud purchaser as to the vehicle's mileage even though there was evidence that purchaser may not have been notified that the vehicle was "salvaged" or that dealer may have used fabricated documents for the purposes of the lawsuit); *loffe*, 414 F.3d at 713-14 (recognizing that the Odometer Act "is concerned specifically with fraud related to the vehicle's mileage rather than with all types of fraud that might involve the withholding of a vehicle's title"). Accordingly, we reverse the trial judge's award of \$1,500 in actual damages and \$4,500 in attorney's fees to Austin under this cause of action.

D. Inconsistent Verdicts

[25] Stokes-Craven asserts the trial judge erred in failing to grant it a new trial on the ground the jury verdicts were inconsistent. Given the jury found in favor of Austin as to his claims for fraud and in favor of Stokes-Craven as to the UTPA claim, Stokes-Craven contends these verdicts are irreconcilable and, thus, warrant a new trial.

[26] [27] [28] Whether to grant a new trial is a matter within the discretion of the trial judge, and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law. *Vinson v. Hartley*, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Cl.App.1996). Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge "should not be required to guess as to what a jury sought to render." *Prego v. Hobart*, 287 S.C. 116, 118, 336 S.E.2d 725, 726 (Cl.App.1985). However, "[i]t is the duty of the court to *50 sustain verdicts when a logical reason for reconciling them can be found." *Rhodes v. Winn-Dixie Greenville, Inc.*, 249 S.C. 526, 530, 155 S.E.2d 308, 310 (1967).

[29] "To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Cl.App.2006); S.C.Code Ann. §§ 39-5-10 to -560 (1976 & Supp.2009).

[30] [31] In contrast, "[t]o establish a cause of action for fraud, the following elements must be proven by clear,

cogent, and convincing evidence: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007). "The failure to prove any element of fraud or misrepresentation is fatal to the claim." *Id.*

*150 A review of the elements of these two claims reveals that different proof is required to recover under each cause of action. For example, the jury could have found the elements of fraud were sufficient to satisfy the deceptive act prong of an UTPA claim; however, it may have concluded the deceptive act was confined to Austin's transaction and did not affect the public interest, *i.e.*, satisfy the public interest prong of the UTPA claim. Thus, we find the verdicts of the jury were not necessarily inconsistent.

E. Punitive Damages

Stokes-Craven asserts the judge erred in affirming the jury's award of \$216,600 in punitive damages. In support of this assertion, it contends the award: (1) cannot stand because the award of actual damages was improper; (2) was based upon the improper closing arguments of Austin's counsel; and (3) is excessive and unconstitutional.

*51 Having found there was evidence to support the jury's award of actual damages to Austin in the amount of \$26,371.10, we focus our analysis on Stokes-Craven's two remaining arguments regarding the award of punitive damages.

In the instant case, Stokes-Craven challenged the award of punitive damages during trial and in its post-trial motions. Prior to the jury's deliberations, a sealed statement regarding Stokes-Craven's net worth was submitted to the jury with the instruction that they only open it in the event punitive damages were awarded. In the course of his closing argument, Austin's counsel indicated that he had not seen this net worth statement and, thus, could only rely on the testimony at trial to estimate the profits of Stokes-Craven. Specifically, counsel referenced the testimony of Dennis Craven wherein he testified regarding the average number of vehicles sold per year and the average profit per vehicle. Extrapolating from

this testimony, Austin's counsel stated "[t]he total profit for 2005, based on Mr. Craven's testimony is one million three hundred and sixty-five thousand dollars profit." Throughout this portion of Austin's counsel's closing argument, counsel for Stokes-Craven interposed objections which were partially sustained by the trial judge.

In its post-trial motion, Stokes-Craven challenged the award of punitive damages on several grounds which included the alleged improper closing remarks of Austin's counsel and the excessiveness of the award.

In his order affirming the jury's award of punitive damages, the trial judge specifically identified and found evidence in the record to support each of the factors outlined in *Gamble*.

[32] Turning to Stokes-Craven's remaining two arguments, we find any complaint regarding improper closing arguments is inconsequential given both the jury and the trial judge relied upon the sealed statement of Stokes-Craven's net worth in assessing whether Stokes-Craven had the ability to pay.⁷ This statement reflected that Stokes-Craven's net ^{*52} worth was \$1,444,561 as of December 31, 2005. Accordingly, Stokes-Craven's second argument is without merit.

[33] We now turn to Stokes-Craven's final argument in which it challenges the amount of the award of punitive damages.

[34] "Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006).

Recently, this Court articulated the guideposts to be applied in conducting a post-judgment review of punitive damages awards. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009).⁸ In *Mitchell*, we ^{**151} explained that a trial judge shall review the constitutionality of a punitive damages award by determining whether the award was reasonable under the following guideposts: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Id.* at 587-88, 686 S.E.2d at 185-86 (citing

BMW of North America v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996)). We further emphasized that an appellate court reviews de novo the trial judge's application of these guideposts. *Id.*

Based on our review of the record in the context of the *Mitchell* test, we find the amount of punitive damages awarded to Austin was not grossly excessive. In reaching this conclusion, we address each of the factors enunciated in *Mitchell*.

^{*53} [35] In terms of reprehensibility, we should consider whether: (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *Id.* at 587, 686 S.E.2d at 185 (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003)).

Considering the above-outlined factors, we find Stokes-Craven's conduct can only be construed as exhibiting an extremely high degree of reprehensibility. Admittedly, the harm caused to Austin was economic. However, this factor alone does not minimize the reprehensibility of Stokes-Craven's conduct given the dealership procured Austin's purchase of the truck through its employees' affirmative misrepresentations regarding the condition of the vehicle. Significantly, Stokes-Craven employees failed to disclose that the truck had been "wrecked" and the lack of a power train warranty. There is also evidence that Stokes-Craven forged Austin's signature on the "Buyer's Guide" in an effort to legitimize the lack of a power train warranty. We believe these misrepresentations, particularly as to whether the vehicle had been wrecked, evinced an indifference to or a reckless disregard of the health and safety of Austin and the general public that would share the road with the potentially unsafe vehicle. Finally, there is evidence that Stokes-Craven's mistreatment of Austin, a financially vulnerable customer, was not an isolated incident as Frierson testified that he had not shown a title to a customer in his twenty-five years of experience.

[36] Next, we find the ratio of punitive damages to actual damages does not warrant reversal. In determining the reasonableness of the ratio we may consider: the likelihood that that the award will deter the defendant from like conduct;

whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay. *Id.* at 588, 686 S.E.2d at 185.

Admittedly, an 8.21 ratio is high considering the type of "injury" underlying Austin's claims. However, it is a single-^{*54} digit ratio and there is evidence of Stokes-Craven's ability to pay. Furthermore, given the extent of the wreck damage and the resultant safety issues, we believe there was a potential for Austin or his passengers to be subjected to serious injury. We also find the amount of the award of punitive damages will inevitably serve as a deterrent to Stokes-Craven from engaging in future misconduct. *See Gore*, 517 U.S. at 582, 116 S.Ct. 1589 (stating "low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages"); *Mitchell*, 385 S.C. at 594, 686 S.E.2d at 188 (concluding a 9.2 to 1 ratio satisfied due process and comported with South Carolina law); *Atkinson v. Orkin Exterminating Co.*, 361 S.C. 156, 170, 604 S.E.2d 385, 392-93 (2004) (stating "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process" (quoting ^{**152} *Campbell*, 538 U.S. at 425, 123 S.Ct. 1513)); *cf. James*, 371 S.C. at 196, 638 S.E.2d at 672 (concluding, in a case involving an insured's bad faith claim against his insurer, punitive damage award of \$1,000,00 which was 6.82 times the amount of actual damages was reasonably related to the actual harm suffered).

Finally, we must consider the difference between the punitive damages awarded to Austin and the civil penalties authorized or imposed in comparable cases. Because the jury awarded punitive damages pursuant to Austin's fraud cause of action, we are compelled to review factually-similar cases.⁹ Based on our review of these cases, we conclude the award of punitive damages in the instant case is consistent with those of comparable cases. *See, e.g., Krysa v. Payne*, 176 S.W.3d 150 (Mo.Ct.App.2005) (affirming jury verdict of \$18,449.53 in compensatory damages and \$500,000 in punitive damages awarded to purchasers of a used vehicle against dealership where dealership: did not provide title to purchasers at the time of purchase; failed to disclose that the vehicle had thirteen prior owners; affirmatively misrepresented the condition of the ^{*55} vehicle; and failed to disclose that the vehicle had sustained significant wreck damage); *Parrott v. Carr Chevrolet, Inc.*, 331 Or. 537, 17 P.3d 473 (2001) (affirming award of \$11,496 in compensatory damages and

\$1 million in punitive damages where the defendant car dealership sold the plaintiff a vehicle that had been previously involved in a serious accident and was missing several pieces of emission control equipment).

In conclusion, having carefully considered the *Mitchell* guideposts, we hold the jury's award of punitive damages was not grossly excessive in violation of the Due Process Clause of the Fourteenth Amendment.

I. Austin's Appeal

A. Election of Remedies

Austin essentially contends the trial judge erred in failing to award his request for attorney's fees and costs in its entirety for the amount of \$49,936.50.

In his post-trial motion, Austin requested to recover damages under all of the jury's verdicts in addition to attorney's fees and costs as statutorily-authorized under the Dealer's Act and the Federal Odometer Act. In his order addressing this request, the trial judge held Austin was required to elect one verdict as between the negligence, fraud, constructive fraud, and the Dealer's Act given Austin experienced one loss based on four different theories.

In view of this holding, the trial judge implicitly denied Austin's request for attorney's fees and costs under the Dealer's Act. Given Austin's recovery under the Federal Odometer Act represented a separate cause of action, the trial judge awarded Austin \$1,500 in actual damages and a "reasonable attorney fee" in the amount of \$4,500, which represented the time spent on recovering under the Federal Odometer Act.¹⁰

Because Austin was ordered to elect between the jury's verdicts of negligence, constructive fraud, fraud, and the violation of the Dealer's Act, Austin claims he was denied the ^{*56} statutorily-authorized attorney's fees and costs under the Dealer's Act¹¹ given he chose to recover for his fraud claim which yielded only actual and punitive damages.

[37] [38] [39] "Election of remedies involves a choice between different forms of redress ^{**153} afforded by law for the same injury or different forms of proceeding on the same cause of action." *Taylor v. Medenica*, 324 S.C. 200, 218.

479 S.E.2d 35, 44 (1996). The basic purpose of election of remedies is to prevent double recovery for a single wrong. *Save Charleston Found. v. Murray*, 286 S.C. 170, 333 S.E.2d 60 (Ct.App.1985). "When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both." *Id.* at 175, 333 S.E.2d at 64.

[40] Although novel in this state, we find Austin's contention is supported by case law from other jurisdictions. As we interpret these cases, they stand for the proposition that a plaintiff may recover attorney fees under a statutory claim in addition to punitive damages under a common law claim. The rationale for this position is that an award for both does not amount to double recovery for a single wrong given attorney's fees are intended to make such claims economically viable for private citizens whereas an award of punitive damages is designed to punish wrongful conduct and deter future misconduct. *See, e.g., Miller v. United Automax*, 166 S.W.3d 692, 697-98 (Tenn.2005) (holding, in suit involving buyers of a used car, election of remedies doctrine did not bar buyers from recovering attorney fees under the Tennessee Consumer Protection Act after having elected to receive punitive damages on their common law misrepresentation claim in lieu of statutory treble damages); *Wilkins v. Peninsula Motor Cars, Inc.*, 266 Va. 558, 587 S.E.2d 581, 583-84 (2003) (concluding, in a case *57 involving a buyer of used car, election of remedies doctrine did not require the buyer to elect between verdicts of fraud and violation of the Virginia Consumer Protection Act where recovery of attorney fees under the Act was not duplicative of punitive damages awarded on the common law fraud claim).

Because costly attorney fees may deter private citizens from bringing a claim under the Dealer's Act, a decision in favor of Austin facilitates the purpose of the Act which is to provide buyers a private right of action against dealers who engage in deceptive practices. Furthermore, given the recovery of attorney's fees under the Dealer's Act is not duplicative of the award of punitive damages, we do not believe a decision in favor of Austin would violate the election of remedies doctrine's prevention of double redress for a single wrong. As its name states, the doctrine applies to the election of "remedies" not the election of "verdicts." Thus, an award of attorney's fees and costs would merely serve to fully compensate Austin for pursuing his statutory-authorized private right of action under the Dealer's Act, which we believe epitomizes the definition of a remedy. *See Black's Law Dictionary* 1163 (5th ed. 1979) (defining "remedy" as

"[t]he means by which a right is enforced or the violation of a right is prevented, redressed, or compensated").

Given our conclusion that Austin can recover attorney's fees and costs under the Dealer's Act, the question becomes whether he should be awarded the entire amount of his request or should the amount be limited to the fees incurred in establishing his claim under the Dealer's Act.

Under the specific facts of this case, we find it would be difficult to dissect Austin's counsel's fee affidavit to ascertain how much time was spent on this particular claim given the violation of the Act was based on the same facts and circumstances underlying his claims for fraud and constructive fraud. Furthermore, to award Austin his claim in its entirety would be consistent with the precedent of this Court. *Cf. Taylor v. Nix*, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992) (finding award of attorney fees under the Dealer's Act was warranted even though fee affidavit was not itemized for time spent for claim under the Act and that spent for the nonstatutory cause of action).

*58 B. Prejudgment Interest

[41] Austin contends the trial judge erred in declining to award him prejudgment interest. Because Stokes-Craven rejected Austin's "demand" to return the truck in exchange for the purchase price, Austin claims his actual damages were "capable of ascertainment." In support of these assertions, Austin notes the jury awarded actual damages in the amount of \$26,371.10 which **154 equaled the purchase price of \$25,981.10 plus \$390.00 for the taxes and tags.

[42] [43] [44] "The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law." *Historic Charleston Holdings, LLC v. Mallon, LLC*, 381 S.C. 417, 435, 673 S.E.2d 448, 457 (2009); *see* S.C.Code Ann. § 34-31-20(A) (Supp.2009) ("In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum."). "Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute." *Charleston Holdings, LLC*, 381 S.C. at 435, 673 S.E.2d at 457. "The fact that the amount due is

disputed does not render the claim unliquidated for purposes of awarding prejudgment interest." *Id.* "Rather, the proper test is 'whether [or not] the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.'" *Id.* (quoting *Bulter Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 259 (2006)).

Although Austin is correct that prejudgment interest is statutorily authorized by the provisions of section 34-31-20 of the South Carolina Code, we find Austin's damages were not liquidated at the time his claim arose. Austin's lawsuit arose out of his dissatisfaction with the purchase of a used vehicle. Because Austin alleged claims of fraud, constructive fraud, negligence, and violations of state and federal motor vehicle acts his prospective damages were unliquidated and could not have been ascertained without evidence of the retail value of the truck. Given Austin's monetary recovery could not have *59 been reduced to certainty, the trial judge correctly denied Austin's request for prejudgment interest.

CONCLUSION

As to Stokes-Craven's appeal, we hold: (1) there was no prejudicial abuse of discretion in admitting the testimony of Disher and Morris; (2) Austin offered proof of actual damages in the amount of \$26,371.10; (3) Austin failed to prove that Stokes-Craven violated the Federal Odometer Act with the requisite intent to defraud him as to the mileage of the truck; (4) the verdicts for fraud and violation of the UTPA were not inconsistent; and (5) there was evidence to support the jury's award of \$216,000 in punitive damages.

In terms of Austin's cross-appeal, we hold: (1) he is entitled to the entire amount of his request for attorney's fees and costs under the South Carolina Dealer's Act; and (2) he is not entitled to prejudgment interest.

Accordingly, we remand this case to the circuit court for entry of judgment consistent with our decision.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

WALLER, J., concurs.

PLEICONES, J., concurring in part and dissenting in part in a separate opinion.

KITTREDGE, J., concurring in part, dissenting in part in a separate opinion in which TOAL, C.J., concurs.

Justice PLEICONES, concurring in part and dissenting in part.

I respectfully concur in part and dissent in part. Specifically, I agree that Stokes-Craven has not shown an abuse of discretion in the trial court's decision to qualify Morris as an expert, *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), although I would give no weight to the fact that Morris had been qualified as an expert on several other occasions. *Cf. State v. Jones*, 383 S.C. 535, 681 S.E.2d 580 (2009) (despite fact that other jurisdictions had permitted same witness to *60 testify as expert in area, trial court abused its discretion in admitting the evidence). I also agree with the majority that Stokes-Craven was entitled to a directed verdict on the Federal Odometer Act claim, and that it cannot prevail on its new trial argument. *See Camden v. Hilton*, 360 S.C. 164, 600 S.E.2d 88 (Ct.App.2005) (inconsistent verdict **155 allegation waived if not raised before jury is dismissed). Finally, I agree with the majority that the trial judge properly denied Austin's request for prejudgment interest.

I agree with Austin that the issue whether Stokes-Craven was entitled to a directed verdict because Austin offered no evidence of fair market value is not preserved for appeal as this failure of proof was not raised as a ground for a directed verdict. Consequently, whether it was raised in the judgment *non obstante veredicto* (JNOV) motion and/or is discussed in the detailed post-trial memorandum is irrelevant. *E.g., In re McCracken*, 346 S.C. 87, 551 S.E.2d 235 (2001) (only issues raised at directed verdict can properly be raised a JNOV). Moreover, since there was no contemporaneous objection either to the expert's or to the owner's testimony that the truck had a value of \$0, I agree that there was evidence of value for the jury's consideration. *E.g., Cantrell v. Carruth*, 250 S.C. 415, 158 S.E.2d 208 (1967) (evidence received without objection becomes competent and cannot be disregarded when considering directed verdict motion). Had the issue been properly preserved, however, I would agree that Austin failed to present any competent evidence of the truck's fair market value, which clearly is more than \$0.

Stokes-Craven also contends that it was entitled to a new trial as there is no evidence in the record to support the jury's verdict valuing the truck at \$26,371.10, that is, the amount

Austin paid for it. Since there was no objection to Austin's or Morris' 50 value testimony, there is evidence in the record to support this verdict.¹² I therefore agree with the majority that Stokes-Craven has not shown an abuse of discretion in *61 the trial court's denial of a new trial. *E.g., Dillon v. Frazer*, 383 S.C. 59, 678 S.E.2d 251 (2009).

On appeal, Stokes-Craven contends the trial judge erred in allowing Disher to testify to safety issues. In my view, this issue is not preserved for appellate review since the judge sustained both of Stokes-Craven's objections to Disher's answers which exceeded the scope of Disher's expertise. *See State v. Thompson*, 304 S.C. 85, 403 S.E.2d 139 (Ct.App.1991) (where objection sustained and no further relief is sought, no issue is preserved for appeal as appellant received all relief requested from trial judge). As I do not view the issue as preserved, I do not join the majority's discussion of prejudice.

Unlike the majority, I would reduce the punitive damages award here. Stokes-Craven challenges the punitive damages award on three grounds arguing that:

- 1) since the actual damage award of \$26,371.10 must be reversed, the punitive damage award cannot stand;
- 2) the punitive award is based on an inappropriate closing argument; and
- 3) the award is unconstitutionally excessive.

As explained above, no issue relating to the actual damage award is preserved for appellate review, and thus Stokes-Craven's first argument fails.

The question of improper closing argument is also not preserved. Austin's counsel argued that, extrapolating from other testimony, Stokes-Craven's total profit for 2005 was \$1,365,000. Stokes-Craven did not object to this argument. In its order reviewing punitive damages, the trial judge wrote that the witness had testified to this "total profit," which is incorrect. However, Stokes-Craven never called this misstatement to the trial judge's attention. Given that there was no objection to the extrapolation of total profit in Austin's closing argument, its alleged impropriety cannot be the basis for reversal here. *E.g., Ligon v. Norris*, 371 S.C. 625, 640 S.E.2d 467 (Ct.App.2006). Further, the trial court's unobjected-to misstatement in its order reversing punitive damages is not a basis for reversal. *E.g., State v. Cuvert*, 382

S.C. 205, 675 S.E.2d 740 (2009) (error must cause sufficient prejudice to warrant reversal).

*62 The third ground urged for reversal is Stokes-Craven's argument that the punitive **156 damages verdict of \$216,600 is unconstitutionally excessive. In *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), we articulated a reformulated three-part test to be used in conducting a post-judgment review of a punitive damages award: the reprehensibility of the defendant's conduct; the ratio between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award; and the difference between the punitive damages verdict and civil penalties authorized in comparable cases. I have reviewed each part below.

1. Reprehensibility

[45] In my view, it is reprehensible to misrepresent a warranty, and to deny that the vehicle had been wrecked when asked directly. I do not find it reprehensible, however, to vaguely confirm the buyer's guess as to the identity of the truck's prior owner. I find the warranty issue was mitigated since, when the misrepresentation/misunderstanding was discovered about two months after the purchase, Stokes-Craven's offered to "trade [Austin] out of the truck." As to the vague confirmation by Stokes-Craven as to the truck's prior owner, i.e., "Yeah, I believe that is his truck," I do not find the action particularly despicable. I am, however, deeply troubled by Stokes-Craven's misrepresentation that the truck had not been wrecked. My concern is tempered somewhat by the testimony of Austin's own expert Disher that "anybody that [sic] had their eyes open and was looking ... could tell that there'd been a massive amount of repairs done to that vehicle" in light of Austin's testimony that he "used his training as a mechanic to examine the [truck's] outside and its underside." The misrepresentation is reprehensible: whether Austin was misled is questionable.

In short, I find the conduct mildly reprehensible. Unlike the majority, I find no evidence that Stokes-Craven "forged" Austin's signature on the "Buyers Guide," only evidence that Austin denied signing it. Finally, given that we have held the trial judge should have granted a directed verdict on the Federal Odometer Act claim, I do not agree that we should rely on evidence of Stokes-Craven's practice of not showing titles to customers, evidence admitted only in an

attempt to *63 prove the Odometer Act claim, as probative of reprehensibility.

2. Ratio

Although I find that Stokes-Craven did not preserve its objections to the testimony that the fair market value of the truck was \$0, in viewing this ratio guidepost *Fortis* instructs we need not always compare the punitive award to the actual damages.

Here, the truck obviously had residual value, either as scrap or for its intended purpose in light of the evidence that Austin continued to drive the truck at the time of the trial, more than four years after it was purchased. In my view, the actual damage award far exceeds the true value of any harm or potential harm suffered by Austin.

On a pure ratio basis, the relationship between the actual/punitive awards is 1:8.21. In my view, this ratio is, as the majority acknowledges, "high," especially since I view the actual damages award as unreliable. Looking at the ratio in light of the other factors to be considered under *Fortis*, I find the punitive damages awarded here will deter Stokes-Craven from making misrepresentations in the future; that the \$216,000 awarded is reasonably related to the harm likely to result from such conduct; and that Stokes-Craven has the ability to pay. I therefore reluctantly conclude that ratio does not provide a basis to reverse or reduce the punitive damage award.

The final guidepost under *Fortis* is a comparison of the \$216,000 to civil penalties authorized in comparable cases. In my view, the closest comparable statutory scheme is the Motor Vehicles Dealers Act, which admittedly does not provide for civil penalties. While the jury found a violation of that statute here, it found no punitive damages were warranted. Under this Act, punitive damages can be awarded if the defendant acted "maliciously," but any such award is capped at three times the actual damages awarded. S.C. Code Ann. § 56-15-110(3) (2006). Here, the maximum "statutory penalty" would have been \$79,113.30 in light of the actual damages award of \$26,371.10.

**157 In short, the reprehensibility is mild, the ratio is high, and the comparable penalty less. Viewing these three guideposts, *64 I find the verdict here constitutionally excessive, and would remit the punitive award to \$100,000.

Compare Fortis, supra (partially remitting punitive damages award after appellate review).

I agree with the majority that a plaintiff who elects to receive damages awarded under a common law theory may also be entitled to recover statutory costs and attorneys fees to which he is entitled under a separate verdict, without running afoul of the public policies underlying the doctrine of election of remedies. See, e.g., *United Labs., Inc. v. Kuykendall*, 335 N.C. 183, 437 S.E.2d 374 (1993). As explained below, however, I do not believe this issue is preserved for our consideration.

Here, Austin sought attorneys' fees under the Dealers Act and also sought reasonable attorneys' fees under the Odometer Act. The trial judge awarded him attorneys' fees under the Odometer Act, restricting the amount to fees and costs reasonably and necessarily incurred in prosecuting that cause of action. The majority has concluded that Austin's Odometer Act claim must fail. In my view, his claim for attorneys' fees and costs dies with it.

On appeal, Austin maintains the trial court erred in requiring him to elect between punitive damages under the fraud or negligence verdict and his costs and fees under the Dealers Act. In my view, this issue is not preserved. After the court ruled that Austin must elect between the Dealers Act verdict, the fraud verdict, and the negligence verdict, but did not rule on this issue involving an election between punitive damages and statutory fees, Austin filed no motion to alter or amend. Since this issue was not ruled on below and no motion to alter or amend was made, no issue regarding the availability of Dealers Act fees and costs is preserved for our review. E.g., *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009).

I also disagree with the majority's holding that, pursuant to *Taylor v. Nix*, 307 S.C. 551, 416 S.E.2d 619 (1992), a plaintiff entitled to fees under the Dealers Act need not segregate the amount of attorney time and costs attributable to that claim and recover only these sums. That opinion holds:

The defendant's attorney argued fees related to the [non-Dealers Act] cause of action should have been excluded.

*65 We agree. However, precisely what fees were unrelated to the statutory action were not presented to the lower court ... [T]he party asserting the right to attorneys fees [must] produce an itemized affidavit of their fees that they believe are related to the statutory claim. The opposing party then has the burden of showing which of the fees are clearly unrelated.

Taylor v. Nix, 307 S.C. at 557, 416 S.E.2d at 622.

The only attorneys' fees affidavit in this record was submitted by Austin's counsel prior to the court's ruling on the election of remedies issues, and makes no pretense of separating fees incurred only in pursuit of the Dealers Act or the Odometer Act. He therefore did not meet even the threshold requirement of *Taylor v. Nix*, *supra*.

Overlooking for the moment that the issue is not preserved, I disagree with the majority that we may award all fees and costs sought on this record, given the applicable law. This is especially so since in making the fees and costs award Austin sought under the Odometer Act, the trial judge honored *Taylor v. Nix*: he required Austin to submit a new affidavit identifying fees and costs attributable to that cause of action, and gave Stokes-Craven the opportunity for "input" following submission of that affidavit. Presumably, the trial judge would have followed this same procedure had he made an award under the Dealers Act.

Austin sought attorneys' fees and costs under two separate statutes. The judge awarded them under one, and Austin did not object. Nowhere below did Austin specify he sought to recover fees and costs incurred in prosecuting the Odometer Act claim in addition to fees and costs incurred in pursuing the Dealers Act claim.

I concur in part and dissent in part.

**158 Justice KITTREDGE, concurring in part and dissenting in part.

I concur in part and dissent in part. I join the well-written majority opinion of Justice Beatty save two exceptions. Concerning the trial court's failure to grant a directed verdict due to the lack of evidence of fair market value and the election of remedies issue, I join the dissent of Justice Pleicones. Additionally, regarding the reprehensibility prong of the punitive *66 damages analysis, I believe Justice Pleicones is correct in rejecting any reliance on Stokes-Craven's practice of not showing titles to customers because the Federal Odometer Act claim fails as a matter of law. I nevertheless join the majority in affirming the punitive damages award. I believe there was ample evidence of Stokes-Craven's reprehensibility (which I do not view as "mild") beyond its failure to show titles to customers. I otherwise concur with the majority opinion's analysis regarding the punitive damages award.

TOAL, C.J., concurs.

Parallel Citations

691 S.E.2d 135

Footnotes

- 1 The South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (the "Dealer's Act") is codified at S.C.Code Ann. §§ 56-15-10 to -600 (2006 & Supp.2009). Section 56-15-40 provides in relevant part, "It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer ... distributor, wholesaler ... or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public." S.C.Code Ann. § 56-15-40(1) (2006).
- 2 The Federal Odometer Act, specifically titled "Motor Vehicle Information and Cost Savings Act," is codified at 49 U.S.C.A. § 32701 to § 32711 (West 2009).
- 3 During the trial, Austin withdrew his causes of action for revocation of acceptance and breach of contract.
- 4 Morris testified that he initially assigned a \$14,000 value to the truck. However, he clarified that this value was based on incomplete information. After he received information from Disher regarding the truck's potential "safety issues," he concluded the retail value of the truck was "zero."
- 5 It would appear that Stokes-Craven technically violated the Act by failing to disclose the truck's title to Austin prior to his purchase. See *Tuckish v. Pompano Motor Co.*, 337 F.Supp.2d 1313, 1318 (S.D.Fla.2004) ("Failure to provide a purchaser with a copy of the certificate of title, when such title is available, technically violates the Odometer Act."). However, because the purpose of the Act is to inform a car buyer of a vehicle's actual odometer reading prior to purchase, we believe this purpose could be effectuated by a seller disclosing the mileage on any document that is part of the purchase transaction. Thus, we do not interpret the Act as restricting the mileage disclosure solely to the title of the vehicle.
- 6 We note the statute provides for concurrent jurisdiction, stating "A person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction." 49 U.S.C.A. § 32710(b). The Act also does not preempt state law regarding the same subject matter. 49 U.S.C.A. § 32711.

- 7 Although we do not think it was prejudicial to Stokes-Craven, we note the trial judge in his written order referenced Dennis Craven's testimony to conclusively establish the dealership's net profit as \$1,365,000. The only reference in the record to this figure is in Austin's counsel's closing argument.
- 8 Because *Mitchell* was decided after the trial in the instant case, we note the trial judge did not have the benefit of our opinion. The judge did, however, properly apply the eight-factor post-verdict review standard of *Gumble v. Stevenson*, 303 S.C. 104, 406 S.E.2d 350 (1991), which was in effect at the time of the trial.
- 9 We disagree with the dissent's analysis of this prong of the *Mitchell* test. We find the dissent's reliance on the Motor Vehicle Dealers Act is misplaced given this Act does not provide for civil penalties and, thus, is inapposite.
- 10 As previously discussed, we find the trial judge erred in failing to direct a verdict in favor of Stokes-Craven as to Austin's claim under the Federal Odometer Act. Thus, we must necessarily reverse Austin's recovery of attorney's fees under the Federal Odometer Act.
- 11 The applicable provision of the South Carolina Dealer's Act provides:
In addition to temporary or permanent injunctive relief as provided in § 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained, and the cost of suit, *including a reasonable attorney's fee*.
S.C.Code Ann. § 56-15-110(1) (2006) (emphasis added).
- 12 I do not agree, however, with the suggestion that Stokes-Craven's refusal to allow Austin's request to return the truck for a full refund permits Austin to seek rescission damages in a breach of contract suit. In my view, Stokes-Craven was under no obligation to honor Austin's request.

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

John R. Polito
Attorney at Law
Post Office Box 2738
Summerville, SC 29484-2738
(843) 871-1688

February 18, 2003

Mr. Dennis Craven, Owner
Stokes-Craven Ford
2801 Paxville Highway
Manning, SC 29102

Re: Donald C. Austin vs. Stokes-Craven Ford, et. al.
Vehicle: 2000 Ford F-250
VIN: 1FTNX21F1YEB23319
Purchase Date: June 1, 2002

Dear Stokes-Craven Ford and Mr. Dennis Craven:

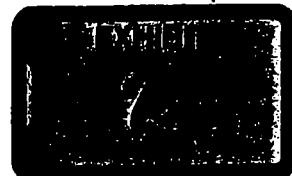
Please be advised that I along with attorney Anton W. Sterba, Esq. of Summerville represent Mr. Austin in connection with his purchase of the above vehicle from your dealership on June 1, 2002. Before committing both sides to protracted and costly litigation we are writing to extend an opportunity to bring this matter to an abrupt and immediate conclusion. Below are the alleged facts as we currently understand them followed by our client's more than reasonable offer to compromise.

Alleged Facts

As you know, this vehicle was previously owned by Gary W. Bailey of Summerville, a long-time loyal Stokes-Craven Ford customer, and had been involved in a roll-over collision on September 28, 2001 requiring roughly \$20,000 in repairs. As you are well aware, Mr. Bailey purchased the vehicle from Stokes-Craven on December 1, 1999 for \$24,741, on April 17, 2002 Stokes-Craven gave Mr. Bailey \$16,668 in trade-in value, and on June 1, 2002 it sold the vehicle to Mr. Austin for \$28,371.

As you also know, Ford was actually involved in making accident-related repairs to Mr. Bailey's vehicle, including replacing a bent rear axle. You are also aware that Barry Thornhall, your General Manager, resides in Inngate (here in Summerville), across Trolley Road from Mr. Bailey's home and just down the street from his business. When repairs were needed to any of Mr. Bailey's vehicles, Mr. Thornhall would personally drive Mr. Bailey's vehicle to Manning for repair by Stokes-Craven and would return it after repairs were complete.

April 2002 - Mr. Bailey was closest to Kenny Craven, Dennis Craven's brother, who in early April 2002 directed Mr. Bailey to drive the repaired truck to Kenny and Dennis's father's residence here in the Summerville area, where he indicates that Stokes-Craven would look



YCR-PRE-AP000363

Page Two
February 18, 2003
Austin Offer of Compromise

It over and get back to him regarding trade-in value toward yet another new truck. Mr. Bailey indicates that the vehicle remained at Dennis Craven's father's residence for two to three weeks.

Early May 2002 - Mr. Bailey asserts that in early May 2002 he received a telephone call from a prospective purchaser living in the Manning area who had seen the registration certificate in the glove compartment of the vehicle. Mr. Bailey asserts that he - unlike Stokes-Craven - openly shared the collision and repair history regarding the vehicle with the perspective purchaser. Mr. Bailey indicates that he is confident that Stokes-Craven knew that the vehicle had sustained extensive wreck damage and he was shocked to learn that Stokes-Craven had sold the vehicle for more than he'd paid for it originally.

June 1, 2002 - Mr. Austin, in the presence of Ms. Gloria Clarke, was shown Mr. Bailey's former truck by Stokes-Craven salesman Billy Frierson. While looking at the vehicle a tag prompted Mr. Austin to ask whether or not the vehicle had been involved in a wreck. Mr. Frierson, in the presence of Ms. Clarke, replied that it had not. Mr. Austin also asked about the extent of the vehicle warranty. Mr. Frierson went and checked and upon returning advised Mr. Austin, again in the presence of Ms. Clarke, that the truck had what was left of the manufacturer's 100,000 power-train warranty. Mr. Austin met with the finance manager where he was again assured that he was receiving the remaining mileage on a power-train warranty.

Upon being presented the Stokes-Craven purchase agreement and told to sign in the lower left corner, Mr. Austin objected to signing the document's "As is" disclaimer when he was purchasing a vehicle that had just been warranted. Mr. Frierson reassured Mr. Austin that this was the form that was used for all used cars and that contrary to the "As is" language the vehicle he was purchasing was warranted.

August 13, 2002 - On August 13, the truck began making a growling noise and began vibrating and Mr. Austin found that a seal was leaking on the rear-end. Mr. Austin tried arranging for repairs to be made at his local Ford dealership but was advised that his warranty did not cover the rear-end. Mr. Austin called Stokes-Craven's service desk and was again advised that the work was covered under the warranty. Mr. Austin relayed what he was being told by his local Ford service department and was advised that they'd have to get back with him. Upon calling back, Mr. Austin was advised of the bad news - his vehicle did not have a power-train warranty and the work would not be covered. The service desk manager recommended that he speak with Dennis Craven.

August 15, 2002 - Mr. Austin spoke with Dennis Craven by telephone advising him that he was being told he did not have a power-train warranty. Mr. Craven told Mr. Austin that he'd speak with the salesman and get back to him. On or about August 17, Mr. Craven informed Mr. Austin that his salesman denied telling him that he received a power-train

YCR-PRE-AP000364

Page Three
February 18, 2003
Austin Offer of Compromise

warranty. Mr. Austin told Mr. Craven that the service department had made the same representation on Aug. 14. Mr. Craven said he would repair the leak after which, he advised, only the engine would be covered.

September 13, 2002 - Mr. Austin went to Stokes-Craven to have the seal repaired and to meet with Mr. Craven. Present with Mr. Craven was Mr. Barry Thornhill. Mr. Craven asked what Mr. Austin wanted and he advised him that he was there to have the leak repaired and because the air-bag light was flashing. Mr. Craven said he would not fix the light. Mr. Austin demanded the warranty he was promised. Mr. Craven said no, and advised him that he had signed a document acknowledging that Mr. Austin was purchasing a warranty on the engine only. Mr. Craven produced a signed document labeled Buyer's Guide supporting his contention, and Mr. Austin immediately advised him that he'd never seen that document and felt that it had been prepared after Mr. Austin had started asking about his warranty. Mr. Craven accused Mr. Austin of calling him a liar. Mr. Austin knew that someone was lying.

It was then that Mr. Austin confronted Mr. Craven about the truck having been in a wreck, to which Mr. Craven denied any knowledge. He then asked Mr. Austin how he'd found out about the truck having been in a wreck. Mr. Austin told him that he had discovered the owner's registration in the glove compartment. Mr. Thornhill slowly turned his head toward Mr. Austin while rolling his eyes, but didn't say a word. Mr. Craven quizzed Mr. Austin about the name on the registration and Mr. Austin replied that it was Bailey Construction. Mr. Craven then turned to Mr. Thornhill and asked him if he knew that this was "Gary's" truck, to which Mr. Thornhill replied "yes."

Mr. Austin could not believe his ears. This revelation and the new document had him growing angrier by the moment. He asked for a copy of the document now knowing that his name had been forged to it. Mr. Austin asked Mr. Thornhill about his relationship with Gary and whether or not they were friends, to which Mr. Thornhill replied "yes," before seeking to minimize the extent of their relationship. Mr. Austin then told the two men that the opinion he was drawing from the wrecked vehicle, the friendship and the whole mess was not good. Mr. Thornhill never once denied knowing that Mr. Bailey's truck had been wrecked.

It was then that Mr. Craven told Mr. Austin that he would buy him a warranty in the neighborhood of 93,000 to 98,000 miles if that would resolve things. Angry at the newest revelations, Mr. Austin advised Mr. Craven that he would need to think about it, to which Mr. Craven asked, what is there to think about? Mr. Austin reminded Mr. Craven that only minutes earlier - before Mr. Thornhill's revelations - that he had said "no" to honoring the Stokes-Craven warranty promise. Mr. Craven said that he'd changed his mind because Mr. Austin has stood firm on what he was told about the warranty. Mr. Austin told Mr. Craven that he felt the need to speak with an attorney and that he would talk to him when he picked-up the vehicle.

YCR-PRE-AP000355

Page Four
February 18, 2003
Austin Offer of Compromise

On or about September 18, 2002 - When picking up the truck, Mr. Austin again met with Mr. Craven and told him that his signature had been forged on the Buyer's Guide and he requested his money back in exchange for the truck. Mr. Craven then asked to see Mr. Austin's driver's license. Mr. Austin produced his license and Mr. Craven compared the signature on it to the Buyer's Order that he removed from his file. After making the comparison, Mr. Craven slid Mr. Austin's driver's license across the table and said, "no."

Offer to Compromise

It is unusual to be evaluating the merits of two fully independent fraud claims arising from a single vehicle purchase, either of which a jury could seize upon. There will be little if any evidentiary debate but that Stokes-Craven produced and relied upon a forged document to deny warranty benefits in association with the re-sale of an extensively damaged vehicle that it either knew, or had multiple reasons to have known, had undergone repairs so extensive that they exceeded vehicle trade-in value - given to a long term and admittedly loyal customer - by roughly \$3,000.00. Should formal discovery become necessary the primary question will be how much deeper a hole is Stokes-Craven willing to dig while under oath?

Attached to this offer of compromise are the evaluations of Mr. John L. Disher of J & L Auto Body, Inc. and Mr. M. Ray Morris, The Car Coach. As you can see, even after \$20,000 in repairs, the bed assembly is still not aligned indicating that the bed, frame or cab mounts are physically distorted. Almost the entire vehicle has been painted; non-metallic body filler having been used to repair damage, after-market parts have been installed, welds have not been properly protected from corrosion, and replaced doors are scraping paint off panels where they collide. Photos are attached for your review.

Mr. Morris inspected the vehicle from the perspective of an auto dealer purchaser, prior to the benefit of knowing Mr. Disher's findings, and without prior knowledge of the nature of wreck related damages. His report notes his findings of extensive evidence of damage and repairs, and also documents an almost one inch difference in truck bed alignment. Mr. Morris concludes that an auto dealer, used car manager, appraiser, or experienced automotive salesman would have noticed the symptoms of collision repair.

Once Mr. Morris's own inspection was complete he communicated with Mr. Disher regarding his findings, and was also appraised of the extent of repairs that had previously been made to the vehicle. In his opinion the value of the vehicle at time of purchase in June 2002 was \$14,000. Since then we've learned that Mr. Morris's valuation was just \$2,268 less than the actual trade-in value given to Mr. Bailey - a long time loyal customer - in April 2002, just two months earlier.

Without getting into specifics of unfair trade claims, treble damages, attorney fees, costs

YCR-PRE-AP000358

Page Five
February 18, 2003
Austin Offer of Compromise

and the potential for punitive awards against multiple named defendants, assuming that the finder of fact accepts Mr. Morris's valuation, then Stokes-Craven "re-sold" a badly damaged and re-built truck while depriving the purchaser of \$12,371 of worth.

For just one moment forget Mr. Austin and Ms. Clarke's assertions that the salesman represented that the vehicle had not been involved in a wreck, and forget that Stokes-Craven has in its possession two different documents that it asserts were signed at the same time, by the same person, which any amateur hand-writing analyst - including a jury - can clearly see were signed by different people. Forget that the forged document was used during the process of denying a promised warranty. Is this the legacy of Stokes-Craven? Is this how Stokes-Craven does business in Manning once it discovers that its manager had actual knowledge that a long time loyal customer's extensively damaged vehicle - that Stokes-Craven had previously sold as new - was rebuilt with \$20,000 in repairs and re-sold from Stokes-Craven's lot for more than the original purchase price?

What Stokes-Craven didn't realize was that this truck would be returning to Summerville with a buyer who worked within 500 yards of the body shop that had struggled so hard and so long to re-build it. Is it Stokes-Craven policy to protect sales practices that it knows are unconscionable in a civilized society? Is it Stokes-Craven standard operating procedure to design the sales-closing to try and protect itself from its own intentional acts of harm? Is it Stokes-Craven policy to ignore inescapable evidence of a serious miscarriage of sales justice in dealing with an honest hard-working man, and if so, how does Stokes-Craven treat the little old lady who doesn't discover the extent of the harms, and who lacks the determination to press her rights to the point of vindication?

For purposes of pre-litigation attempt at full and complete compromise of this claim Mr. Austin has directed us to offer:

1. Tender of possession and title to the vehicle to Stokes-Craven; and,
2. A standard general release of any and all claims against Stokes-Craven.

In exchange for:

1. Fully satisfying all outstanding vehicle loan indebtedness, including financed insurance;
2. Reimbursement of all loan payments made through the date of final compromise (\$556.17 per month commencing on 7/16/2002);
3. Reimbursement of attorney fees paid to date of \$1,500; and
4. Reimbursement of \$125.00 in expert evaluation costs paid to date.

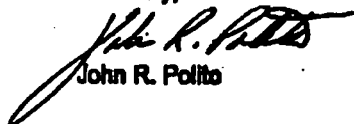
Please be advised that the above offer is hereby revoked if notice of written acceptance

YCR-PRE-AP000357

Page Six
February 18, 2003
Austin Offer of Compromise

has not been dispatched by March 7, 2002.

Sincerely,


John R. Polito

JRP/wp
Enclosures: See Exhibit Index
cc: Mr. Donald C. Austin

Mr. Anton W. Sterba
104 South Pine Street
Summerville, SC 29483
(843) 871-3670

Anton Sterba
PO Box 9108
Summerville
29484

Fax 843-821-3540

YCR-PRE-AP000358

Offer to Compromise Exhibit Index

Donald C. Austin vs. Stokes Craven Ford, et. al.

February 18, 2003

Exhibit	Description
A	Norton & Richardson repair documentation (8 pages)
B	Vehicle registration of Gary Baily Const, Inc dated 04/18/00
C	Location of Thomall and Bailey residences off Trolley Road
D	Stokes-Craven purchase information document dated 06/01/02
E	Buyer's Guide given to Mr. Austin on 09/13/02 (2 pages)
F	Donald C. Austin's Buyer's Guide/signature comparisons
G	Inspection report of J & L Auto Body, Inc. dated 11/21/02 (two pages)
H	Inspection photographs taken by J & L Auto Body, Inc. on 11/05/02
I	Inspection report and valuation of The Car Coach dated 11/22/02

YCR-PRE-AP000359

ALLSTATE INSURANCE COMPANY
4055 FABER PLACE DRIVE, SUITE 301
N. CHARLESTON, SC 29415
(843) 747-6900

AIR SHOP MUST CALL 843-529-3745 FOR SUPPLEMENT APPROVALS PRIOR TO REPAIRS.

CD LOG NO 2444 -3

SUPPLEMENT S3

10-01-01 8:43 AM
12-20-01 1:36 PM

CLAIM INFORMATION

CLAIM # [REDACTED] POLICY [REDACTED]
COMPANY ERROR * COMPANY NAME NOT FOUND CLAIM REP
INSURED [REDACTED] LOSS DATE 09-28-01
CLAIMANT [REDACTED] LOSS TYPE COLLISION

INSPECTION

TYPE FIELD
APPRAISER NAME ALLEN FOGLEMAN
LICENSE # 35-9972
WORK PHONE (843) 529-3721
ADDRESS 4055 FABER PLACE
CITY STATE NO CHARLESTON
ZIP 29415-

FAX (843) 871-4009
INSP DATE 12-12-01
LOCATION NORTON/RICHARDSON
CITY STATE SUMMERVILLE SC

OWNER

[REDACTED]
SUMMERVILLE SC 29485-5678

WORK# (843) [REDACTED]
HOME# (843) [REDACTED]

REPAIR

VEHICLE

2000 FORD F-250 SUPER DUTY LARIAT 4 DR EXT CAB
8 CYL TURBO DIESEL 7.3L

OPTIONS

TWO-STAGE - EXTERIOR SURFACES
COMPOSITE/EUROPEAN H/LAMPS
DRIVER POWER SEAT
POWER DOOR LOCKS
OVERHEAD CONSOLE
TILT STEERING WHEEL
AUTOMATIC TRANS
PASSENGER SIDE AIRBAG

4-WHEEL DRIVE
RUNNING BOARDS
ELEC REMOTE CONTROL MIRRORS
POWER WINDOWS
REAR BUMPER
AIR CONDITIONING
CRUISE CONTROL

BODY COLOR WHITE
CONDITION
LICENSE # P251728
LICENSE STATE SC

MILEAGE 54,545
VIN 1FTNX21F1YEB23319
CODE P818
VEH INSP #

REMARKS:

THIS ESTIMATE IS BASED ON VISUAL DAMAGE SEEN AT THE TIME CAR WAS INSPECTED.
ADP FINDTWI-142052 NO LKQ HITS
STEER GEAR INSTALLED AT SELLARS. NORTONS PAID TEARDOWN, TOWANDSTORE, AND TOW

OP CODES:

-1-

YCR-PRE-AP000381

0 SUPER DUTY LARIAT 4 DR EXT CAB
78992D01 LOG 2444 -3

10-01-01 8:43 AM
S3 12-20-01 1:36 PM

ENTERED VALUE
ETITATIVE PART
RTL REPL PRICE
REPAIR
ADDITIONAL LABOR
APPEAR ALLOWANCE

E - REPLACE OEM
EU - LIKE KIND & QUALITY
ET - PARTL REPL LABOR
L - REFINISH
RI - R&I ASSEMBLY
RP - RELATED PRIOR

NG - REPLACE NAGS
EP - COMPETITIVE PART
IT - PARTIAL REPAIR
SB - SUBLET
P - CHECK
UP - UNRELATED PRIOR

OP	GDE	MC	DESCRIPTION	MFR. PART NO.	PRICE	AJ%	B%	HOURS	R
E	0011		BUMPER, FRONT	YC3Z17757HA	444.63		S1	1.5	1
E	0019		PANEL, FRONT VALANCE	1C3Z17626AAC	54.93		S3	INC	1
E	0101		HOOK, FRONT BUMPER T LT	YC3Z17N808AA	30.23		S1	0.2	1
E	0102		HOOK, FRONT BUMPER T RT	YC3Z17N808AA	30.23		S1	0.2	1
E	0017		BRKT, FRONT BUMPER M LT	F81Z17B985AD	70.20		S3	INC	1
E	0067		BRKT, FRONT BUMPER M LT	F81Z17752AD	38.10		S3	INC	1
E	0068		BRKT, FRONT BUMPER M RT	F81Z17752AC	38.10		S3	INC	1
EP	0029		GRILLE ASSEMBLY	COMPETITIVE PART	129.19			INC	1
EP	0040		REINF, GRILLE ASSEMBLY	COMPETITIVE PART	94.00		S1	1.4	1
E	0042		HEADLAMP ASSY, HALOG RT	1C3Z13008AA	157.70		S3	INC	1
N	0973		HEADLAMPS AIM	ADDITIONAL LABOR				0.5	1
RI	0064		LAMP, SIDE MARKER RT	R&I ASSEMBLY			S1	INC	1
E	0083		PANEL, HOOD	1C3Z16612BA	413.00		S1	0.9	1
L	0083		>>HOOD, FENDER NOT AVAILABLE @KEYSTONE PANEL, HOOD	REFINISH			S1	4.3	4
				2.8 Surface					
				1.5 Edge					
				INC Two-stage					
E	0755	01	RADIATOR	YC3Z8005BA	348.52		S2	1.6	1
E	0731		CONDENSER, A/C	F81Z19712AA	187.00*		S2	0.8	2
			>>FROM KEYSTONE AUTO 552-4303.						
I	0521		MUFFLER ASSEMBLY	REPAIR				0.5*	2
L	0103		FENDER, FRONT	LT REFINISH			S3	0.5*	4
				0.5* Surface					
				INC Two-stage					
			>>BLEND						
E	0104		FENDER, FRONT	RT F81Z16005AA	196.32		S1	2.4	1
L	0104		FENDER, FRONT	RT REFINISH			S1	3.1	4
				2.1 Surface					
				1.0 Edge					
				INC Two-stage					
E	0162		NAMEPLATE, FENDER	RT F81Z16720VA	16.22		S1	0.2	1
TE	0588	01	STRIPE ASSEMBLY	LT PARTL REPL PRICE	56.02		S2		1
TE	0589	01	STRIPE ASSEMBLY	RT PARTL REPL PRICE	56.02		S2		1
E	0108		SKIRT, INNER FENDER	RT F81Z16054AA	36.98		S3	0.6	1
E	0937		CAP, WHEEL HUB FRONT	RT 1C3Z1130AA	29.20		S1		1
SB	0143		WINDSHIELD, SHADED	SUBLET	353.46*		S1		1
E	0151		MLDG ASSY, W/S REVEAL	YC3Z2503144AA	42.55		S1	0.5	1
I	1051		PANEL, COWL TOP	REPAIR			S2	2.0*	1
L	1051		PANEL, COWL TOP	REFINISH			S2	0.5	4
				0.5 Surface					
I	0164		PILLAR, HINGE	RT REPAIR			S2	5.5*	1
			>>INC PULL						
L	0164	10	PILLAR, HINGE	RT REFINISH				0.5*	4
				0.5* Surface					

-2-

YCR-PRE-AP000382

		SUPER DUTY LARIAT 4 DR EXT CAB		10-01-01 8:43 AM	
		8992D01 LOG 2444 -3		S3 12-20-01 1:36 PM	
	PANEL, INSTRUMENT	SUBLET	75.00*		2
	RT SIDE, AND DOOR TRIM. DR VINYL.				
01	PANEL, RUNNING BOARD	RT F81216450YA	355.70*	S3	INC 1
	PNL, CAB SIDE OUTER	RT REPAIR			5.0*1
175	PNL, CAB SIDE OUTER	RT REFINISH		S1	1.5 4
		1.5 Surface			
		INC Two-stage			
E 0208	DOOR SHELL, FRONT	RT F8122520124BB	385.50	S1	4.7 1
L 0208	DOOR SHELL, FRONT	RT REFINISH		S1	3.2 4
		2.2 Surface			
		1.0 Edge			
		INC Two-stage			
E 0485	W/STRIP, FRONT DOOR	RT F8122851222AA	29.85	S1	0.3 1
E 0236 01	PNL, INNER DOOR TRIM	RT YC323623942AAA	161.00	S2	0.1 1
E 0256 01	MLDG, FRONT DOOR LOW	RT F8122520878AAB	34.12	S1	0.2 1
E 0066	N/PLATE, FRONT DOOR	RT F812167202B	14.30	S1	0.2 1
E 0230	MIRROR, OUTER R/C	RT F81217682BAA	128.13	S1	INC 1
E 0546	GLASS, MIRROR OUTER	RT F81217K707AA	46.32	S1	0.2 1
NG 0216	GLASS, FRONT DOOR T	RT NAGS DD9327-GT	514.50	-56	S1 INC*1
E 0487	CHANNEL, FRONT GLASS	RT YC327821536AA	71.07	S3	INC 1
E 0212	HINGE, FRONT DOOR UP	RT F8122522800AA	46.67	S3	0.2 1
L 0212	HINGE, FRONT DOOR UP	RT REFINISH		S3	0.3 4
		0.3 Surface			
E 0214	HINGE, FRONT DOOR LW	RT F8122522810AA	32.43	S3	0.2 1
L 0214	HINGE, FRONT DOOR LW	RT REFINISH		S3	0.3 4
		0.3 Surface			
E 0250	HANDLE, FRONT DOOR O	RT F8122522404BAC	40.10	S1	INC 1
E 0288	DOOR SHELL, REAR	RT F8122824630AA	506.88	S3	3.9 1
L 0288	DOOR SHELL, REAR	RT REFINISH		S3	2.9 4
		1.9 Surface			
		1.0 Edge			
		INC Two-stage			
E 0347 01	MLDG, REAR DOOR LOWE	RT XC322825532AAB	26.52	S3	0.2 1
EU 0003	BED ASSEMBLY	LIKE KIND & QUALI	2,132.80* +25	S1	3.5*1
	>>FORD TAKEOFF				
L 0003	BED ASSEMBLY	REFINISH		S1	14.7 4
		12.2 Surface			
		0.6 Two-stage setup			
		1.9 Two-stage			
E 0117 01	MLDG, BEDSIDE PNL UP	LT F81299291A41AAB	87.50	S1	0.4 1
E 0629 01	DECAL, BEDSIDE PANEL	LT YC329925622AAA	19.75	S1	0.6 1
E 0630 01	DECAL, BEDSIDE PANEL	RT YC329925622AAA	19.75	S1	0.6 1
L 0479	SHELL, TAILGATE	REFINISH		S3	2.5 4
		2.5 Surface			
		INC Two-stage			
RI 0130	MLDG, TAILGATE UPPER	R&I ASSEMBLY		S3	0.4 1
RI 0411	N/PLATE, TAILGATE	R&I ASSEMBLY		S3	0.2 1
RI 0503	EMBLEM, TAILGATE	R&I ASSEMBLY		S3	0.2 1
RI 0531	HANDLE, TAILGATE OUTER	R&I ASSEMBLY		S3	0.3 1
RI 0464	LATCH, TAILGATE	LT R&I ASSEMBLY		S3	0.3 1
RI 0465	LATCH, TAILGATE	RT R&I ASSEMBLY		S3	0.1 1
RI 0481	HINGE, TAILGATE	LT R&I ASSEMBLY		S3	0.6 1
RI 0482	HINGE, TAILGATE	RT R&I ASSEMBLY		S3	0.2 1
RI 0415	CABLE, T/G SUPPORT	LT R&I ASSEMBLY		S3	0.1 1

-3-

YCR-PRE-AP000363

SUPER DUTY LARIAT 4 DR EXT CAB
8992D01 LOG 2444 -3

10-01-01 8:43 AM
S3 12-20-01 1:36 PM

TABLE, T/G SUPPORT	RT R&I ASSEMBLY		S3	0.1	1
TAILLAMP ASSEMBLY	LT APPEAR ALLOWANCE	10.00*			1
TAILLAMP ASSEMBLY	LT R&I ASSEMBLY			0.3	1
TAILLAMP ASSEMBLY	RT COMPETITIVE PART	31.72	S1	0.3	1
PAD, REAR BUMPER STE	RT F81Z17B807AB	27.77	S1	0.2	1
ANTIFREEZE-ETHY-GLYC	SUBLET	12.00*	S3		1
A/C SERVICE	SUBLET	75.00*			1
FT ALIGNMENT	SUBLET	39.95*			1
MT AND BAL 2 RT WHEELS	SUBLET	24.00*			1
TWO TONE	REFINISH			2.0*	4*
PULL RT FRONT	REPAIR	0.00*		2.0*	1*
SET UP	REPAIR			1.5*	1*
STEERING FLUID	COMPETITIVE PART	2.50*	S2		1
RT RR TIRE	APPEAR ALLOWANCE	15.00*	S2		1
RHINO LINER	SUBLET	500.00* +25	S3		1
2ND TOW	SUBLET	35.00*	S2	INC*	1*
STEER GEAR ASSY	SUBLET	438.83*	S2	INC*	1*
RT FRT WHEEL	COMPETITIVE PART	194.00* +25	S2	0.3*	1*
RT RR WHEEL	COMPETITIVE PART	194.00* +25	S1	0.3*	1*
TEARDOWN SELLARS	SUBLET	96.00*	S2	INC*	1*
STORAGE SELLARS	SUBLET	30.00*	S2	INC*	1*
RT FRT TIRE	COMPETITIVE PART	170.99*	S2	0.3*	1*
COOLANT CONDITIONER	COMPETITIVE PART	7.80*	S2	INC*	1*
HORN	REPLACE OEM	55.63*	S2	0.2*	1*
SEAT BACK FRAME	REPLACE OEM	53.25*	S3		1
SEAT COVER	SUBLET	80.00*	S3		1

94 ITEMS

MC MESSAGE

01 CALL DEALER FOR EXACT PART # / PRICE
10 INCLUDES ADP TIME TO CLEAR ENTIRE PANEL.

FINAL CALCULATIONS & ENTRIES

PARTS

GROSS PARTS	\$	4,388.19
OTHER PARTS	\$	3,471.50
PAINT MATERIAL	\$	300.00**

ADJUSTMENTS

	DISCOUNT	MARKUP
LINE ITEMS	\$ 288.12	\$ 630.20
PARTS TOTAL		
TAX ON PARTS ONLY	6.800%	

\$ 8,501.77
\$ 492.11

LABOR

	RATE	REPLACE HRS	REPAIR HRS	
1-SHEET METAL	\$ 34.00	29.2	16.5	\$ 1,553.80
2-MECH/ELEC	\$ 65.00	0.8	0.5	\$ 84.50
3-FRAME	\$ 34.00			
4-REFINISH	\$ 34.00	36.3		\$ 1,234.20
5-PAINT	\$ 20.00			

LABOR TOTAL

TAX ON LABOR

\$ 2,872.50

-4-

YCR-PRE-AP000384

SUPER DUTY LARIAT 4 DR EXT CAB		10-01-01	8:43 AM
8992D01	LOG 2444 -3	S3 12-20-01	1:36 PM
AIRS		\$	1,884.24
		\$	135.00
TOTAL		\$	13,885.62
LESS: DEDUCTIBLE		\$	250.00-
ADD: APPEARANCE ALLOWANCE		\$	25.00
NET TOTAL		\$	13,660.62
RATES/TAXES ADJUSTMENT		S2	
LESS: PREVIOUS NET TOTAL		\$	12,751.85-
NET SUPPLEMENT TOTAL		\$	908.77

PXN Y/02/00/00/02/02 CUM 07/03/00/04/04 Geocode: 29210 SOUTH CAROLINA
 SPPL Yes Geocode: 29210 SOUTH CAROLINA
 ADP PENPRO W040 S3 LOG 2444 -3 12-20-01 14:01:08 REL 4.00 CD 11/01
 COPYRIGHT, AUTOMATIC DATA PROCESSING, INC. 2000

** USER-ESTABLISHED THRESHOLD FOR PAINT MATERIAL HAS BEEN REACHED AND
 CALCULATED IN THIS ESTIMATE. ANY ADDITIONAL MATERIALS MAY REQUIRE
 FURTHER APPROVAL. **

2.5 HRS WERE ADDED TO THIS EST. BASED ON ADP'S TWO-STAGE REFINISH FORMULA.

ESTIMATE CALCULATED USING THE 2.5 HOUR MAXIMUM ALLOWANCE FOR TWO-STAGE
 REFINISH OF NON-FLEX, EXTERIOR SURFACES.
 THE PREPARATION OF THIS ESTIMATE MAY HAVE BEEN PREPARED BASED ON THE USE OF
 CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR
 VEHICLE. THERE ARE WARRANTIES APPLICABLE TO THESE REPLACEMENT PARTS. THESE
 WARRANTIES ARE PROVIDED BY THE MANUFACTURER AND/OR DISTRIBUTOR OF THE PARTS,
 RATHER THAN BY THE ORIGINAL MANUFACTURER OF YOUR VEHICLE. ALL SHEET METAL
 COMPONENTS SHOULD ALSO BE CERTIFIED BY THE CERTIFIED AUTOMOBILE PARTS
 ASSOCIATION. THIS STATEMENT IS APPLICABLE TO PARTS IDENTIFIED WITHIN THE
 ESTIMATE AS A COMPETITIVE ECONOMY OR PXN REPLACEMENT PART.

TO ALL REPAIR FACILITIES: BEFORE USING AN AFTERMARKET SHEETMETAL PART,
 BE SURE TO LOOK FOR THE CAPA SEAL. THIS IS NOT AN AUTHORIZATION FOR REPAIR.
 SUPPLEMENTS MUST BE APPROVED PRIOR TO REPAIR. IF YOUR CAR IS OF UNITIZED
 CONSTRUCTION, IN SOME CASES THE REPAIR SHOP MAY NEED SPECIAL EQUIPMENT TO
 PROPERLY REPAIR THE CAR. YOU SHOULD DETERMINE IF THE SHOP YOU SELECT TO
 COMPLETE THE REPAIRS IS PROPERLY EQUIPPED.

OWNERS SHALL SURRENDER VEHICLE
LICENSE PLATE AND REGISTRATION CARD
TO LOCAL LAW ENFORCEMENT OFFICE WITHIN FIVE
(5) DAYS IF LIABILITY INSURANCE IS NOT
MAINTAINED.

David J. Bailey
(Signature of Owner)

Registered owner must sign, registration card
immediately upon receipt. Person transferring
the vehicle must immediately notify the Division
of Motor Vehicles of the Department of Public
Safety in writing, giving the name and
address of the new owner together with the date of
transfer. The license plate issued for the vehicle
shall remain with the new owner, who shall notify the
(45) days of the transfer, and either apply for the
transfer of the plate to a vehicle of the same type
of the same owner, or shall return the plate and
registration to the Department.

Application for the license must be made on
Department's form 400-Form, and should be
reported by the properly assigned title, a
liability insurance certificate (Form 77-100
and proper fees.

All correspondence should be directed to:
Division of Motor Vehicles
S.C. Department of Public Safety
P.O. Box 1488
Columbia, S.C. 29202-0488



YCR-PRE-AP000368

Summerville, SC to Manning, SC

70.3 Miles



**Distance Between Stokes-Craven General Manager
and
The Owner of Wrecked Truck**

YCR-PRE-AP000387



2601 Paxville Hwy. / Manning, SC 29102 / 803-433-5400

PURCHASER'S NAME: DONALD C. AUSTIN 218-96-4706 02-19-53 05-01-2002
1041 DEHRVILLE DR PINOPOLIS BERRY SC 29469
STREET ADDRESS CITY COUNTY STATE ZIP
843-753-2719 843-875-8853

PURCHASE VEHICLE INFORMATION
PLEASE ENTER MY ORDER ☒ NEW ☐ CAR ☐ USED ☐ TRUCK
FOR THE FOLLOWING ☐ DEMO ☐ MTG

YEAR 2000 MAKE FORD
MODEL OR SERIES F-250 BODY CREW
COLOR WHITE TRIM
IDENTIFICATION NO. 1FTRX21F1YB23319
MILEAGE 58120
TO BE DELIVERED ON OR ABOUT: 01, 2002 STOCK NO 0081A
SALESPERSON WILLIAM FRIERSON

TRADE-IN VEHICLE INFORMATION
MAKE OF TRADE-IN
YEAR MODEL BODY
IDENTIFICATION NO.
COLOR
I CERTIFY THAT ODOMETER READING ON MY ABOVE TRADE IN VEHICLE WAS NOT EXCEEDED 10000 MILES
Signature

TRADE LIENHOLDER
ADDRESS
USED TRADE-IN ALLOWANCE \$11.25
BALANCE OWED ON TRADE-IN \$11.25
NET ALLOWANCE ON USED TRADE-IN \$11.25
DEPOSIT OR CREDIT BALANCE \$11.25
CASH WITH ORDER \$11.25
TOTAL CREDIT TRANSFER TO RIGHT COLUMN \$11.25

CASH DELIVERED PRICE OF VEHICLE 25,932.00
KEY /
SCI /
INS. COBSTATE FARM
AGENT: PEGGY PINNELL
POLICY /
DATE: / /
LIEN: Chase Manhattan Bank (USA), N.A.
ADDRESS: 1100 Park Ave NY 10022
EXTENDED SERVICE AGREEMENT
YES (X)
DEALER SERVICES: \$49.50
SECURE ETCH \$100.00
Cash Price of Vehicle & Accessories 25,981.50
STATE AND LOCAL TAXES 300.00
License, License Transfer, Title, Registration Fee 90.00
TOTAL PRICE OF UNIT 26,371.50
TOTAL CREDIT TRANSFERRED FROM LEFT COLUMN \$11.25
UNPAID BALANCE DUE ON DELIVERY 26,371.50

USED VEHICLE DISCLAIMER: The purchaser understands and agrees that this vehicle is being purchased "AS IS" and that most used cars have some type of damage before the seller takes possession and control of the vehicle. Therefore, the seller makes no representations concerning the history of the used vehicle and you should not rely upon any salesman's or manager's representations concerning the prior use, history, damage or durability of this used car. With this understanding the purchaser agrees that there are no representations or warranties that this vehicle has not been damaged and repaired and the purchaser takes the vehicle subject to such damage and repair.
Seller specifically disclaims any warranty or obligation for the proper operation of any emission control equipment or the proper removal of same from the vehicle. Buyer shall be solely responsible for compliance with any present or future laws or regulations affecting emissions of this vehicle.
THE VEHICLE BEING SOLD UNDER THIS AGREEMENT IS BEING PURCHASED AND ACCEPTED BY THE PURCHASER "AS IS."

DISCLAIMER OF WARRANTY: The seller, STOKES-CRAVEN FORD, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and STOKES-CRAVEN FORD neither warrants nor undertakes any other promise to warrant for its liability in connection with this sale.
The purchaser of the vehicle described hereby understands that it may have suffered damage during production, transit, or while in the control and possession of the seller, and agrees that the seller makes no warranty of merchantability or fitness for a particular purpose with regard to such damage.
The only warranties applicable to the vehicle including dealer-installed equipment are warranties made by the manufacturer and not STOKES-CRAVEN FORD.
The undersigned further warrants and agrees that STOKES-CRAVEN FORD shall not be liable for any consequential damages, including but not limited to, damages for inconvenience, transportation, and rental charges.
THIS VEHICLE RETAIL BUYER ORDER is an offer by me to purchase the vehicle described herein on the terms and conditions specified on this document. This agreement is not enforceable except upon the completion of any offer by the dealer, manager or other authorized representative of STOKES-CRAVEN FORD as indicated below. THERE ARE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS (EXCEPT THOSE WHICH ARE WRITTEN WITHIN THIS VEHICLE RETAIL BUYER ORDER). The buyer agrees that all prior negotiations and verbal statements and representations are merged into this instrument and any representations, warranties and/or agreements made orally herein are void and unenforceable.
I WARRANT THAT I AM EIGHTEEN YEARS OF AGE OR OLDER.

0 to _____ Buyer's Signature
Accepted By: STOKES-CRAVEN FORD

YCR-PRE-AP000368

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE Ford MODEL F-250 YEAR 2000 VIN NUMBER 1FTNX21K1YE13331
DEALER STOCK NUMBER (Optional) 2081A

WARRANTIES FOR THIS VEHICLE:

☐ **AS IS-NO WARRANTY**

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☒ **WARRANTY**

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

50,000 miles
or 5 years
whichever comes first

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

YCR-PRE-AP000369

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body

Frame- cracks, corrective welds, or rusted through
Dogrials - bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or noises related to camshaft lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting in any gear
Manual clutch slips or chatters

Differential

Improper fluid level or leakage excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System

Visible leakage

Inoperable Accessories

Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT specs.)
Not enough pedal reserve (DOT specs.)
Does not stop vehicle in straight (DOT specs.)
Hoses damaged
Drum or rotor too thin (Mfg. Specs.)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System

Too much free play at steering wheel (DOT specs.)
Free play in linkages more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit balls cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint ends damaged
Structural parts bent or damaged
Stabilizer bar, disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

RECEIPT OF ORIGINAL COPY ACKNOWLEDGED

David C. Carter
SIGNATURE OF PURCHASER

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 456).

YCR-PRE-AP000370

Donald C. Austin's June 1, 2002 signature was forged by some unknown Stokes-Craven Ford employee on some unknown date upon the Buyer's Guide in an attempt to fabricate evidence that would deprive Mr. Austin of the promised warranty.



YCR-PRE-AP000371

J & L Auto Body, Inc.

408 Old Turkey Road
Summerville, SC 29483
Tel: 843-871-4649
Fax: 843-873-3156
Frank@jlday@aol.com



www.certifiedfirst.com

You're Driving Home Our Reputation™

November 21, 2002

Re: 2000 Ford, F-250 Super Duty Pick-up truck. VIN# 1FTNXZ1F1YEB23319

On November 5, 2002, I made a visual inspection of the above vehicle at the request of Donald Austin, the vehicle owner, which resulted in the following conclusions.

Initial visual inspection revealed that;

The vehicle has definitely been involved in an accident and had extensive mechanical and body repairs done in an attempt to correct this.

Almost the entire vehicle had been painted at some time since it had left the factory.

The pick-up bed assembly is not aligned properly with the cab, indicating that either the bed, frame or cab mounts have been distorted.

The front axle housing and much of the associated hardware had been replaced.

The rear axle housing and springs had been replaced.

Front end sheet-metal and trim has been replaced.

Both right side doors had been replaced

There are tell-tale indicators all over the vehicle such as rounded bolt heads, panels readjusted to new positions, paint edges, and panel mis-alignment.

There are strong indications that the bed assembly may not have been the one that came with the truck.

The vinyl dash panel appears to have been repaired.

YCR-PRE-AP000372

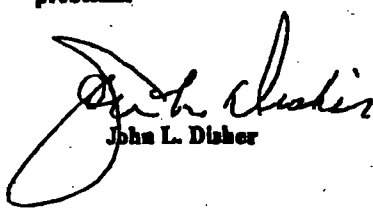
The air conditioning condenser has been replaced with an after-market condenser.

Mil gauge readings of paint thickness indicated that the right rear cab pillar panel has been repaired with a non-metallic filler of some sort to smooth over damage.

Radiator Core Support panel has been welded in place and welds not properly protected from corrosion.

Mis-alignment of right side doors is scraping paint off panels where they collide.

Some time after inspecting the vehicle I had the opportunity to see a copy of some of the paper work that outlined the \$20,000+ repair to this vehicle. The paperwork was pretty much in line with my findings from the initial inspection, but added one additional very interesting aspect. The accident date was 09-28-01 and the final supplement was prepared 03-26-02, indicating a repair ordeal that stretched out over 6 months, attesting to the extent of the damage and confirming the original owners reluctance to keep the vehicle and experience additional problems.

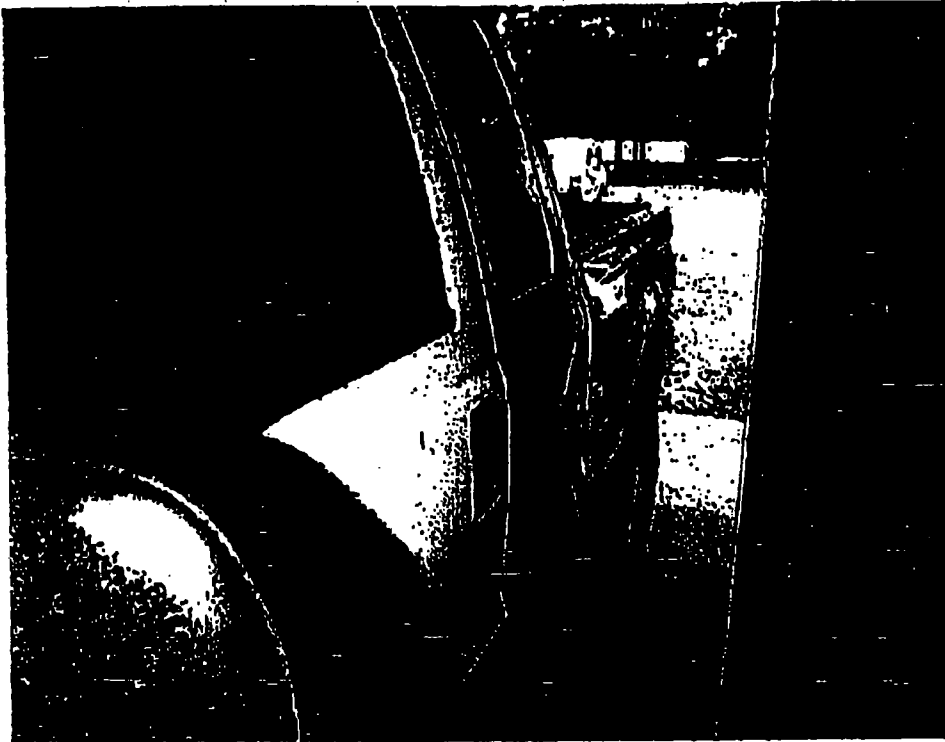


John L. Disher

YCR-PRE-AP000373



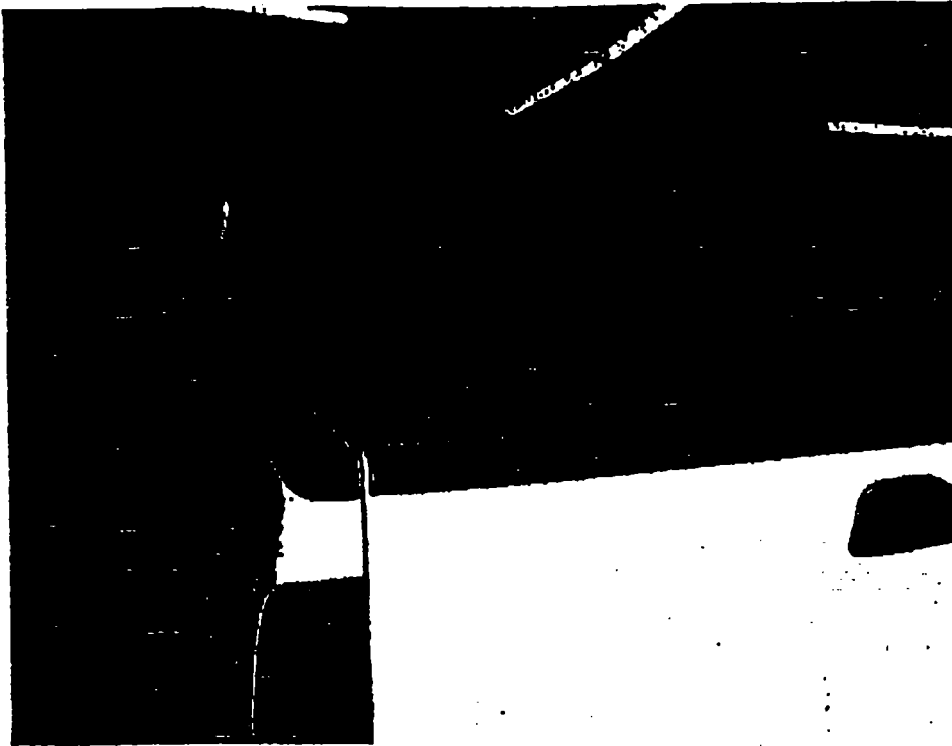
YCR-PRE-AP000374



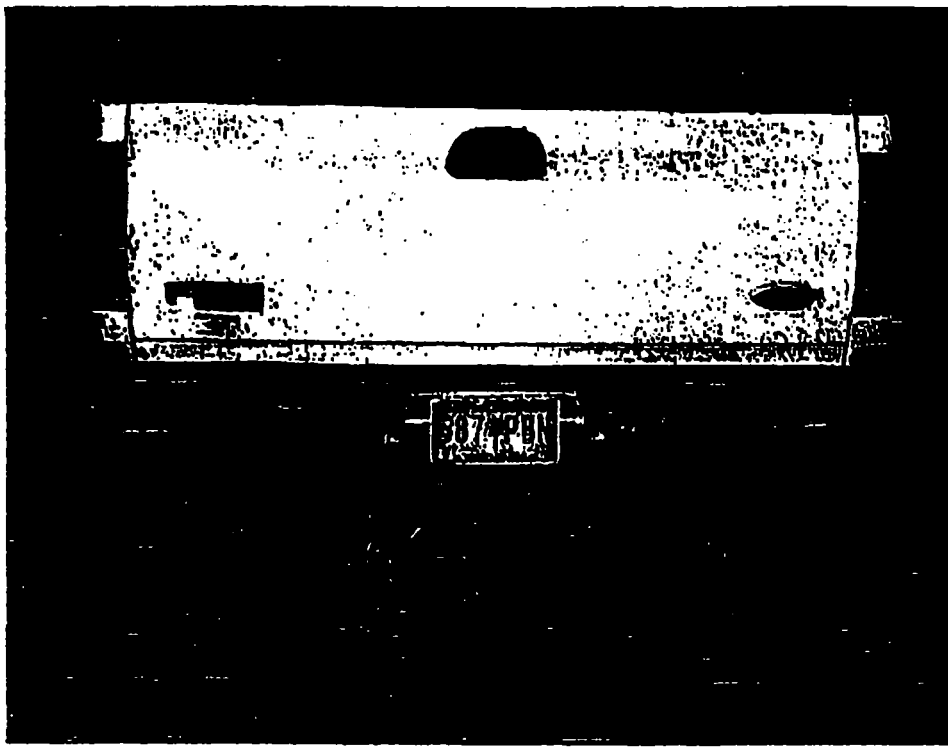
YCR-PRE-AP000375



YCR-PRE-AP000378



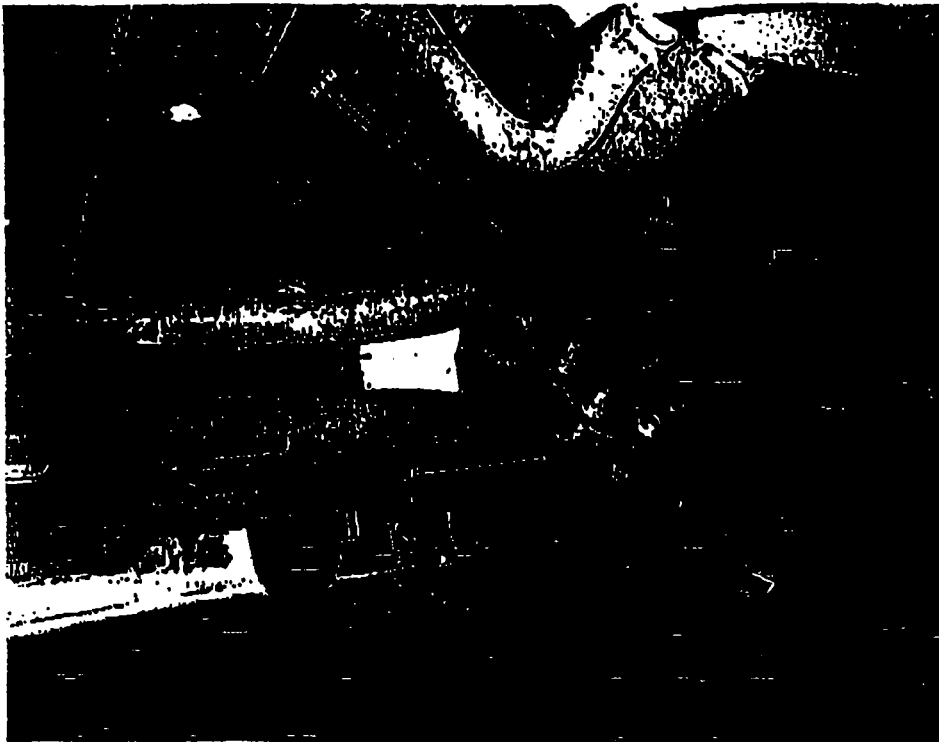
YCR-PRE-AP000377



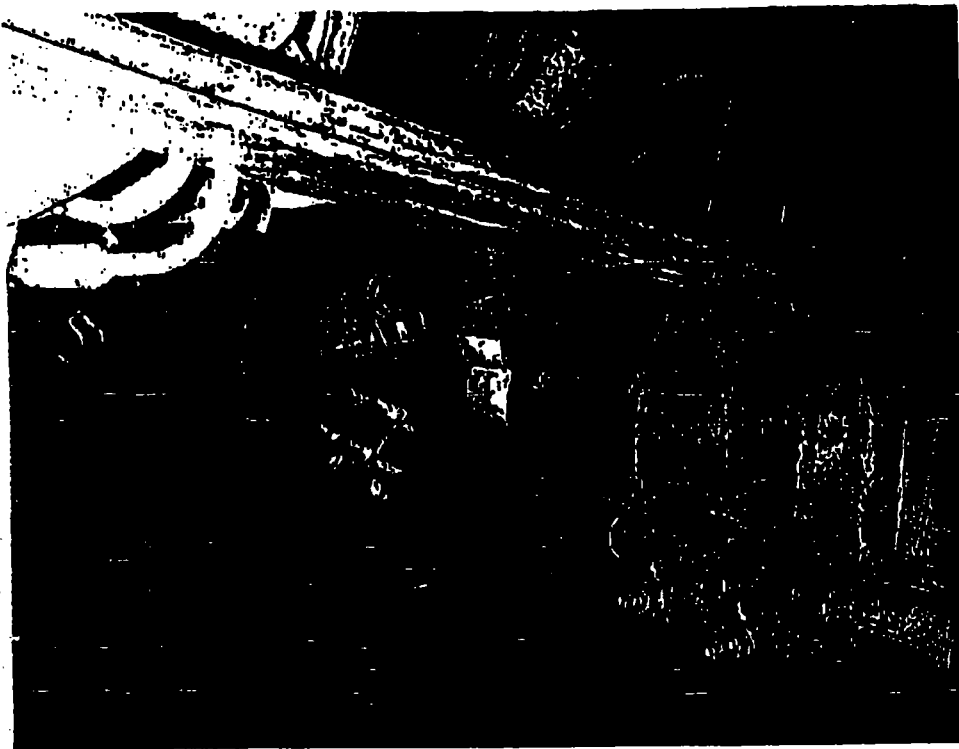
YCR-PRE-AP000378



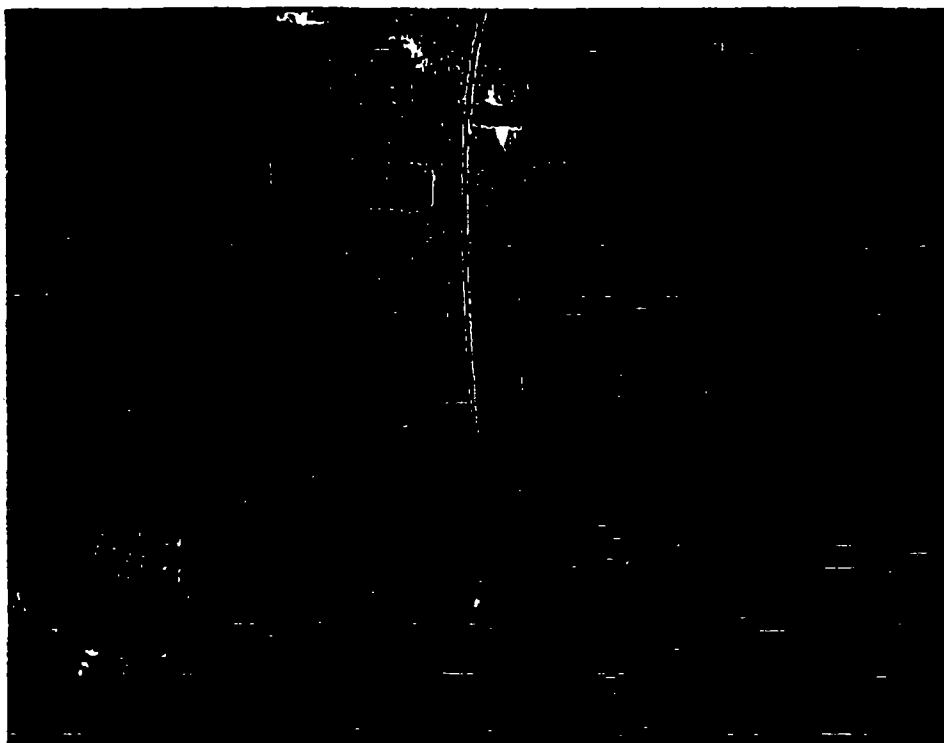
YCR-PRE-AP000379



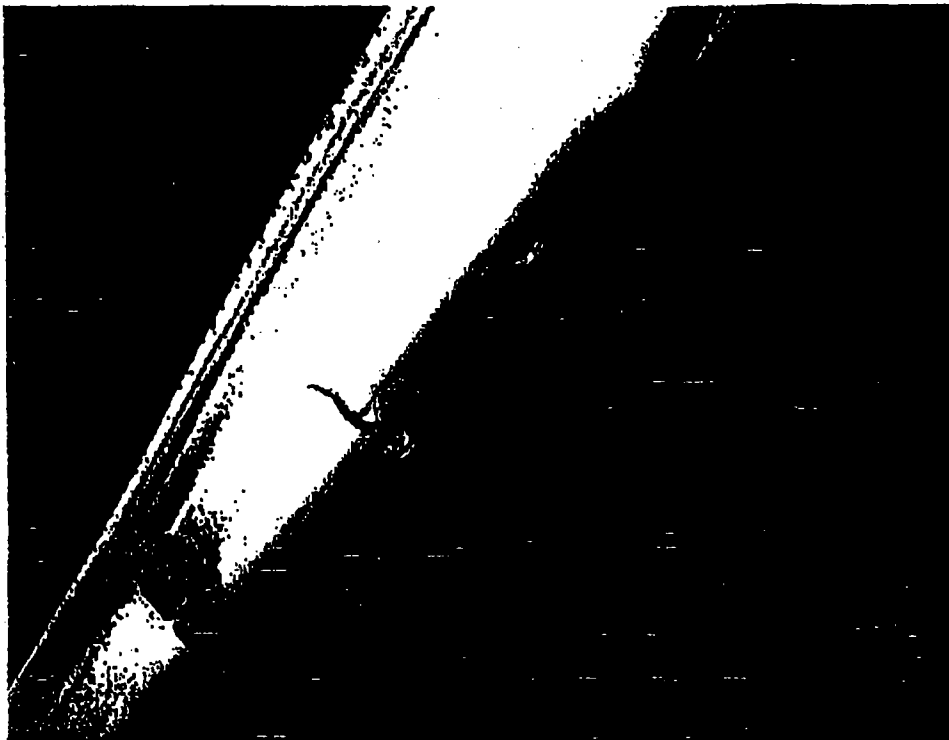
YCR-PRE-AP000380



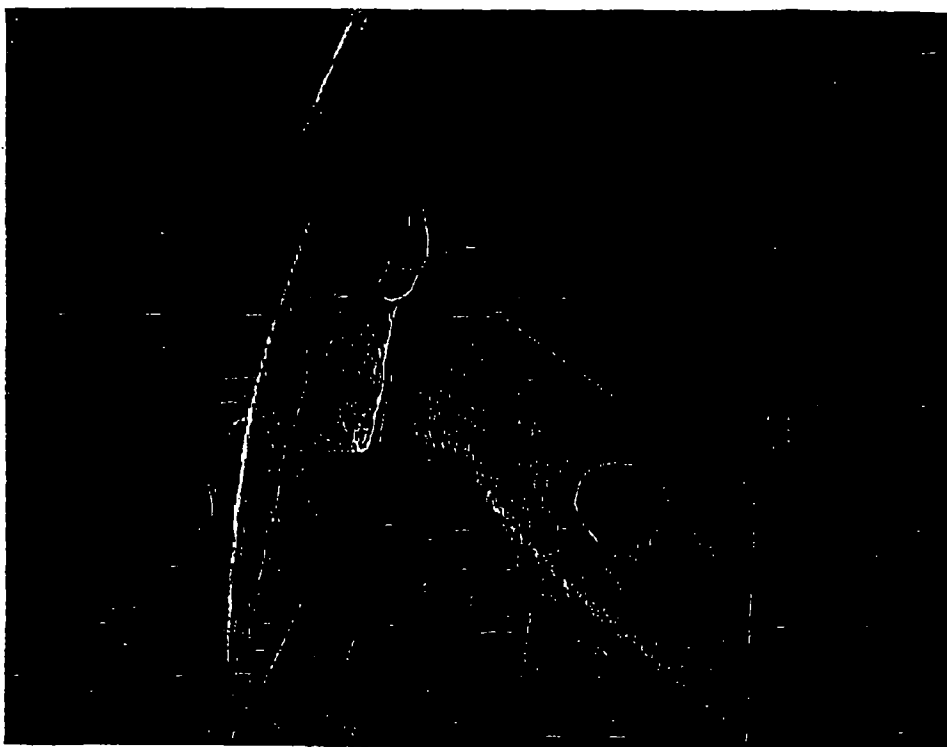
YCR-PRE-AP000381



YCR-PRE-AP000382



YCR-PRE-AP000383



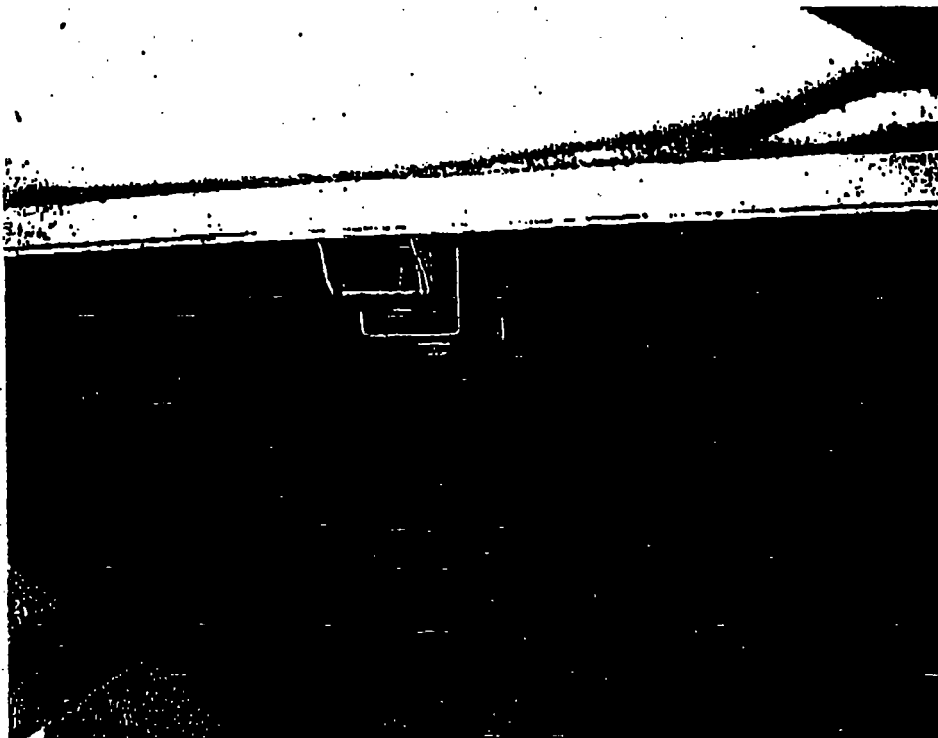
YCR-PRE-AP000384



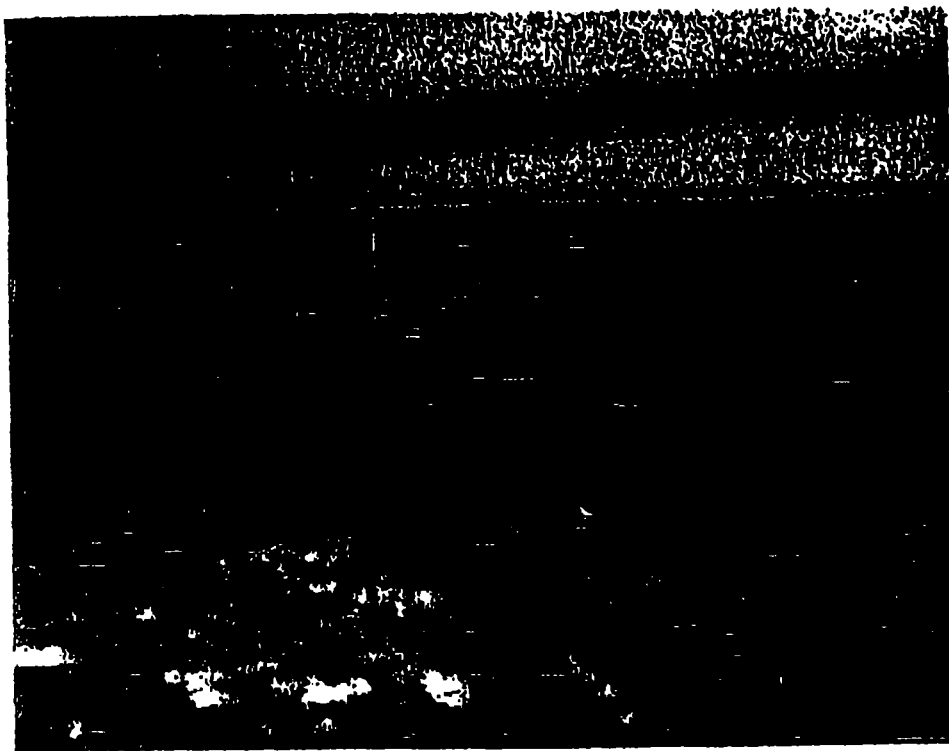
YCR-PRE-AP000385



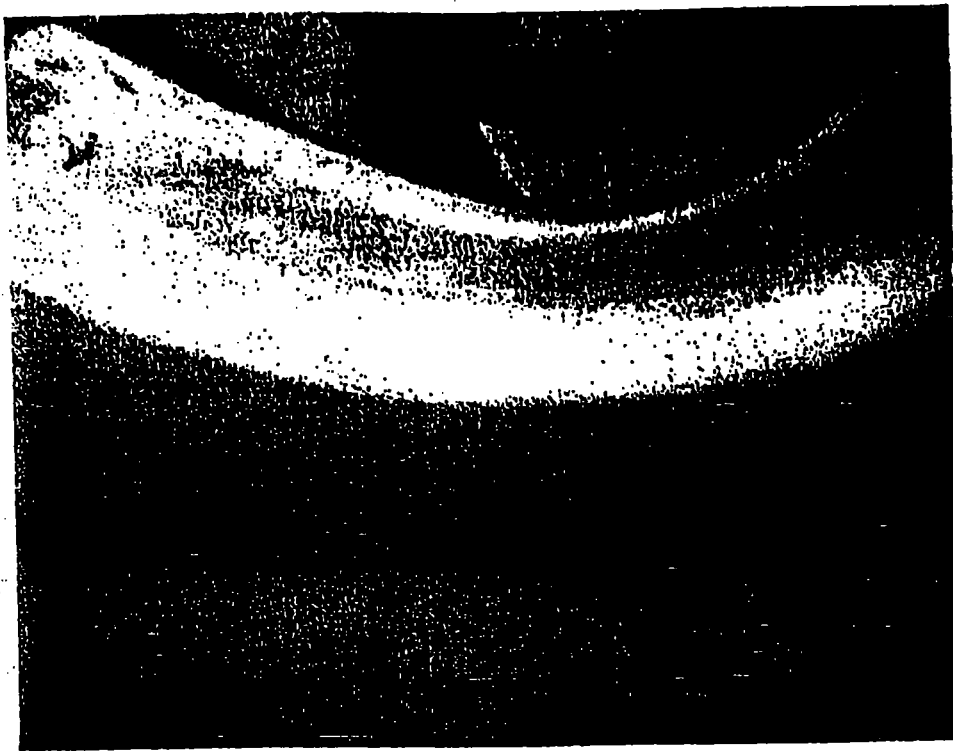
YCR-PRE-AP000388



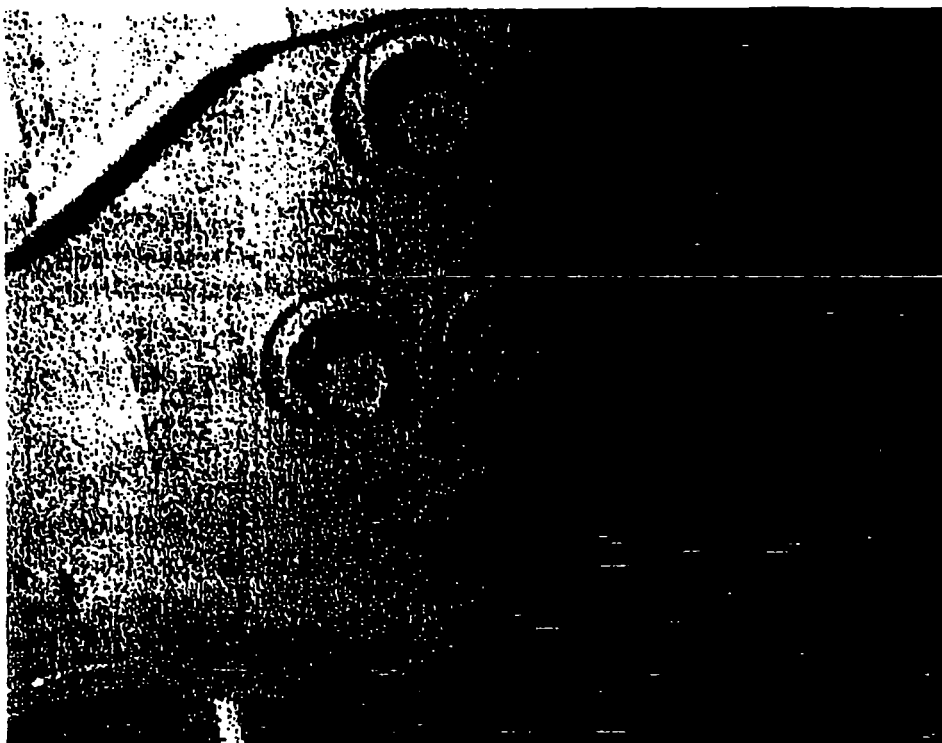
YCR-PRE-AP000387



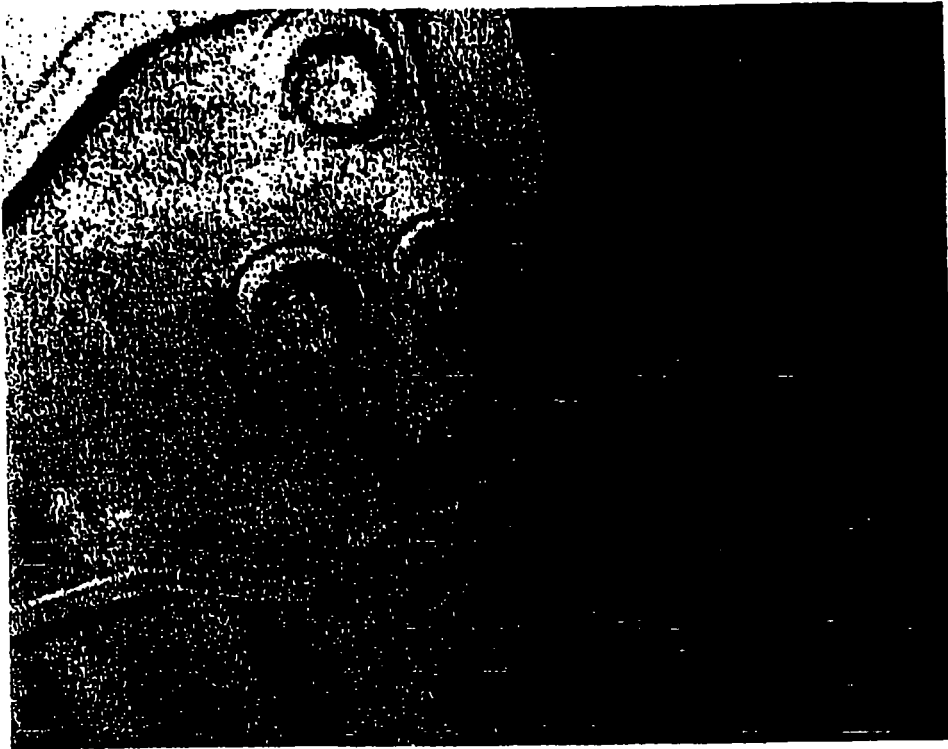
YCR-PRE-AP000388



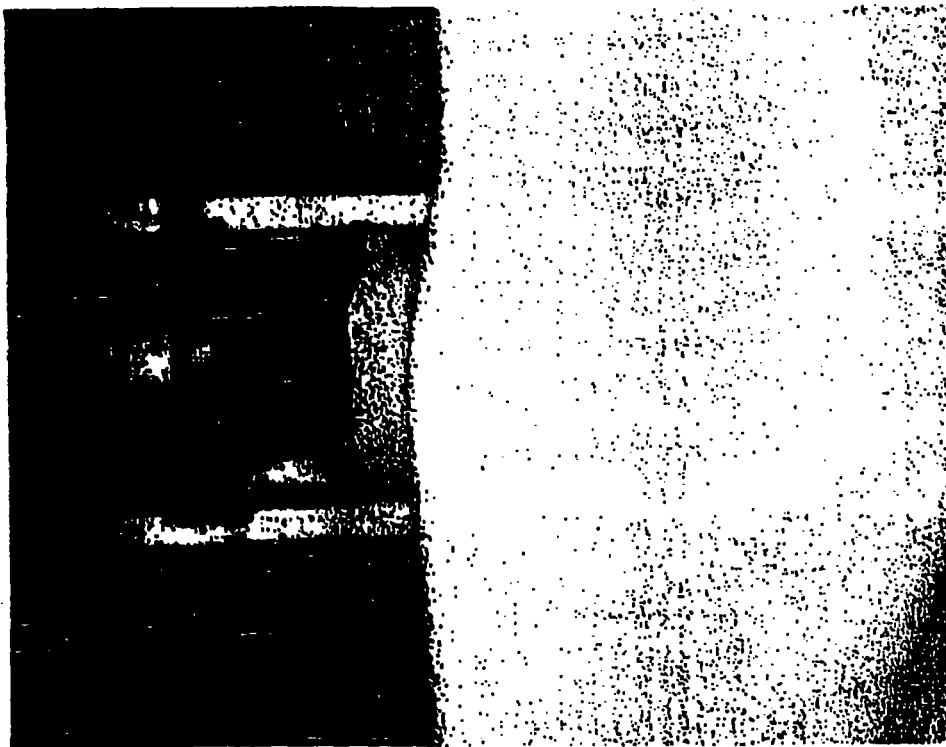
YCR-PRE-AP000389



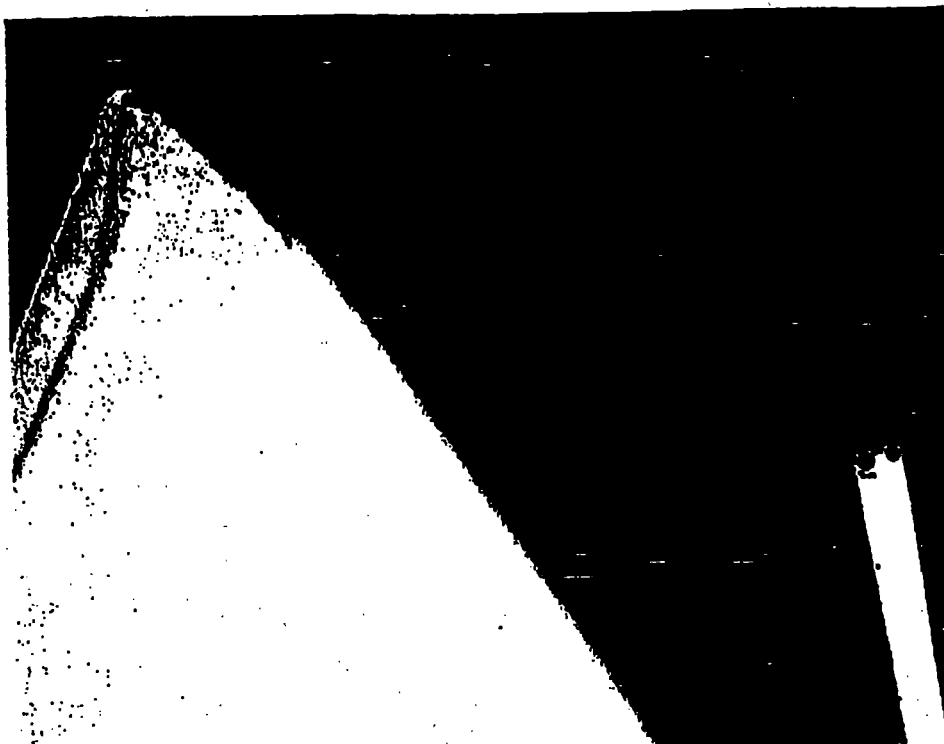
YCR-PRE-AP000390



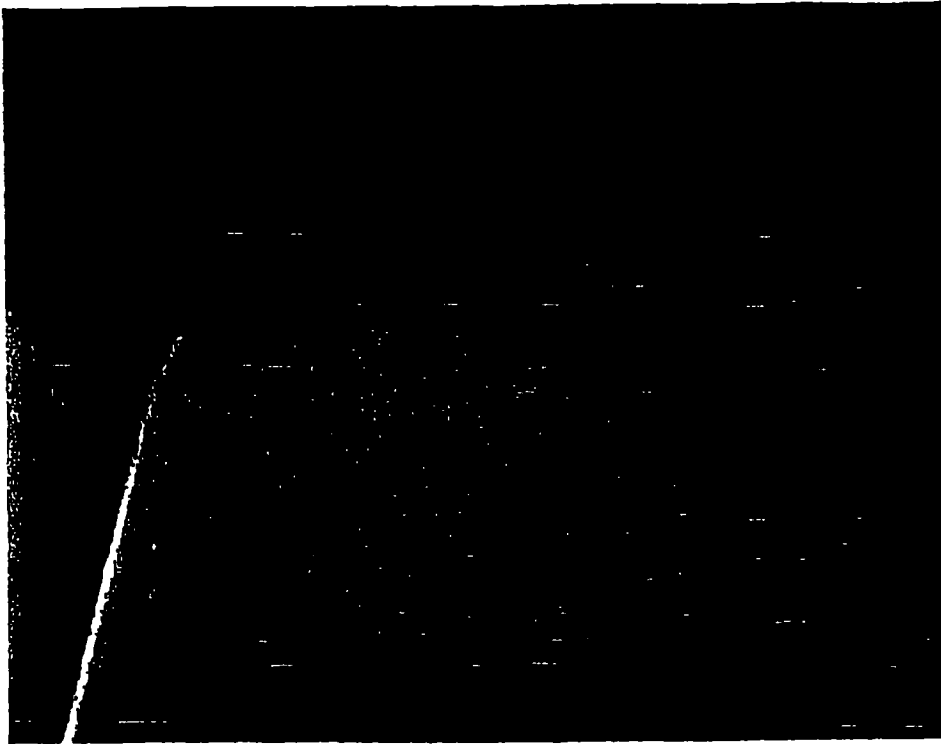
YCR-PRE-AP000391



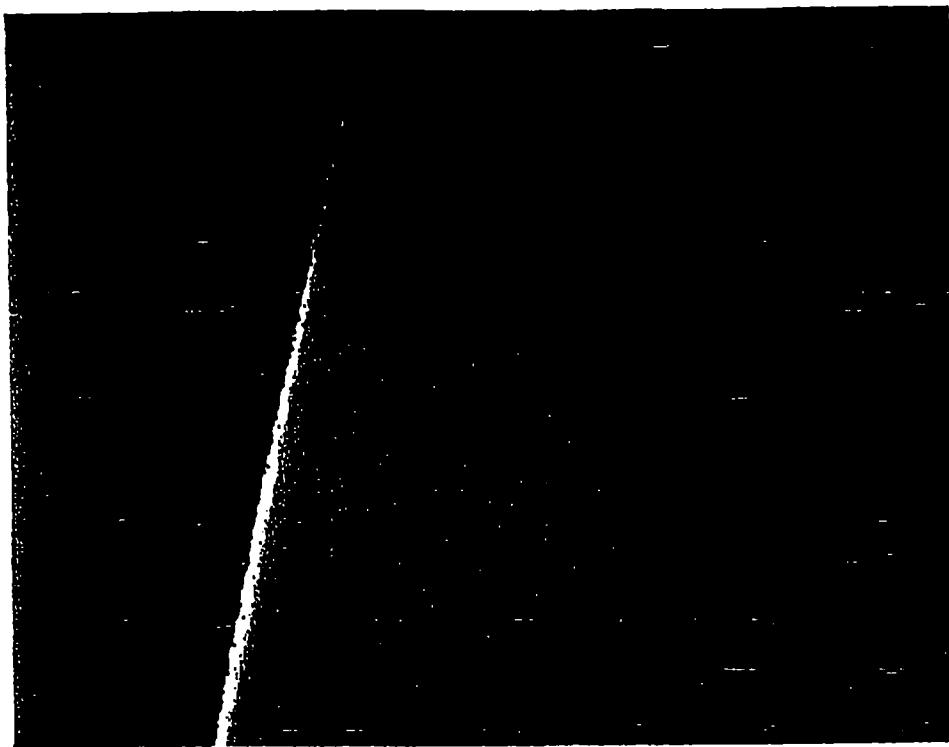
YCR-PRE-AP000392



YCR-PRE-AP000393



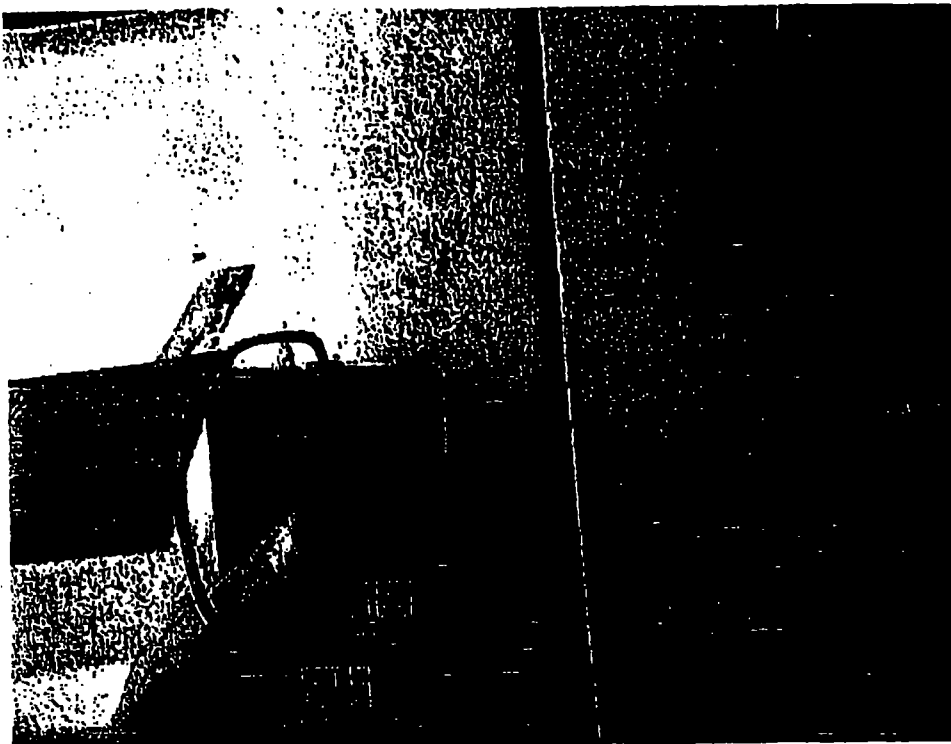
YCR-PRE-AP000394



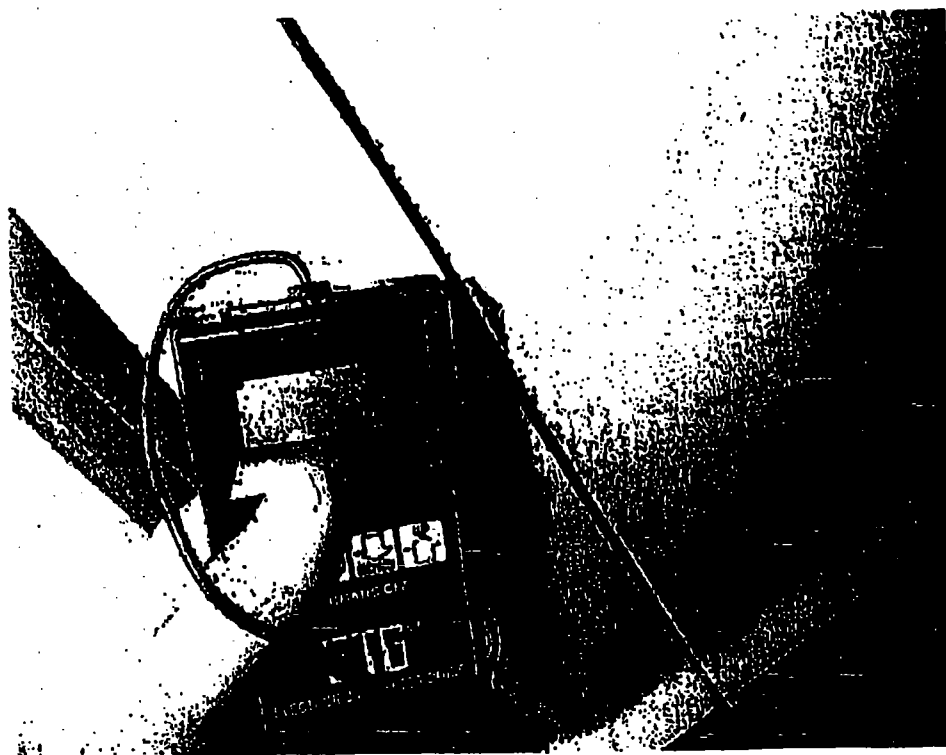
YCR-PRE-AP000395



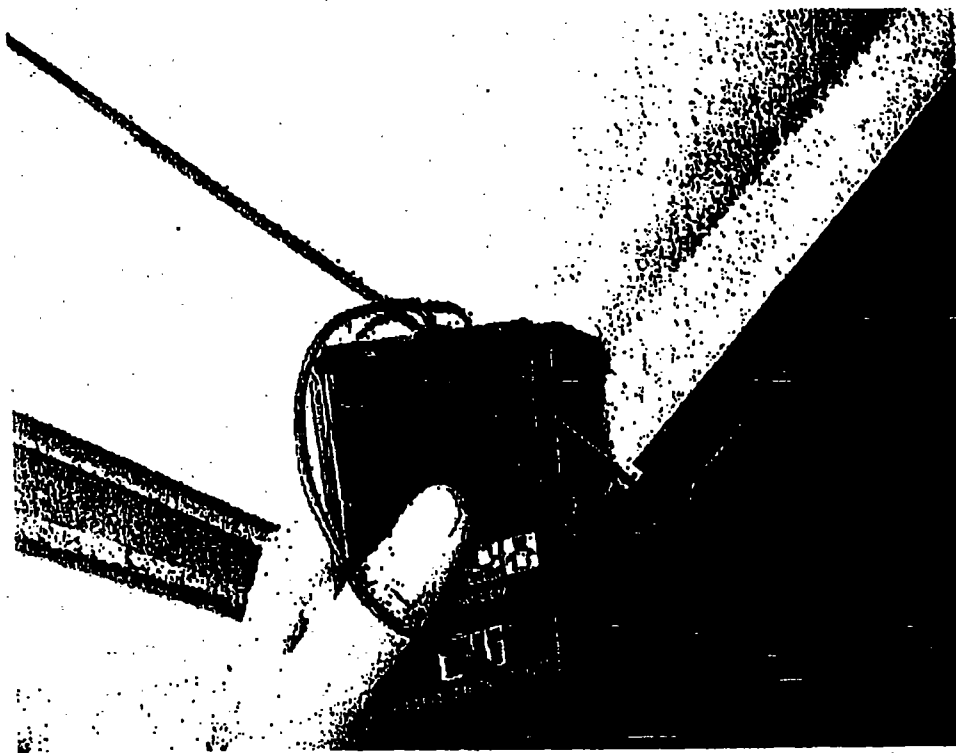
YCR-PRE-AP000396



YCR-PRE-AP000397



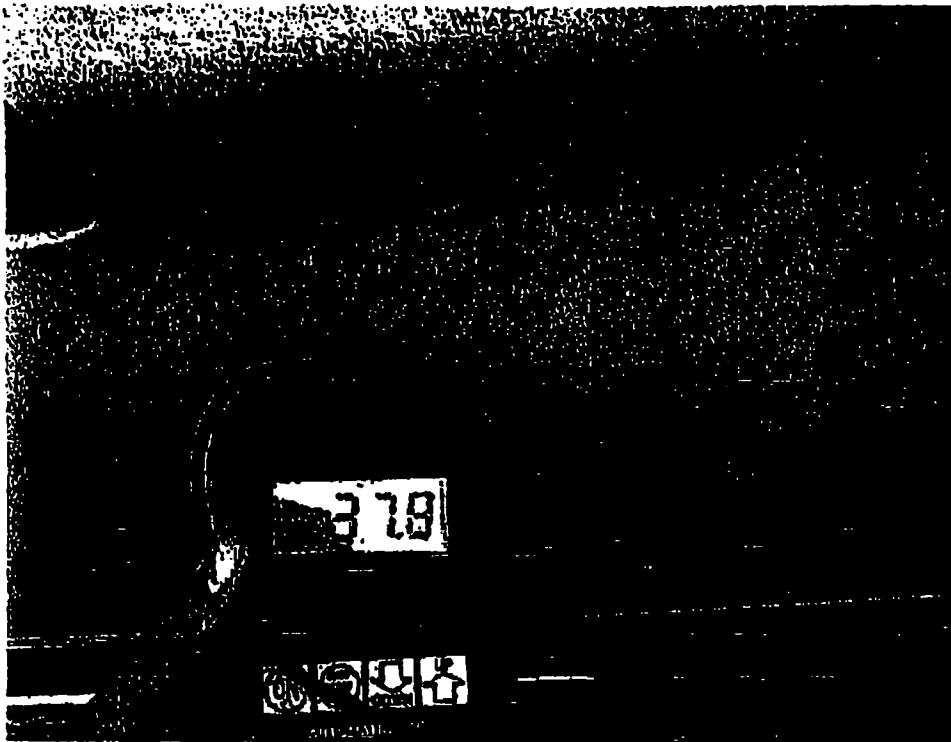
YCR-PRE-AP000398



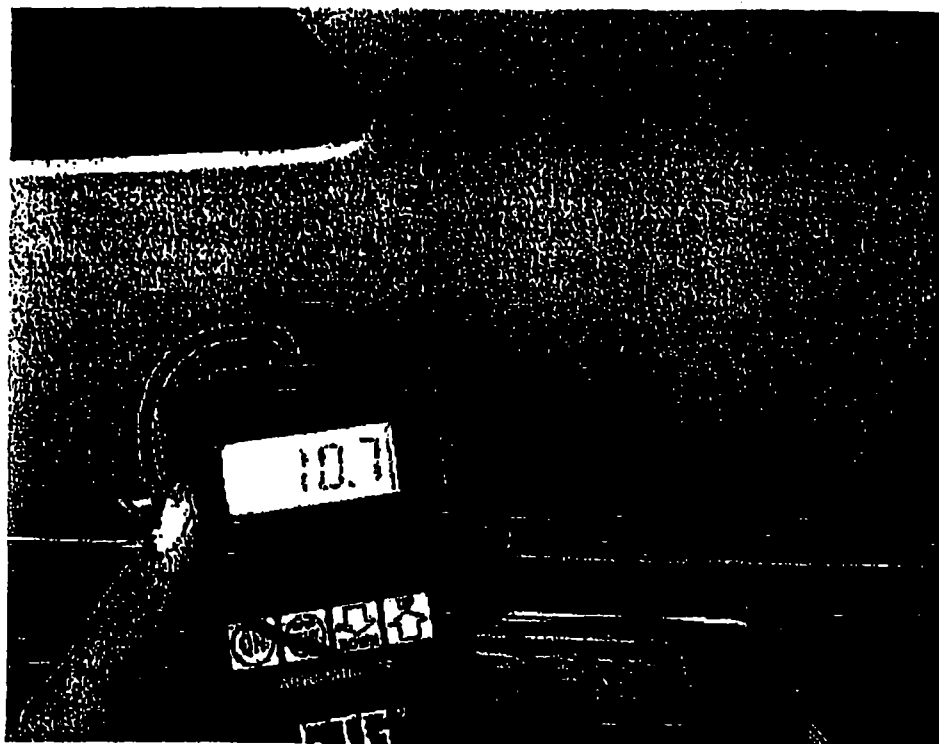
YCR-PRE-AP000399



YCR-PRE-AP000400



YCR-PRE-AP000401



YCR-PRE-AP000402

The Car Coach
2311-G Tall Sail Dr.
Charleston, S.C. 29414
rvr@thecarcoach.biz

November 22, 2002

John R. Polito, Esq.
709 Black Oak Blvd.
Summerville, S. C. 29485

Re: Examination and report on 2000 Ford F250SD of Donald C. Austin

Dear Mr. Polito,

The following is my report of my examination and opinions of the 2000 Ford F250SD pickup truck, VIN1FTNX21F1YEB23319. I examined this vehicle on November 15, 2002. Mileage on the vehicle at the time of my examination was 65,508.

At your request, I inspected this vehicle for the purpose of determining if there were indications of collision damage repairs. I approached this vehicle from the perspective of an auto dealer used car manager/appraiser, or a dealer considering this vehicle for purchase at auction. Since most of the skills required for management level positions at an automobile dealership are acquired through on the job training, it is not uncommon for a sales manager or used car manager to seek the assistance of a seasoned, or experienced salesman, who displays a talent for evaluating vehicles, to assist in appraising trade-in vehicles from time to time. Having had this experience, I looked at Mr. Austin's vehicle from that standpoint as well.

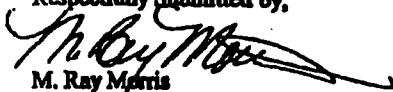
It was readily apparent to me, as I did a "walk-around" inspection of Mr. Austin's 2000 Ford F250SD, that evidence of collision damage repair existed. I noticed indications of paintwork on several areas of the truck including the hood panel, front fenders, passenger side doors, cab and bed of the vehicle. Not the least of these indications was rough, paint over-spray on the edges of the fenders and hood panels. I also noticed that the hood panel to upper grille area clearance was closer on the driver side than on the passenger side. Also, the front bumper was low on the passenger side. Mounting bolts for the passenger side fender panel are inconsistent with the driver side, and appear to have been disturbed. Mounting bolts for the hood panel display wrench marks and appear to have been disturbed. Passenger side door panel alignment is inconsistent with driver side, and the door mounting bolts also display wrench marks. The gap at the top of the passenger side front door is wider than the corresponding area on the driver side door. Truck bed alignment is odd, inasmuch as the passenger side, at the rear of the cab area, is lower than the driver side by nearly an inch. Finally, the gap between the rear bumper and the bed quarter panels is much wider on the driver side than the corresponding area on the passenger side. The above mentioned symptoms alone would have been enough to alert one to the need for this vehicle to be further inspected by a collision repair specialist.

YCR-PRE-AP000403

before being considered for trade-in or purchase at an auction, if being considered by a used car manager, appraiser or experienced salesman working in that capacity. It is my opinion that a typical auto dealer used car manager, appraiser, or experienced automotive salesman looking at this vehicle for the purpose of buying it, or trading it in, would have noticed the symptoms of collision repair. I further believe they would have suspected the possibility of severe damage because of the large area of the vehicle displaying damage symptoms and the close proximity of the repaired panels, one to another.

Further, it is my opinion that, assuming disclosure of the condition of this vehicle at the time of purchase, the market value of the 2000 Ford F250 SD mentioned previously in this report, would be greatly diminished. Based upon the information received from you and the conversation with Mr. John Disher, concerning the extent and dollar amount of collision repairs to this vehicle, I have arrived at the following conclusions. It is my opinion that, considering the extensive damage repairs to the vehicle, including, but not limited to, the above mentioned body panels, as well as mechanical repairs/replacement of the front and rear axles, as well as indications of repairs to the frame of the vehicle, and further considering the mechanical failure of the rear pinion seal, indicating that previous damage may not have been properly repaired, the estimated market value of the 2000 Ford F250SD of Donald C. Austin, showing 58,120 miles at the time of purchase in June of 2002, was approximately \$14,000.00. I have based this estimated value on figures gleaned from the Southeastern Edition of the automotive Black Book, which is used extensively by dealers in the local area, as well as my familiarity with dealer practices and the local automotive market.

Respectfully Submitted by,



M. Ray Morris
Dba The Car Coach
2311-G Tall Sail Dr.
Charleston, S. C. 29414
843-708-7788

YCR-PRE-AP000404

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS
3 COUNTY OF CLARENDON FOR THE THIRD JUDICIAL CIRCUIT

4 STOKES-CRAVEN HOLDING CORP,
5 d/b/a STOKES-CRAVEN FORD,

6 Plaintiff,

Civil Action No.: 2010-CP-14-457

7 vs

8 SCOTT L. ROBINSON AND JOHNSON,
9 MCKENZIE & ROBINSON, LLC,

Defendants.

10 D E P O S I T I O N

11 WITNESS: DENNIS NORMAN CRAVEN

12 DATE: Thursday, May 19, 2011

13 TIME: 10:06 a.m.

14 LOCATION: Law Offices of
15 William H. Johnson, Esq.
16 411 North Brooks Street
Manning, South Carolina

17 TAKEN BY: Attorneys for the Defendants

18 REPORTED BY: GINA M. SMITH
19 Certified Shorthand Reporter
Registered Professional Reporter

20 -----
21
22
23 Gina M. Smith, CSR, RPR
24 117 Harmon Creek Court
25 Lexington, SC 29072
803-359-5705



1 like any other owner there, they can do what they
2 want to, but they -- he's there more than any other
3 owner I've ever seen.

4 Okay. Now, you've discussed this matter
5 with Mr. Craven, Dennis Craven, before today,
6 right? Answer, a couple of -- a couple years ago
7 that whenever this started up, he had mentioned it
8 to me if I remembered the deal at all, and --
9 question, when was the last time you talked to him
10 about it? Answer, well, yesterday he told me he
11 was going to call me up here and -- but we didn't
12 discuss anything about it. I don't know exactly.

13 Question, so you haven't -- so you really
14 haven't discussed this case with anybody since
15 June, July -- well, maybe August or September of
16 2002. Is that a fair statement? Answer, that's a
17 fair statement.

18 So my question to you is, going back to
19 the complaint, you allege in -- Stokes-Craven, the
20 plaintiff, alleges in the complaint that the
21 defendants were negligent in failing to use due
22 diligence in the investigation of the facts of the
23 underlying case, and so is this an example -- would
24 you have expected your attorney to speak to
25 Mr. Frierson before two days before the trial?

1 A. Yes.

2 Q. Okay. Is that an example of what you're
3 alleging here in the complaint of their failing to
4 use --

5 A. Yes.

6 Q. -- due diligence? Okay. Okay.

7 You see how -- you see the dialogue we're
8 getting into? I'm trying to isolate what --
9 examples of what you mean in the complaint. Fair
10 enough?

11 A. Got you.

12 Q. Okay. Now, and I'd say to -- just to make
13 this clear, a number of these issues, as you might
14 expect, are contested in this case. This is the
15 plaintiff's opportunity to provide their side of
16 it.

17 A. Got you.

18 Q. Fair enough?

19 A. Fair.

20 Q. Okay. Okay. Next, we're going to get
21 into some other examples, but can you -- can you
22 right now off the top of your head provide other
23 instances which the plaintiff would contend that
24 the defendants did not investigate the facts of the
25 case sufficiently prior to the trial? We'll get

1 A. I would say so.

2 Q. Okay. Is one of the allegations -- is one
3 of the examples of the allegations of not
4 investigating the facts or looking into the case,
5 would that be not getting Mr. Frierson's
6 handwriting sample? Should that have been done
7 prior to the trial in your opinion by your lawyers?

8 A. Sure, yes.

9 Q. And in the -- were you aware -- when was
10 the first time you were aware that -- excuse --
11 strike that.

12 Prior to the trial, up to the trial, had
13 you ever been -- had that subject ever come up
14 between you or your lawyers and Mr. Frierson about
15 taking his handwriting sample?

16 A. I don't recall that.

17 Q. Okay. And why was the handwriting sample
18 an important thing?

19 A. There was a as-is form that was presented
20 to Mr. Austin at the time that I did and that was
21 shown that was signed as-is, and he denied that
22 that was his signature, and that's where all this
23 came from.

24 Q. So the authenticity of his signature
25 became an issue?

1 A. Exactly.

2 Q. Okay.

3 A. Right.

4 Q. All right. And it was -- came -- did
5 you -- is it the plaintiff's position that
6 Mr. Robinson should have objected to the witness
7 giving his handwriting sample there in court that
8 day?

9 A. I mean, I wouldn't have an opinion.

10 Q. You don't have an opinion one way or the
11 other about that?

12 A. No.

13 Q. Okay. All right. Okay. Let's look at --
14 was your brother also a potential witness in the
15 case?

16 A. Yes.

17 Q. Okay. And was -- and he was important
18 why?

19 A. He was the one that traded in the truck
20 that Mr. Austin purchased. He handled that
21 transaction.

22 Q. I see.

23 A. So he was tied to the truck that was
24 purchased from the --

25 Q. I see. He took that as a trade-in on

1 Q. And his answer's never. And then the next
2 line is -- the question is, when was the first time
3 you found out it had been in a wreck? And what was
4 his answer?

5 A. About two days ago.

6 Q. Okay. Were you -- were you surprised to
7 learn that your brother only learned about the fact
8 that the truck was in a wreck two days prior to the
9 trial?

10 A. Could be asked in a different -- how about
11 ask that question in a different way?

12 Q. Fair enough. Fair enough.

13 Is -- does the plaintiff contend that the
14 defendant should have interviewed Mr. Kenny Craven
15 about his knowledge concerning the wreck of the
16 truck sooner than two days before the trial?

17 A. Correct.

18 Q. Okay. And that's one of the -- that's one
19 of the allegations here that -- when you say in
20 failing to investigate the facts of the case,
21 that's one of the elements the plaintiff contends
22 that -- where the defendants fell down on?

23 A. Okay.

24 Q. Is that true?

25 A. Correct.

1 Q. Okay. He's not employed with you. When
2 did he leave?

3 A. Estimate three years ago.

4 Q. Okay. And question, do you anticipate him
5 being here to testify?

6 A. No, sir.

7 Q. Have you contacted him to testify?

8 A. No, sir.

9 Q. Does the plaintiff contend that your
10 attorney should have contacted Mr. Thornall to
11 testify?

12 A. Yes.

13 Q. Okay. And does the plaintiff contend that
14 Mr. Thornall would have provided testimony that
15 would have benefitted the plaintiff at trial?

16 A. Correct.

17 Q. Okay. And the plaintiff also contends
18 that -- I take it, that had these things been done,
19 including calling Mr. Thornall as a witness at
20 trial, that the results of the trial more probably
21 than not in the eyes of the plaintiff would have
22 been different?

23 A. Correct.

24 Q. Okay. Let's go on now to 540. Okay. And
25 on page 540, this is also your testimony,

1 Next question, so a salesman was
2 authorized to appraise this truck. Is that what
3 you're telling me?

4 A. Yes.,

5 Q. Mr. Craven, I'm going to hand you what has
6 been sent to me by your attorney, defendant's
7 responses to interrogatories to the plaintiff. Do
8 you remember sending me questions to Mr. Robinson
9 asking for information, who the witnesses were in
10 the case, what they know, and that kind of stuff,
11 and you responded to those, gave that information
12 to Mr. Robinson so that he could submit it to me?
13 Your answer was?

14 A. Correct.

15 Q. Okay. These are the responses that I
16 received from Mr. Robinson. Take a look at the
17 back page, the last page. It's signed by him,
18 right?

19 A. Okay.

20 Q. You received a copy of those?

21 A. Not to my knowledge.

22 Q. And your testimony was that the answers to
23 interrogatories that had been submitted to the
24 plaintiff you had never seen?

25 A. Correct.

1 Q. And the -- I assume the plaintiff's
2 position in this case is that you should have seen
3 them?

4 A. Correct.

5 Q. And as you were on the stand that day, is
6 that the first time that it came to your attention
7 that you had not seen those answers to
8 interrogatories?

9 A. Correct.

10 Q. And that -- is it the plaintiff's
11 contention, then, that if you had seen those
12 answers to interrogatories that you may have been
13 able to do something or plan something better and
14 the results of the trial may have been -- more
15 likely would have been different?

16 A. Correct.

17 Q. Okay. And this is -- you have another
18 example of the -- of 7 A that we're talking
19 about --

20 A. Okay.

21 Q. -- in the allegations, true?

22 A. Correct.

23 Q. Okay. All right. Let's go on to 543.

24 MR. EPTING: Susan, were you purposely
25 turning that down or were you trying to --

1 A. Correct.

2 Q. Okay. My question to you is: Does the
3 lack of communication or some of the -- does the
4 plaintiff contend, Stokes-Craven contend, that your
5 personal lack of knowledge about the litigation --
6 do you lay that at Mr. Robinson's and the other
7 defendants' doorstep?

8 A. Correct.

9 Q. And that if that had -- and was this --
10 this was the first time -- this was -- when you
11 became aware during your testimony that you had not
12 received this information from Mr. Robinson?

13 A. Correct.

14 Q. And you didn't know it before that?

15 A. Correct.

16 Q. Is your testimony?

17 A. Correct.

18 Q. She can't pick up a nod. She's the best
19 in the business, but she still can't pick up a nod.

20 And that if the -- is the plaintiff's
21 contention in this case, then, that if it had --
22 Mr. Robinson had kept you more informed and you had
23 been better prepared on questions such as this,
24 that more likely than not the trial would have
25 turned out differently?

1 A. Correct.

2 Q. And you possibly would have won the trial?

3 A. It would have turned out different.

4 Q. Okay. More favorable to Stokes-Craven

5 Ford?

6 A. Correct.

7 Q. And as a result of this and some of the
8 other issues we've discussed, is it the plaintiff's
9 contention in the case, then, that as a result of
10 these deficiencies and these items of negligence
11 that the plaintiff says the defendants engaged in,
12 did or didn't do, that it suffered damage at the
13 hands of the verdict?

14 A. Correct.

15 Q. Okay. Okay. Let's see here. How many
16 days did the trial last, Mr. Craven?

17 A. Don't recall. I want to say no more than
18 two.

19 Q. Okay.

20 A. If that.

21 Q. And did you and Mr. Robinson have --
22 during the course of the trial -- say after the
23 first day's testimony, did the two of you get
24 together and have a conference that night?

25 A. Before trial --

1 MR. EPTING: 16.

2 BY MR. POWELL:

3 Q. \$216,000, that figure?

4 A. Correct.

5 Q. When the verdict was handed down, how did
6 you feel?

7 A. Embarrassed.

8 Q. Okay. And --

9 A. Very.

10 Q. Okay. And would it be a fair statement
11 that the allegations, the specific things we were
12 talking about, that is the failure to keep you
13 advised and the other issues and that deficiencies
14 that the plaintiff contends that the defendants
15 made through the course of handling the case and at
16 trial, when the verdict was handed down it became
17 evident that that was a serious problem for the
18 plaintiff?

19 A. Correct.

20 Q. Okay. All right. Could we take a
21 break --

22 MR. EPTING: Yeah.

23 MR. POWELL: -- for a few minutes.

24 MR. EPTING: Sure.

25 THE VIDEOGRAPHER: We are off the record

1 concerning the possibility of insurance paying the
2 judgment?

3 A. No, I did not.

4 Q. Okay. After the verdict came down, was
5 there any discussion between you and Mr. Robinson
6 at all about the result?

7 A. I don't recall.

8 Q. Okay.

9 A. And I say that because your state of mind
10 at that point -- I was lost, you know, so it would
11 be unfair for me to say what was said after the
12 verdict. I just -- I didn't understand what all
13 was happening.

14 Q. Okay. But you knew enough to know that at
15 that point --

16 A. That it wasn't good.

17 Q. -- that it was --

18 A. Excuse me.

19 Q. -- it was a serious problem, and you
20 contend in this case that you knew at that time it
21 was a serious problem for Stokes-Craven Ford?

22 A. Exactly.

23 Q. Okay. And for some of the reasons we've
24 already discussed?

25 A. Correct.

1 THE VIDEOGRAPHER: This is the beginning
2 of Tape Number Two in the deposition of Dennis
3 Craven. We are on the record another 1:05 p.m.

4 BY MR. POWELL:

5 Q. Mr. Craven, earlier you had alluded to a
6 conversation with your controller concerning
7 numbers in sales and whatnot and the effect of this
8 verdict upon Stokes-Craven Ford?

9 A. Correct.

10 Q. Do you recall that?

11 A. Correct.

12 Q. And am I to take it that what you mean by
13 that is that Stokes-Craven Ford suffered a damage
14 to its reputation as a result of the verdict?

15 A. I feel it has, yes, sir.

16 Q. Okay. And that's the position of the
17 plaintiff in this case?

18 A. Right.

19 Q. Okay. And that began when the verdict was
20 handed down?

21 A. Shortly after that.

22 Q. Okay.

23 A. The newspapers did a fantastic job of not
24 publishing any of that and none of that actually
25 got out, and then as word seeped out, you could

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP)
d/b/a STOKES-CRAVEN FORD)

CASE NO. 2010-CP-14-457

Plaintiff)

vs.)

SCOTT L. ROBINSON and JOHNSON)
McKENZIE & ROBINSON, LLC)

Defendants)

AMENDED COMPLAINT

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2011 AUG 26 PM 1:14

Plaintiff, Stokes-Craven Holding Corp d/b/a Stokes-Craven Ford ("Stokes-Craven"), files this action for professional malpractice, inter alia, against Defendants Scott L. Robinson and Johnson & Robinson, LLC. In support of this action, Plaintiff would show the Court the following:

1. Plaintiff, Stokes-Craven, is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.
2. The Defendant, Scott L. Robinson, is admitted to the bar and is licensed to practice law in the State of South Carolina. The Robinson is a resident of the city of Manning, County of Clarendon and maintains an office for the practice of law at 8 S. Brooks St, Manning, South Carolina, 29102.
3. The Defendant, Johnson McKenzie & Robinson, LLC is a company organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 8/26/11
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY



4. In February of 2003, the Plaintiff retained Robinson and his law firm for the purpose of defending it in the action styled *Donald C. Austin v. Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford*, case no. 2004-CP-14-135 filed in Clarendon County, South Carolina ("the underlying case").

5. As a result of the attorney-client relationship created by the above conduct of the parties, Defendants had a duty to represent Plaintiff with the reasonable care, skill, and diligence possessed and exercised by the ordinary attorney in similar circumstances.

6. The underlying complaint contained causes of action for revocation of acceptance, breach of contract, negligence, constructive fraud, common law fraud, violation of the South Carolina Motor Vehicle Dealer's Act, violation of the South Carolina Unfair Trade Practices Act (UTPA), and violation of the Federal Odometer Act, and was brought by Donald Austin who discovered the used pickup truck he purchased from Stokes-Craven had been in an accident.

**FOR A FIRST CAUSE OF ACTION
NEGLIGENCE**

7. Defendants were negligent in their defense of Stokes-Craven, and failed to exercise reasonable care, skill and diligence in the following ways:

- a. In failing to use due diligence in the investigation of the facts of the underlying case;
- b. In failing to prepare or serve any written discovery to aid in the defense of Stokes-Craven;
- c. In failing to depose any witnesses including the plaintiff and the testifying experts in the underlying matter;
- d. In failing to obtain copies of the expert vitas or reports prior to trial;

- e. In failing to prepare a pretrial brief, trial exhibits, voir dire, requests to charge, or any other documents for use at trial;
- f. In failing to provide any evidence of the value of the vehicle at trial;
- g. In failing to contemporaneously object to the testimony offered by Plaintiff and Plaintiff's expert with regard to the value of the vehicle being "\$0";
- h. In failing to preserve for appeal the issue of whether the Plaintiff in the underlying matter presented competent evidence of the vehicle's fair market value for appeal;
- i. In failing to preserve for appeal the question of whether plaintiff's experts in the underlying matter were qualified to give expert opinions;
- j. In failing to contemporaneously object to or preserve for appeal the trial court's misstatement with respect to Stokes-Craven's total profit for 2005;
- k. In advising Plaintiff's counsel in responses to discovery that Stokes-Craven did not have any insurance policies relevant to the claims made in the underlying lawsuit;
- l. In advising Stokes-Craven that it did not have coverage under its insurance policy for the claims made in the underlying case when Stokes-Craven was sued for negligence and constructive fraud; and
- m. In failing to notify Stokes-Craven's insurance carrier of the claims made against its insured in the underlying matter.
- n. In omitting to advise Plaintiff on the date of the oral argument when Plaintiff and Defendant Scott Robinson traveled together to Columbia and at which time Scott Robinson discussed the nature of the appeal with Plaintiff's representative Dennis Craven, that the statute of limitations might run and further failed to advise that the merits of the appeal actually involved Scott Robinson's negligent acts.

- o. In concealing the fact of the malpractice from the Plaintiff up to the time the Supreme Court render its opinions and at a time when the Defendants were counsel for Plaintiff.
8. The Defendants' conduct as described above constitutes negligence as well as a breach of the contractual obligation owed to the Plaintiff, and Stokes-Craven is entitled to damages.
9. The underlying case was tried on or about August 14, 2006, and as a direct and proximate result of Defendants failure to exercise reasonable care, skill, and diligence in representing Stokes-Craven, a jury verdict in the amount \$26,371.10 actual and \$216,600.00 punitive damages was returned against Stokes-Craven.
10. As a further proximate result of the Defendants' negligence, Stokes-Craven was forced to pay approximately \$60,000 in legal expenses despite having insurance coverage.
11. As a further proximate result of the Defendants' negligence, Stokes-Craven has suffered lost revenues as a result of the fallout from the trial in the small community of Manning and Clarendon County since the 2006 verdict was rendered in the amount of \$869,641.09.
12. The verdict was appealed, and the South Carolina Supreme Court issued a majority opinion as well as several separate opinions concurring in part and dissenting in part.
13. The Supreme Court, in its opinions styled, *Austin v. Stokes-Craven*, 387 S.C.22, 691 S.E.2d 135 (S.C. 2010), upheld both the actual and punitive damages awards, specifically citing errors by Defendants in the handling of Stokes-Craven's defense. In particular, the Supreme Court stated:
- a. "Initially, we find Stokes-Craven failed to preserve any challenge to the admissibility of Disher's testimony." Opinion at 39.

b. "First, when Austin moved to qualify Disher as an expert witness in the field of auto body repair, counsel for Stokes-Craven did not question Disher and made no objection to his qualifications." Opinion at 39.

c. "Furthermore, it appears that the testimony that Stokes-Craven primarily challenges on appeal was that produced by its own cross-examination of Morris." Opinion at 41.

d. "Moreover, since there was no contemporaneous objection either to the expert's or to the owner's testimony that the truck had a value of \$0, I agree that there was evidence of value for the jury's consideration." Opinion at 60.

e. "Had the issue been properly preserved, however, I would agree that Austin failed to present any competent evidence of the truck's fair market value, which clearly is more than \$0." Opinion at 60.

f. "Stokes-Craven also contends that it was entitled to a new trial as there is no evidence in the record to support the jury's verdict valuing the truck at \$26,371.10, that is, the amount Austin paid for it. Since there was no objection to Austin's or Morris' \$0 value testimony, there is evidence in the record to support this verdict." Opinion at 60.

g. "As explained above, no issue relating to the actual damage award is preserved for appellate review, and thus Stokes-Craven's first argument fails." Opinion at 61.

h. "In its order reviewing punitive damages, the trial judge wrote that the witness had testified to this "total profit," which is incorrect. However, Stokes-Craven never called this misstatement to the trial judge's attention." Opinion at 61.

i. "Given that there was no objection to the extrapolation of total profit in Austin's closing argument, its alleged impropriety cannot be the basis for reversal here." Opinion at 61.

14. Further Defendants were reckless in the handling of the case in the following particulars:

- a. In failing to acknowledge the severity of the potential for a large verdict against Stokes-Craven and placing a worst case scenario value on the case of no more than the value of the vehicle in question;
- b. In acknowledging that they were aware at the time of the underlying action that in order to make a JNOV post trial motion it first required an objection at trial and/or a motion for Directed Verdict;
- c. In acknowledging that they were aware at the time of the underlying action that in order for a jury to award punitive damages, the jury first had to award actual damages;
- d. In acknowledging that they were aware at the time of the underlying action that testimony of a zero value was not competent or credible testimony and that there had to be competent evidence of actual value for the plaintiff to survive a directed verdict motion;
- e. In acknowledging that they were aware at the time of the underlying action that if there was no proof of value of Plaintiff's claim that a motion to move to dismiss at the directed verdict stage for lack of evidence would have been appropriate and that if the motion were not made at that time then it could not be made at JNOV;
- f. In acknowledging that evidence received without objection becomes competent and cannot be disregarded when considering directed verdict motion;
- g. In acknowledging that at no time in the underlying action did they confirm or preserve any communication with their client, Stokes-Craven, with regard to concerns of the danger of exposure, advising settlement, discovery strategy, or trial strategy or preparation, and in fact never even preserved a representation agreement with the client;
- h. In acknowledging that the attorney-client relationship between them and Stokes-Craven began when they received the demand letter from attorney Polito;

i. In acknowledging that competent counsel would conduct discovery and meet with witnesses prior to testimony and that there was no discovery served, no voir dire, and no witness preparation;

j. In acknowledging that they did not enter any rejected jury charges into evidence to protect for appeal;

k. In acknowledging that any JNOV motion has to set forth the grounds for appeal with specificity;

l. In acknowledging that a competent lawyer would have advised their client to settle the underlying case due to a bad fact situation and would be remiss not to do so;

m. In acknowledging that Stokes-Craven itself had no ability to protect the record through objections and post-trial motions and must rely on competent counsel to do same;

n. In acknowledging that they did not advise Stokes-Craven to pay the judgment into the court in order to mitigate his damages by halting the accrual of interest on the judgment;

o. In covering up the total lack of discovery, client communication, insurance tender and trial preparation by saying this was done at the direction of the client; and

p. In concealing the acts of malpractice throughout the time of the attorney/client relationship, which included the time up to oral argument in the Supreme Court and the date the Supreme Court ruled.

15. As a direct and proximate result of the Defendants' negligence, the Plaintiff has been injured and suffered damage. Plaintiff is entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by this Court.

**FOR A SECOND CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

16. The foregoing allegations are fully incorporated herein.
17. The Defendants entered into a fiduciary relationship with the Plaintiff.
18. By entering into a fiduciary relationship with the Plaintiff, the Defendants obligated themselves to act only in the best interests of the Plaintiff.
19. The Defendants' conduct, more particularly described above, constitutes a breach of this duty.
20. As a direct and proximate result of the Defendants' actions, inactions, and breach of fiduciary duty, the Plaintiff has been injured and suffered damage. Plaintiff is entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by this Court.

WHEREFORE, Stokes-Craven prays for judgment against the Defendants for actual and punitive damages in the amount of the jury verdict awarded against it, plus post-judgment interest, lost profits, the attorneys' fees paid to Defendants in the underlying case, and costs and attorneys' fees associated with this lawsuit, together with such other relief the Court deems appropriate.

[signatures on following page]

Respectfully submitted:

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr., Esq.

Michelle N. Endemann, Esq.

3 State Street, Charleston, SC 29401

P: 843.377.1871

F: 843.377.1310

ake@epting-law.com

ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina

August 13, 2011

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).

Signed this 13th day of AUGUST, 2011 at
Charleston, South Carolina

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2011 AUG 26 PM 1:14

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 8/26/11
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No. 2010-CP-14-457

Stokes-Craven Holding Corp, d/b/a)
Stokes-Craven Ford,)
)
Plaintiff,)

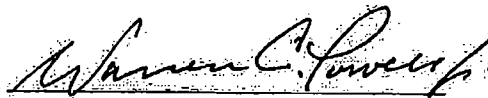
v,)

Scott L. Robinson and, Johnson)
McKenzie & Robinson, LLC,)
)
Defendants.)

**Defendant Johnson McKenzie & Robinson
LLC's Notice of Motion and Motion for
Summary Judgment
[Rule 56 of SCRCP]**

TO: ANDREW K. EPTING, ESQUIRE, AND MICHELLE ENDEMANN, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF:

You will please take notice that Defendant Johnson McKenzie & Robinson, LLC by and through its undersigned counsel, will move before the Presiding Judge of the Clarendon County Court of Common Pleas, Third Judicial Circuit, in Manning, South Carolina, on the tenth (10th) day after service hereof, or at such time as the Court may schedule, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order for Summary Judgment. The grounds for this motion are set forth in Memorandum in Support of Defendant Johnson McKenzie & Robinson, LLC's Motion for Summary Judgment filed herewith.



Warren C. Powell, Jr.
Bruner Powell Wall & Mullins, LLC
PO Box 61110
Columbia SC 29260
803-252-7693
*Attorneys for Defendant Johnson McKenzie &
Robinson, LLC,*

November 26, 2012
Columbia, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No. 2010-CP-14-457

Stokes-Craven Holding Corp, d/b/a)
Stokes-Craven Ford,)
)
Plaintiff,)

v.)

Scott L. Robinson and, Johnson)
McKenzie & Robinson, LLC,)
)
Defendants.)

**AMENDED
MEMORANDUM IN SUPPORT OF
DEFENDANT JOHNSON MCKENZIE
& ROBINSON, LLC'S MOTION FOR
SUMMARY JUDGMENT**

Defendant Johnson McKenzie & Robinson, LLC ("JMR") moves this Honorable Court for summary judgment on the basis that the statute of limitations expired on all claims asserted by Plaintiff Stokes-Craven Ford before it filed this lawsuit.

I. MATERIAL FACTS¹

Plaintiff Stokes-Craven Ford, located in Manning, South Carolina, is an automobile and truck dealership of new and used vehicles. Dennis Craven is an owner, officer, and the on site manager of the plaintiff corporation. During June 2002 Donald Austin drove to Plaintiff's place of business to look for a Ford F250. After locating such a truck on the lot, he encountered William Frierson, one of Plaintiff's salesman. Austin testified in the underlying case that he asked Frierson about the warranty and whether the

¹ Facts recited herein are for purposes of this motion only and are as alleged by Plaintiff or as found in the case of Donald C. Austin v. Stokes-Craven Holding Corp., d/b/a Stokes-Craven Ford, Civil Action No. 2004-CP-14-135

truck had been "wrecked." Austin testified Frierson told him the warranty was a "5-year, 100,000 mile powertrain warranty" and denied the truck had been "wrecked." Austin agreed to purchase the truck for \$26,371.10. During the process of signing the purchase agreement, Austin questioned one of the forms indicating that he was buying the truck "as is." Austin contends Frierson told him this was a formality and that the truck had a "5-year, 100,000 mile powertrain warranty." Austin also claimed the finance manager confirmed the existence of the warranty and "talked" him out of purchasing an extending warranty. Austin said he was led to believe by Frierson that the truck was previously owned by Bud Knight, a Summerville man Austin knew had a reputation for taking immaculate care of his vehicles.

Although unknown to Austin when he bought the truck, Gary Bailey had purchased the truck originally in 1999 from the same dealership for \$32,000. Bailey dealt with Kenny Craven, the brother and employee of Dennis Craven. On the night of September 28, 2001, Bailey's son was involved in a single vehicle accident during which "something broke in the front end, the truck flipped over, spun around the road, and slammed into a guardrail." The truck was repaired at a cost of \$20,398.38. Bailey drove the truck after the repairs were made until he noticed an oil leak in the front axle and made the decision to trade in the truck and purchased a new one from Stokes-Craven. Bailey testified he contacted Kenny Craven in April of 2002 and told him of the wreck, the repairs and the oil leak. On April 17, 2002, Bailey traded in his old truck for \$28,714.50 and purchased a new truck from Stokes-Craven.

Austin purchased the truck previously owned by Bailey in June, 2002. He initially drove the truck without noticing any problems until he discovered an oil leak in August

of 2002. Austin contacted another Ford dealership near his Moncks Corner residence to see if the rear seal leak could be repaired under warranty. This dealership informed Austin the repair was not covered by the truck's warranty and that he should contact Stokes-Craven regarding the repair. After receiving conflicting answers from Stokes-Craven's service department, Austin was told the repair was not covered by the truck's warranty and that he should contact Dennis Craven, manager and one of the owners of Stokes-Craven.

Austin then called Craven and explained his problem. Craven then spoke with his staff and called Austin several days later. According to Austin, Craven told him that his staff denied the representations concerning the 5-year, 100,000 mile powertrain warranty but, nevertheless, Craven offered to fix the oil leak with the understanding that any additional repairs would be paid by Austin. Austin then offered to return the truck for the purchase price and rejected Craven's offer to "trade him out of the truck." Austin informed Craven that he was not satisfied with this offer but still intended to have the oil leak fixed by Stokes-Craven. The repair was scheduled for September 13, 2002.

Prior to his scheduled repair appointment, Austin inadvertently discovered the wreck damage to the vehicle when he came in contact with William Norton, the owner of the repair shop where Bailey had taken the vehicle following his son's accident. During this discussion, Norton gave Austin the list of repairs made to the truck. Austin also discovered a warranty book in the truck during this time period which indicated that the truck was only covered by a 5-year, 100,000 mile warranty limited to the engine.

When Austin dropped off and later picked up the truck for the oil leak repair, he had conversations with Craven on both occasions concerning complaints about the truck.

Austin again requested that he be allowed to return the truck for the purchase price given his new discoveries regarding the prior ownership, the "wreck" damage and the lack of a powertrain warranty. During these conferences Austin states that he found out Thornall, Stokes-Craven's used car manager and a neighbor of the Baileys, most likely was aware of the truck's history. In his meeting with Austin, Dennis Craven produced a "Buyer's Guide" document purportedly containing Austin's signature which stated that the truck was covered by warranty "up to 100,000 on diesel engine." Austin denied that he signed the document and informed Craven and Thornall that he had not received this document at the time he purchased the truck. Craven compared the signature on the signed document with Austin's driver's license; although the signatures did not look the same, Craven denied Austin's request for a refund. Craven admits that after comparing the signature contained on the warranty document with the signature contained on Austin's driver's license in 2002 he concluded that the purported signature of Austin's name on the warranty document at Stokes-Craven Ford was a forgery. (Craven deposition, May 19, 2011, p. 105, lines 2-11)

On or about February 18, 2003 Craven received a letter from Austin's first attorney, John Polito reciting virtually all of the material allegations concerning Austin's dealings with Stokes-Craven Ford and problems he had with the truck including the dispute concerning the warranty document and its forgery. Austin, through his attorney renewed his request for a refund of the purchase price of the truck and, additionally, requested payment of Polito's fees in the sum of \$1,500, for his work in drafting the lengthy letter with attachments. Craven claims that he turned this letter over to his

attorney, Robinson. Craven, however, never agreed to the terms contained in the Polito letter.

On March 15, 2004 Austin filed suit against Stokes-Craven Ford alleging various causes of action including breach of contract, negligence, constructive fraud, common law fraud, violation of the South Carolina Motor Vehicles Dealer's Act and violation of the South Carolina Unfair Trade Practices Act. Austin sought actual and punitive damages, prejudgment interest, attorney fees and costs. Stokes-Craven, represented by attorney Robinson, answered and denied each of Austin's material allegations.

The case was called for trial during August of 2006 and, after a three day trial, on August 17, 2006 the jury found in favor of Austin and awarded damages for negligence and fraud in the amount of \$26,371.10 actual damages and \$216,600 punitive damages. The jury also found Stokes-Craven had violated the Federal Odometer Act. The jury found in favor of Stokes-Craven regarding Austin's claim under the UTPA.

Both parties filed post trial motions. Stokes-Craven moved for judgment notwithstanding the verdict (JNOV), a new trial, and a new trial *nisi remittitur*. The trial court denied Stokes-Craven's post trial motions and, in a separate order, affirmed the award of punitive damages finding evidence to support each of the requisite factors outlined in Gamble v. Stephenson, 305 S.C. 104, 406 S.E.2d 350 (1991).

As to Austin's post-trial motions, the trial court ruled that Austin was required to elect between his remedies, he was entitled to a statutorily authorized award of \$1,500 plus attorney fees as to the jury's verdict on the violation of the Federal Odometer Act, Austin was entitled to recover \$4,500 in attorney fees as opposed to the requested

\$49,936.50 based on the violation of the Odometer Act and Austin was entitled to taxable costs but not entitled to prejudgment interest.

Both parties timely appealed the trial court's rulings and the Supreme Court certified the case from the Court of Appeals pursuant to Rule 204(b), SCACR. The Supreme Court in its March 8, 2010, opinion affirmed Austin's award of actual and punitive damages. After applying the factors enumerated in Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (2009), the Supreme Court stated as follows:

Considering the above-outlined factors, we find Stokes-Craven's conduct can only be construed as exhibiting **an extremely high degree of reprehensibility**. Admittedly, the harm caused Austin was economic. However, this factor alone does not minimize the reprehensibility of Stokes-Craven's conduct given the dealership procured Austin's purchase of the truck through its employees' affirmative misrepresentations regarding the condition of the vehicle. Significantly Stokes-Craven employees failed to disclose that the truck had been "wrecked" and the lack of power train warranty. There is also evidence that Stokes-Craven forged Austin's signature on the "Buyer's Guide" in an effort to legitimize the lack of a power train warranty. (Emphasis added)

Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 53 691 S.E.2d 135,151 (2010)

On August 6, 2010 Stokes-Craven Holding Corp, d/b/a Stokes-Craven Ford, filed suit against Defendants herein, asserting claims against Defendant attorneys as to alleged trial and pretrial errors. Among other allegations, Plaintiff alleges in material part that Defendants were negligent as follows:

- a. Defendants failed to use diligence in investigating the facts of the underlying case (Plaintiff's Amended Complaint, Paragraph 7 (a));
- b. Defendants delayed interviewing key witnesses until two days before trial (Craven deposition, May 19, 2011, pp. 27-35, 38-41);

c. Defendants failed to show to Craven Robinson's draft of Stokes-Craven's answers to Austin's interrogatories prior to transmitting same and Craven discovered this during his testimony at trial when he noticed some of the answers (he contends) were wrong (Craven deposition, May 19, 2011, pp. 45-46);

d. Defendants failed to prepare Craven for his trial cross examination regarding questions suggesting that his brother, Kenny, should not have appraised the truck (Craven deposition, May 19, 2011, p. 47);

e. Defendants failed to get the case settled (Second Amended Complaint, Par. 14(l)); and,

f. That if Robinson had kept him better informed and not made the other errors listed above the trial would have turned out differently and more favorable for Stokes-Craven (Craven deposition, May 19, 2011, pp. 42-43, 52-54).

Dennis Craven, principal and manager of Stokes-Craven and its 30(b)(6) representative, testified that when the verdict in the Austin trial was handed down in August of 2006, it was evident that it was a serious problem for Stokes-Craven (Craven deposition, May 19, 2011, p. 61). He testified further on this subject as follows:

Q: It [verdict] was a serious problem and you contend in this case that you knew at that time it was a serious problem for Stokes-Craven?

A: Exactly.

Q: And for some of the reasons we've already discussed?

A: Correct.

(Craven deposition, May 19, 2011, p. 74)

Craven testified further that Plaintiff's reputation was hurt by the verdict shortly after the verdict was handed down (Craven deposition, May 19, 2011, p. 80).

Craven testified that within 60 days after the August 2006 trial the plaintiff changed lawyers (Craven deposition, May 19, 2011, p. 75). Craven said that when the Charleston, South Carolina law firm of Young Clement and Rivers was hired Robinson was no longer his attorney (Craven deposition, May 19, 2011, p. 84).

Despite his earlier sworn testimony, in May 2011, Craven sent an errata sheet in November 2012, more than 1 ½ years after his testimony and after Defendants filed for summary judgment, attempting to completely change² his deposition testimony by making the following statement:

After the trial I hired Young Clement & Rivers to handle my appeal. As they were filing motions, interrogatories and appeal dates, they would copy Mr. Robinson on current events, then Mr. Robinson and I would discuss these issues. When it came time for the Supreme Court hearing Mr. Robinson and I rode together to Columbia discussing the issues at hand, during this time I believed he was acting as my lawyer.

In August of 2011 Plaintiff amended its Complaint to set forth allegations and specifications of negligence concerning Mr. Robinson's post-trial role and conduct again in an attempt to circumvent the clear statute of limitations to this action, and in alleging that Defendants were negligent in:

7. ...(n) In omitting to advise Plaintiff on the date of the oral argument when Plaintiff and Defendant Scott Robinson travelled together to Columbia and at which time Scott Robinson discussed the nature of the appeal with Plaintiff's representative Dennis Craven, that the statute of limitations might run and further failed

² It is little wonder why Mr. Craven testified that after Young Clement & Rivers ("YCR") was engaged to represent Plaintiff post-trial that Robinson was no longer Stokes-Craven's attorney as Mr. Brown of YCR testified he did not believe Robinson participated in drafting any of the written materials for the appeal. (Brown deposition, April 19, 2012, p. 43)

to advise that the merits of the appeal actually involved Scott Robinson's negligent acts;

(o) In concealing the fact of the malpractice from Plaintiff up to the time the Supreme Court render [sic] its opinion and at a time when Defendants were counsel for Plaintiff.

These additional allegations, however, do nothing to change the undisputed facts that compel an order for summary judgment for Defendants on the grounds that the statute of limitations ran before this suit was filed.

II. ISSUE TO BE DECIDED BY THE COURT

When did the Statute of Limitations commence to run as to any claim against Defendants Johnson McKenzie & Robinson, LLC and Robinson?

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000). "Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." Hedgepath v. Am Tel. and Tel Co., 348 S.C. 340, 559 S.E.2d 327, 335 (Ct. App.2002) citing Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991). "Once the moving party carries its initial burden, the 'opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but

'must come forward with specific facts showing that there is a **genuine issue for trial.**' (emphasis in original) Hedgepath at 354, 559 S.E.2d at 335 (citations omitted). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999).

IV. ARGUMENT

A. The Statute of Limitations is an absolute bar to actions brought outside the limitations set forth in S.C. Code Ann. §§ 15-3-530 and 535 (1976 as amended).

S.C. Code Ann. §§15-3-530 and 535 (1976 as amended) are the statutory provisions that create an absolute bar to any recovery when a claim or lawsuit is filed over three years from the date that the claim arose. Section 15-3-535 provides that actions "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." The focal point of most litigation surrounding the statute of limitations is when the statute of limitations begins to run or when the cause of action accrued.

B. Controlling Law As To When The Clock Starts: The Objective Discovery Rule

It is well settled in this state that the accrual of a cause of action, whether in tort or in contract, is governed by the discovery rule. This statutory period begins to run, therefore, when a person could or should have known, through the exercise of reasonable

diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. Austin v. Conway Hosp., Inc., 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987) *quoting* Rogers v. Efrid's Exterminating Co., Inc., 284 S.C. 377, 379, 325 S.E.2d 541, 542 (1985). Specifically, the discovery rule focuses upon whether the complaining party acquired knowledge of any facts "sufficient to put said party on inquiry, which, if developed, will disclose" the alleged conduct. Walter J. Kline, Co. v. Kneece, 239 S.C. at 478, 483, 123 S.E.2d 870,874 (1962) *quoting* Tucker v. Weathersbee, 98 S.C. 402, 82 S.E.2d 638 (1914). Therefore, the application of the discovery rule is in large measure a function of determining what facts and circumstances were known or discoverable by a complainant and when they were known or discoverable. South Carolina cases provide clear guidance as to when the Statute commences to run under a given set of facts.

Dean v. Ruscon, 321 S.C. 360, 468 S.E.2d 645 (1996)

In Dean, the plaintiff observed in November 1984 a crack approximately three feet in length at the front right corner of her building and concluded that the crack was attributable to Ruscon's pile driving, which commenced in October and November of 1984. After hiring a structural engineer, Dean was informed that unless there was a change in the gauge or crack, the damage could be corrected by placing right angle steel on the building's corners. Ruscon resumed pile driving activities adjacent to the block where Dean's building was located. In August of 1985, Dean noticed that the original crack had expanded and the facade of the building was bulging and buckling at the location of the original crack. Dean closed her business in the building after being

informed that the building was no longer structurally sound. Dean filed suit in April of 1991.

The trial court directed a verdict for Ruscon, concluding that Dean discovered potential damage to her building in 1984 and associated it with Ruscon's pile driving activities. The Court of Appeals reversed, concluding that a question of fact existed as to whether Dean was reasonably diligent in determining whether the damage to her building was attributable to Ruscon thereby triggering the running of the Statute of Limitations in 1984.

The Supreme Court reversed the Court of Appeals and recited the standard language that, "the Statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Id. at 363, 468 S.E.2d at 647 (citations omitted). The Supreme Court went further to define "exercise of reasonable diligence" to mean that "the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial." Id. at 363-364, 468 S.E.2d at 647.

Dean argued that the crack which appeared in 1984 and the bulging of the bricks in 1985 present two distinct harms and, therefore, separate statutory periods should be imposed as to each harm. The Supreme Court took notice that, "Dean admitted that she personally believed the damage to her building resulted from the pile driving activities of 1984, and that when she first noticed the crack, she thought the structure of the building

was compromised." *Id.* at 364, 468 S.E.2d at 648. The Supreme Court found that because the subsequent harm was not separate and distinguishable, it was discoverable in 1984 and, accordingly, the statute of limitations commenced to run at that time, entitling Ruscon to judgment as a matter of law.

Burgess v. Am. Cancer Soc'y, 300 S.C. 182, 386 S.E.2d 798, (Ct. App. 1989)

Burgess sued her former attorney for legal malpractice contending that although the Plaintiff claimed she was aware that a Cancer Society employee, Oulla, was having an affair with her former attorney, McLeod, she was unaware that Oullah was passing information she had allegedly learned from McLeod about Burgess's claim to managerial level personnel at the Cancer Society office.

The trial court and the Court of Appeals held "as a matter of law, that Burgess' knowledge of the alleged affair between McLeod, her attorney, and Oullah, then Executive Secretary of ACS, constitutes such knowledge of existing facts which were sufficient to put Burgess on inquiry and had she pursued such inquiry, it would have disclosed alleged communications between McLeod and Oullah." *Id.* at 187, 386 S.E.2d at 800-801. Hence, in order for the statute to commence to run it is not necessary that the Plaintiff need acquire precise information of the attorney's incorrect or negligent conduct but merely acquire "such facts as would have led to the knowledge thereof, if pursued with reasonable diligence." *Id.* at 186, 386 S.E.2d at 800 (citations omitted). Because Burgess was aware of the affair, the appellate court held that she was on notice to inquire further and, inasmuch as she was on notice, the statute had commenced to run.

Burgess illustrates how little information the Plaintiff must possess to cause the statute of limitations to commence to run in South Carolina. The Fourth Circuit of

Appeals observed, "South Carolina's Statute of Limitations requires 'very little to start the clock'". Roe v. Doe, 28 F.3d 404, 407 (4th Cir. 1994) *applying South Carolina law and cited with approval in* Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998). Determining when a cause of action arises or accrues under the discovery rule requires an objective analysis, not a subjective one. *See Burgess*, 300 S.C. at 186, 386 S.E.2d at 800. Therefore, such a determination is properly one for the court, not a jury.

Peterson v. Richland County, et al, 335 S.C. 135, 515 S.E.2d 553 (Ct. App. 1999)

Peterson received a confession of judgment from Scarscella in December 1988. The confession of judgment was attached to the summons and complaint filed on Peterson's behalf by her attorney, Frank Register, on December 28, 1988. The judgment was not properly indexed by the Office of the Clerk of Court, enabling Scarscella to sell his property in 1990, without first paying the judgment. This case was dismissed in August of 1989, pursuant to Rule 40(c)(3), SCRCF, after there was no response when the case was called for trial. The Rule 40(c)(3) document listed Register as Peterson's attorney.

Peterson changed attorneys in October 1993, when she hired Attorney Harold Swafford to foreclose on the judgment. Swafford retained a title abstractor to examine the title. The abstractor reported that the judgment had been clocked in and placed in the Clerk's folder, but was not properly indexed in the Abstract of Judgments. In addition, the plaintiff learned through Swafford that the original case against Scarscella had been dismissed in August of 1989 pursuant to Rule 40(c)(3). The plaintiff received this information from Swafford in October or November of 1993. On November 4, 1993, within two or three weeks of the abstractor's report to him, Swafford filed a summons and

complaint to foreclose on the property previously owned by Scarscella. That litigation was unsuccessful.

In October 1994, Peterson commenced suit against Richland County and the Clerk of Court. In February 1997 Peterson amended her pleadings to add Register as a party defendant. In her amended complaint, Peterson alleged Register was negligent in failing to follow up on the case, once he received the August 17, 1989, Rule 40(c)(3) order. Peterson argued that the order was notice to Register that the earlier filed confession of judgment had not been properly indexed, and had he inquired into the issuance of the order, the improper indexing of the judgment would have been cured.

Register filed a motion for summary judgment arguing that the statute of limitations commenced to run in the fall of 1993 when Peterson learned that the judgment had not been properly enrolled. Although Peterson knew in the fall of 1993 that the judgment had not been properly enrolled, she claimed she had no knowledge of a potential claim against Register until discovery commenced and the attorney for the Clerk of Court indicated Register might be liable. The trial court granted Register's motion, finding Peterson "knew or should have known she had been 'injured' shortly after retaining Swafford to represent her . . . in October 1993" *Id.* at 138, 515 S.E.2d at 554.

The Court of Appeals found:

It is undisputed that Peterson had knowledge of her injury by November 4, 1993, the date she commenced an action to foreclose on the judgment. By that time, she knew that an error had been committed in the indexing of her judgment. It is further undisputed that she had knowledge at that time that a Rule 40(c)(3) order had been issued dismissing her action against Scarscella. Although she may have believed that the Clerk's office was to blame for the erroneous indexing of her judgment, she had facts before her that, by the exercise of reasonable diligence, would put

a person of common knowledge and experience on notice that she might have a claim against her attorney.
Id. at 139, 515 S.E.2d at 555.

It is important to note here that the Court of Appeals found that under these facts the Statute commenced to run **before** the conclusion of the foreclosure suit brought by Peterson. This is because in the words of the Court, "... she had facts before her, by the exercise of reasonable diligence, would put a person of common knowledge and experience on notice that she might have a claim against her attorney" Id. The unsuccessful conclusion of her foreclosure suit was not necessary for the Statute to commence to run.

Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005)

Dr. Epstein filed an action against his former attorney asserting legal malpractice, alleging damages to his reputation, "and the claims he raises in his Complaint are primarily related to trial and pre-trial errors." Id. at 382, 610 S.E.2d at 821. As a defense, Dr. Epstein's attorney, Brown, asserted that Dr. Epstein's claims against him were barred by the statute of limitations. In analyzing Brown's defense, the South Carolina Supreme Court affirmed the application of the "discovery rule" in a legal malpractice action. In particular, the Court stated:

South Carolina Code Ann. §15-3-530 (Supp.2003) provides a three year statute of limitations for legal malpractice lawsuits. Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996); S.C.Code Ann. § 15-3- 535. *See also Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct.App.1997). The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a

person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed. *Id.* (emphasis supplied).

Epstein at 376, 610 S.E.2d at 818

The Supreme Court concluded, "Under the facts of this case, we find Dr. Epstein clearly knew, or should have known he might have had some claim against Brown at the conclusion of his trial." *Id.* at 382, 601 S.E.2d at 821.

The same question to be answered by this court is as follows: Would a person of common knowledge and experience be placed on notice that some right of his might have been invaded or that he may have a claim against another party when: a) he believes that his attorney delayed interviewing key witnesses until two days before trial commenced; b) his attorney allegedly failed to show him the parties' draft answers to interrogatories which he contends were incorrect and he discovered this during his trial testimony; c) his attorney failed to prepare him for his cross-examination concerning an important trial issue; d) his attorney failed to settle the case; e) he alleges that if his attorney had kept him better informed and not made the errors listed above the trial would have turned out differently and more favorably for him; and, f) all of the above occurred at or before trial and were absolutely known to Plaintiff in the face of an adverse jury verdict of \$26,371.10 actual damages and \$216,600 punitive damages? *Epstein*, perhaps more than any other appellate opinion, controls the outcome of this motion.

This rule applying an objective standard to a litigant complaining of his trial attorney's pretrial and trial actions was followed by the South Carolina Federal District Court in *Clearwater Trust v. Wyche, Burgess, Freeman & Parham*, 2007 WL 17957979

(D.S.C. 2007). There the Plaintiff sued the defendant law firm for failing to file its action in a timely manner. Two separate trial judges determined that the underlying action had not been filed in a timely manner. First, Judge Herlong dismissed the case as having been untimely filed on July 11, 2002. Thereafter, the case was remanded to the state court and seven months later, Judge Patterson ruled from the bench dismissing the action because it had not been timely commenced, which was followed up with a written order on May 15, 2003. Plaintiffs were aware of the rulings. The South Carolina Supreme Court affirmed the ruling in February 2006. The Clearwater Trust, however, waited to file the malpractice action until June 22, 2006, after the final ruling by the Supreme Court.

The District Court clearly ruled that an aggrieved client cannot wait until the final disposition of the underlying case in finding that the statute of limitations had not run as to the claim against the attorneys. The court reiterated:

Under the discovery rule, a party must exercise "reasonable diligence." S.C. Code Ann. §15-3-535 (2005). The South Carolina Supreme Court has defined "reasonable diligence" as simply act[ing] with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party *might* exist." Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The Court further established that "[t]he statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." *Id.* at 376, 610 S.E.2d at 818.

Clearwater Trust at 4.

C. The Statute of Limitations commenced as to any claim against Defendants in 2006:

In the case sub judice, Plaintiff knew, or with the exercise of reasonable diligence, should have known that some right had been invaded when the jury returned a verdict against it for \$26,310.10 actual damages and \$216,600 punitive damages.

Plaintiff Stokes-Craven Ford, just as the plaintiff in Epstein, asserts claims as to **alleged trial and pre-trial errors** on the part of Defendant attorneys. Plaintiff alleges Defendants were negligent as follows:

- a. Defendants failed to use diligence in investigating the facts of the underlying case (Amended Complaint, Paragraph 7(a));
- b. Defendants delayed interviewing key witnesses until two days before trial (Craven deposition, May 19, 2011, pp. 27-35, 38-41);
- c. Defendants failed to show to Craven Robinson's draft of Stokes-Craven Ford's answers to Austin's interrogatories prior to transmitting same and Craven discovered this during his testimony at trial when he noticed some of the answers he contends were wrong (Craven deposition, May 19, 2011, pp. 45-46);
- d. Defendants failed to prepare Craven for his trial cross examination suggesting that his brother, Kenny, should not have appraised the truck (Craven deposition, May 19, 2011, p. 47);
- e. Defendants failed to get the case settled (Amended Complaint, Paragraph 14(l)); and,
- f. That if Defendants had kept Craven better informed and not made the other errors listed above, the trial would have turned out more favorably for Stokes-Craven (Craven deposition, May 19, 2011, pp. 52-54).

Significantly, Plaintiff's principal, Dennis Craven, testified that when the verdict in the Austin trial was rendered in August 2006 it became evident that it was a serious problem for Plaintiff. (Craven deposition, May 19, 2011, p. 61) Craven testified the Austin trial has been a "big hit" to him resulting in lower sales. (Craven deposition, May 19, 2011, p. 23) Craven stated Plaintiff's reputation was hurt by the verdict shortly after the verdict was handed down. (Craven deposition, May 19, 2011, p. 80) Plaintiff also contends these problems were known in August, 2006 when the jury's verdict was delivered. Craven testified as follows:

Q: It (the verdict) was a serious problem and you contend in the case that you knew at that time it was a serious problem for Stokes-Craven?

A: Exactly.

Q: And for some of the reasons we've already discussed?

A: Correct.

According to Plaintiff's contentions in this case Craven became aware of Defendants' alleged errors during the trial itself and without any doubt at the time the adverse verdict was rendered by the jury. Plaintiff contends it recognized the verdict as a serious problem for the company at the time it was rendered and its reputation suffered thereafter. Plaintiff also testified that had Robinson not made these alleged errors before and during trial that the trial would have turned out differently.

As demonstrated in the litany of facts and circumstances above, the statute of limitations began to run no later than 2006, specifically August of that year, the month during which the verdict against Plaintiff was rendered on the negligence and fraud claims in the sum of \$26,371.10 actual damages and \$216,600 punitive damages. The

Fourth Circuit Court of Appeals observed in Roe v. Doe, 28 F.3d 404 (4th Cir. 1994) that South Carolina's statute of limitations requires, "very little to start the clock." Id. at 407 (applying South Carolina law and cited with approval in Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998)). As demonstrated by testimony of Plaintiff's principal, there was an abundance of information and facts known to Plaintiff in August of 2006 sufficient to put it on notice that some right of it might have been invaded and that, according to its allegations, had a potential claim against its attorney at that time. From that point, Plaintiff had three years to investigate and bring suit. Instead, Plaintiff waited until August 16, 2010 to file suit. The statute of limitations ran on Plaintiff's claims against Defendants in 2009; therefore, Defendants are entitled to summary judgment as a matter of law.

The facts in this case insofar as they relate to the commencement of the running of the statute of limitations are more compelling than those in Burgess, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989). In Burgess there was no evidence that the plaintiff was aware that the allegedly negligent or wrongful conduct had in fact caused her damage. In contrast, not only are the facts present in this action sufficient to place Plaintiff as a reasonable person on notice that Defendants had made mistakes prior to and during the trial of the underlying action but that, in addition, Plaintiff through its principal admits that in August of 2006 it was evident to him that these errors had caused serious problems for the auto dealer.

The fact that Plaintiff did not know the full extent of the damages it now claims is immaterial to the statute of limitations analysis. In Dillon County School District #2 v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985), the

school district argued that the Statute of Limitations did not commence to run until it learned it needed a new roof and, accordingly, when all of its damages could be ascertained. The Court of Appeals disagreed and in so doing stated:

The fact, however, the school district did not appreciate the full extent of the damage until later is immaterial, The Town of Mannsville v. G.A.F. Corp., 364 N.E.2d 1292 (Mass. App. Ct. 1977). The Statute of Limitations began to run at the point in time when the school district either discovered or reasonably should have discovered it had a serious roof problem and not when it learned it needed a new roof.

Dillon at 215, 332 S.E.2d at 554.

Likewise, Plaintiff admits that by August of 2006 after the verdict was rendered against it, Stokes-Craven Ford knew that said verdict was a serious problem for the company and that the problem was caused by Defendants alleged errors (Craven deposition, May 19, 2011, pp. 42-43, 52-53, and 74).

The application of the principles set out in Dean, Supra. leads to the same conclusion. In the same way the trial court and the Supreme Court found that because Dean attributed damage to her building to Ruscon's 1984 pile driving activities the Statute commenced at that time, it commenced in this case as to any claim against Defendants during August 2006 because that is when Plaintiff attributed damages it sustained to its reputation resulting shortly after the verdict to Defendants' alleged pre-trial and trial errors.

Finally, the principles and holding set forth in Epstein v. Brown, supra, controls the outcome of this motion. The plaintiffs' allegations in the two cases are remarkably similar. The following excerpt from the opinion illustrates this:

In his complaint, Dr. Epstein alleged Brown was negligent in numerous particulars, including: **failing to conduct an adequate**

investigation, failing to advise Epstein to settle, failing to keep Epstein adequately informed during the pendency of the case, representing ... forgetting to call expert witnesses, and adopting a defense which was contrary to Dr. Epstein's medical opinion. Counsel for Dr. Epstein conceded that many of these allegations were within Dr. Epstein's knowledge at the time of the jury's verdict.

Id. at 376, 610 S.E.2d at 818. (Emphasis added)

Likewise, in this case there can be little doubt that Plaintiff's claims of alleged errors are, as was the case in Epstein, trial and pretrial errors. The Supreme Court in Epstein, commenting on this dynamic stated as follows:

Under the facts of this case, we find Dr. Epstein clearly knew, or should have known he might have had some claim against Brown at the conclusion of his trial. The damages he claims are largely those to his reputation and the claims he raises in his complaint are primarily related to trial and pre-trial errors.

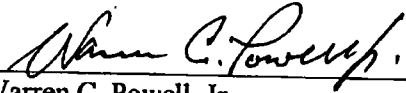
Id. at 382, 610 S.E.2d at 821.

Accordingly, the Supreme Court found that the trial court properly granted summary judgment to the defendant based upon the defense of the statute of limitations. The same result should be ordered in this case.

CONCLUSION

Plaintiff alleges trial and pre-trial errors on the part of Defendants caused it to suffer an adverse jury verdict for actual and punitive damages on fraud and negligence claims. Plaintiff's principal and manager admits being aware of these errors during the trial and that Plaintiff's damages, including damage to its reputation, was known at the time of or shortly after the August 2006 verdict. "A person of common knowledge and experience" under these facts would be on notice "that some right of his has been invaded

or that some claim against another party might exist." The statute of limitations commenced as to any claim Plaintiff might have against Defendants in 2006. This suit was not commenced until August 5, 2010. Accordingly, summary judgment should be awarded to all defendants based upon the statute of limitations.


Warren C. Powell, Jr.
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260
803-252-7693
Attorneys for Defendant Johnson McKenzie & Robinson, LLC

Columbia, South Carolina
January 4, 2013

CCY

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CLARENDON) Case No.: 10-CP-14-457

3

4 STOKES-CRAVEN HOLDING CORP.
5 d/b/a/ STOKES-CRAVEN FORD,

6

7 Plaintiff,

8 vs.

9 SCOTT L. ROBINSON and JOHNSON
10 MCKENZIE & ROBINSON, LLC,

11

12 Defendants.

13

14

15

DEPOSITION OF
STEPHEN L. BROWN, ESQUIRE

16

17

18 DATE: April 19, 2012

19 TIME:

10:07 a.m. to 12:30 p.m.

20 LOCATION:

McNair Law Firm, LLC
100 Calhoun Street
Suite 100
Charleston, South Carolina

21

22 REPORTED BY: Beth Walters

23

24

PALMETTO STATE COURT REPORTERS
3022 S. Morgan's Point Road, Box 118
Mt. Pleasant, SC 29466
843.670.1637 Fax: 843.216.9767
Palmettostatecr@yahoo.com

25

EXHIBIT

1

1 at the Opinion and more than one Justice focused on
2 the issue preservation matter in the case.

3 A Yes, sir.

4 Q And that this hit you the wrong way
5 because when you started to discuss that at oral
6 argument, I think I'm accurate when I say that the
7 Chief Justice shut you down?

8 A Correct.

9 Q In doing that. And then the Opinion comes
10 out, and as a result, what you're reading there is
11 that it appears that they used that very issue to
12 rule against you?

13 A Correct.

14 Q Mr. Brown, does that hit you as
15 fundamentally unfair?

16 A I want to be very careful as how I answer
17 this question, because I don't want it in front of
18 the Supreme Court at some point in time. It was --
19 and -- did it hit me as fundamentally unfair? I
20 don't know. The issues had been briefed, so they
21 had it before them. I knew that issue preservation
22 was going to be an issue. One of the conversations
23 I had with Scott was, "Scott, help me out here. Is
24 there anywhere else I can look on the valuation
25 issue?" I knew it was -- I knew it was going to be

1 an issue, because I will tell you this, we -- I've
2 handled -- I work on lots of appeals, and a lot of
3 them are outside appeals. And the first thing we do
4 when we're trying to uphold something for
5 somebody -- the first thing we do is tear apart and
6 look for issue preservation issues, because we know,
7 especially at the Court of Appeals level, they will
8 punt any chance they get on an issue preservation
9 issue. That's why when the Supreme Court took this
10 as a 204(b) certification, two things. Number one
11 it didn't concern me one way or the other, because
12 Kenrick's Dad had previously told me they get bored,
13 and that's where their 204(b)'s come from. They
14 randomly just will send cases over. Don't ever
15 think the 204(b) has some grand implication in the
16 scheme of your case. And number two, the Supreme
17 Court at times will do what they're going to do. I
18 mean, no ultra means what it means above their head,
19 and I've -- you know, I -- sometimes if you get them
20 right way, it doesn't really matter whether the
21 issue is preserved or not. You can just get them on
22 a tear.

23 Q I think where you're headed with that is
24 that there's not an awful lot of predictability
25 there?

1 we went on that, we knock a whole lot, if not all of
2 it, out, or at least we get a chance to redo it.

3 Q And this was the issue -- as you were
4 reading through the transcript -- I think you said
5 earlier, when you were reading through it, this is
6 an issue that jumped out at you?

7 A It did.

8 Q And when you called in -- the issue I'm
9 talking about is the issue preservation issue.

10 A Correct.

11 Q And you called -- after you read that, I
12 think you said -- after you read the trial
13 transcript, to make this clear, you followed that up
14 with a conversation with Mr. Robinson?

15 A Correct. I've had several conversations.
16 I can't tell you that that was on conversation one
17 or conversation three, because we discussed lots
18 of -- every issue in the case Mr. Robinson and I had
19 some discussion about where I would want his take on
20 it, because I find it helpful to understand what the
21 trial attorney was thinking and doing and what have
22 you, so -- but, yes, we did discuss this. I also
23 remember asking Scott, "Are there any other briefs
24 out there or memoranda or any issues that may have
25 been presented to the court that I don't have in

1 Q And I gather the issue preservation matter
2 was more in your bailiwick --

3 A Correct.

4 Q -- in this case --

5 A Correct.

6 Q -- than the Federal Odometer Act?

7 A Correct.

8 Q And you reviewed -- it looks as though you
9 reviewed the trial transcript in April and May and
10 possibly June 2007; is that --

11 A That is correct, but on any entry that
12 just says, "Work on appeal," that could be drafting.
13 That could be going back and rereading a section of
14 it. That could be talking to people. That could be
15 reviewing case law.

16 Q But where it says -- certainly, where it
17 says --

18 A It's a --

19 Q -- "Begin review of trail transcript for
20 appeal issues," that's --

21 A Primarily, although as Ms. Taylor Wall
22 asked, if I hit an issue, if I read something in it
23 I don't understand or that I want follow up on, I
24 may put down the transcript and pick up the phone.

25 Q Pick up the phone.

VENDOR
NAME

STOKES-CRAVEN FORD CHRYSLER JEEP DODGE • MANNING, SC 29102

ISSUED BY 01

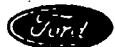
CHECK
NUMBER 730313

VENDOR
CONTROL
NUMBER

Copyright 2000 Alfa, Inc.

YOUNG CLEMENT RIVERS LLP.

DATE	DESCRIPTION	AMOUNT	DATE	DESCRIPTION	AMOUNT
2412 1006	1435.86 STATEMENT 332730 YOUNG C 1435.86- YOUNG CLEMENT RIVERS LLP.				
DETACH AND RETAIN FOR YOUR RECORDS 6/01/2007 TOTAL NET AMOUNT ►					1,435.86



STOKES-CRAVEN
FORD CHRYSLER JEEP DODGE
2601 PAXVILLE HWY.
MANNING, SC 29102
(803) 433-8400



Bank of Clarendon

07-073/532

6/1/2007 730313

*****1.435.86

*****1.435.86

One Thousand Four Hundred Thirty-Five DOLLARS

TO
THE
ORDER
OF

YOUNG CLEMENT RIVERS LLP.
STATE OF SC

NON-NEGOTIABLE

Accounting Copy

Craven 0298



Charleston Office
28 Broad Street
P.O. Box 993
Charleston, SC 29402-4993
Telephone (843) 577-4000
Facsimile (843) 724-4000



**YOUNG
CLEMENT
RIVERS LLP**
ATTORNEYS AT LAW

2412
Taxpayer Identification Number: 57-0471590

STATEMENT OF ACCOUNT

STOKES CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN FORD
DENNIS CRAVEN
2801 PAXVILLE HWY
MANNING, SC 29102

STATEMENT NO. 332730

MAY 29, 2007

FOR PROFESSIONAL SERVICES RENDERED THROUGH APRIL 30, 2007
YCR FILE NO.: 13214-20061880
CASE NO.: 2004-CP-14-135

RE: DONALD C. AUSTIN V STOKES-CRAVEN HOLDING CORP, D/B/A STOKES-CRAVEN FORD

2/27/2007	ERO	1.10	RECEIPT AND ANALYSIS OF NUMEROUS PLEADINGS IN UNDERLYING MATTER FROM CLARENDON CLERK OF COURT
4/9/2007	EOB	0.30	TELEPHONE CONFERENCE WITH DENNIS CRAVEN X2 RE: APPEAL STATUS
4/9/2007	EOB	0.70	EXAMINED STATUS OF COURT FILE TO DETERMINE DEADLINES FOR TRANSCRIPT AND INITIAL BRIEFS FOR APPELLANT AND RESPONDENT
4/9/2007	ERO	0.20	TELEPHONE CONFERENCE WITH ATTORNEY ROBINSON'S ASSISTANT RE: STATUS OF TRIAL TRANSCRIPT (X2)
4/9/2007	ERO	0.50	PREPARE NOTICE OF APPEARANCE AND SUPPORTING PAPERWORK
4/9/2007	ERO	0.10	CORRESPONDENCE TO CLERK OF COURT RE: SAME
4/12/2007	ERO	0.20	TELEPHONE CONFERENCE WITH ATTORNEY ROBINSON'S ASSISTANT RE: TRIAL TRANSCRIPT
4/12/2007	ERO	0.40	PREPARE NOTICE TO SC COURT OF APPEALS RE: RECEIPT OF TRANSCRIPT AND CALCULATE BRIEFING SCHEDULE
4/17/2007	SLB	0.10	RECEIVE AND REVIEW CORRESPONDENCE FROM COURT OF APPEALS REGARDING NOTICE OF APPEARANCE
4/18/2007	SLB	1.10	BEGIN REVIEW OF TRIAL TRANSCRIPT FOR APPEAL ISSUES
4/24/2007	SLB	2.80	CONTINUE REVIEW OF TRANSCRIPT REGARDING APPEAL ISSUES

PROFESSIONAL SERVICES

1,200.00

Jan
PAGE: 1

Craven 0299

STOKES CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN
DONALD C. AUSTIN V STOKES-CRAVEN HOLDING CORP.,
13214-20081960

STATEMENT NO. 332730
MAY 29, 2007

SUMMARY OF PROFESSIONAL SERVICES

PROFESSIONAL	HOURS	RATE	AMOUNT
STEPHEN L. BROWN	4.00	185.00	760.00
EDWARD D. BUCKLEY, JR.	1.00	185.00	185.00
ELIZABETH R. ONEIL	2.50	90.00	225.00
	7.50		1,200.00

COSTS

	COPYING EXPENSE - INTERNAL	12.25
	POSTAGE - INTERNAL	4.62
	LONG DISTANCE CALLS - INTERNAL	8.60
2/20/2007,	CLARENDON COUNTY CLERK OF COURT - COPY COURT DOCUMENTS FOR APPEALS FILE	75.75
2/27/2007	JUSTMAN, AMEE - 187.5 MI @.485 TO CLARENDON COUNTY CLERK OF COURT RE: COPY COURT DOCUMENTS ON 2004-CP-14-0135 FOR APPEALS FILE	90.94
4/13/2007	FEDEX	20.70
4/30/2007	SOUTH CAROLINA COURT OF APPEALS - MOTION FILING FEE	25.00
	TOTAL COSTS	235.86

CURRENT BILLING 1,435.86

PLEASE MAKE CHECKS PAYABLE TO YOUNG CLEMENT RIVERS, LLP

PAGE: 2

Craven 0300

STOKES-CRAVEN FORD CHRYSLER JEEP DODGE - MANNING, SC 29102

Copyright 1999 ACR, Inc.

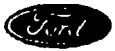
VENDOR
NAME

YOUNG CLEMENT RIVERS LLP

ISSUED BY 04

CHECK
NUMBER 730664VENDOR
CONTROL
NUMBER

DATE	DESCRIPTION	AMOUNT	DATE	AMOUNT	TOTAL AMOUNT
2412	STATEMENT NO 333577 FOR PROFESSIONAL SERVICES RENDERED THRU MAY 31, 2007 1006	1898.92			
		1898.92- YOUNG CLEMENT RIVERS LLP			
DETACH AND RETAIN FOR YOUR RECORDS 7/05/2007 TOTAL NET AMOUNT ►					1,898.92



STOKES-CRAVEN
FORD CHRYSLER JEEP DODGE
2801 PAXVILLE HWY.
MANNING, SC 29102
(803) 433-8400



Bank of Clarendon

87-873/532

7/ 5/2007 730664

*****1,898.92

*****1,898.92

One Thousand Eight Hundred Ninety-Eight DOLLARS & 92 CENTS

TO
THE
ORDER
OF

YOUNG CLEMENT RIVERS LLP
PO BOX 92
CHARLESTON, SC 29402-0092

NON-NEGOTIABLE

Accounting Copy

Craven 0301

Charleston Office
28 Broad Street
P.O. Box 993
Charleston, SC 29402-0993
Telephone (843) 577-4000
Facsimile (843) 724-6600



Taxpayer Identification Number: 57-0471590

Acct 2412

STATEMENT OF ACCOUNT

STOKES CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN FORD
DENNIS CRAVEN
2601 PAXVILLE HWY
MANNING, SC 29102

STATEMENT NO. 333577

JUNE 27, 2007

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2007

YCR FILE NO.: 13214-20081980

CASE NO.: 2004-CP-14-135

RE: DONALD C. AUSTIN V STOKES-CRAVEN HOLDING CORP, D/B/A STOKES-CRAVEN FORD

5/2/2007	SLB	0.10	RECEIVE AND REVIEW CORRESPONDENCE FROM COURT TO MOSKOS REGARDING HIS CROSS APPEAL
5/9/2007	SLB	0.10	RECEIVE AND REVIEW CORRESPONDENCE FROM ATTORNEY MOSKOS REGARDING BRIEFING SCHEDULE
5/9/2007	SLB	0.20	TELEPHONE CONFERENCE WITH ATTORNEY MOSKOS REGARDING BRIEFING SCHEDULE
5/8/2007	SLB	0.10	RECEIVE AND ANALYZE NEW BRIEFING SCHEDULE
5/16/2007	SLB	3.80	RECEIVE AND ANALYZE TRIAL TRANSCRIPT REGARDING APPEAL ISSUES
5/29/2007	SLB	2.10	REVIEWING TRIAL TRANSCRIPT FOR APPEAL ISSUES
5/30/2007	SLB	3.20	REVIEW TRIAL TRANSCRIPT FOR APPEAL ISSUES

PROFESSIONAL SERVICES

1,872.00

SUMMARY OF PROFESSIONAL SERVICES

PROFESSIONAL	HOURS	RATE	AMOUNT
STEPHEN L. BROWN	9.60	195.00	1,872.00
	9.60		1,872.00

COSTS

COPYING EXPENSE - INTERNAL
POSTAGE - INTERNAL

0.75
1.17

PAGE: 1

Craven 0302

JVI

STOKES CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN
DONALD C. AUSTIN V STOKES-CRAVEN HOLDING CORP.
13214-20061880

STATEMENT NO. 333577
JUNE 27, 2007

5/31/2007 SOUTH CAROLINA COURT OF APPEALS -
MOTION FILING FEE
TOTAL COSTS

25.00

25.02

CURRENT BILLING

1,898.92

PLEASE MAKE CHECKS PAYABLE TO YOUNG CLEMENT RIVERS, LLP

PAGE: 2

Craven 0303

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
 DONALD AUSTIN,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	C/A #: 2004-CP-14-135
v.	)	
	)	
STOKES-CRAVEN HOLDING, D/B/A	)	
	)	
DEFENDANT.	)	

MONDAY, AUGUST 14, 2006
 TUESDAY, AUGUST 15, 2006
 WEDNESDAY, AUGUST 16, 2006
 CLARENDON COUNTY COURTHOUSE
 MANNING, SOUTH CAROLINA

BEFORE:
 THE HONORABLE JOHN C. HAYES, PRESIDING

APPEARANCES:

C. Steven Moskos, Esquire
 Attorney and Counselor at Law
 535 Stinson Drive
 Charleston, South Carolina 29407
 Attorney for Donald Austin

Scott L. Robinson, Esquire
 Johnson, McKenzie & Robinson, LLC
 2 North Brooks Street
 Manning, South Carolina 29102
 Attorney for Stokes Craven Ford

TAKEN BY MELISSA R. WINFIELD
 CERTIFIED VERBATIM REPORTER

1 A: I WOULDN'T THINK SO. I'M NOT SURE. BUT I WOULD NOT THINK
2 SO.
3 Q: WELL, WHEN MR. CRAVEN WAS WORKING AT THE DEALERSHIP
4 WHAT WAS HIS POSITION?
5 A: HE WAS A SALESMAN.
6 Q: DID HE HAVE ANY OTHER JOBS AND RESPONSIBILITIES OTHER
7 THAN SELLING CARS?
8 A: I... I DON'T KNOW, SIR. I DON'T GET IN THEIR PERSONAL LIVES.
9 Q: DID MR. CRAVEN GET AWAY WITH THINGS AT THE DEALERSHIP
10 THAT OTHER SALESMEN WOULDN'T HAVE BECAUSE HE'S DENNIS
11 CRAVEN'S BROTHER?
12 A: NOT TO MY KNOWLEDGE. I NEVER DID SEE IT MYSELF.
13 Q: AND AT THAT POINT MR. CRAVEN HELD WHAT POSITION AT THE
14 DEALERSHIP? EXCUSE ME, DENNIS CRAVEN?
15 A: DENNIS CRAVEN?
16 Q: YES, SIR.
17 A: HE WAS THE OWNER.
18 Q: WAS HE THE SOLE OWNER?
19 A: I DON'T THINK SO.
20 Q: WAS HE ALWAYS ON THE LOT? WAS HE ALWAYS THERE
21 WORKING OR WOULD HE BE GONE FOR A COUPLE OF DAYS?
22 A: WELL, SOMETIMES HE WOULD BUT I MEAN HE'S LIKE ANY OTHER
23 OWNER THERE THEY CAN DO WHAT THEY WANT TO BUT THEY ...
24 HE'S THERE MORE THAN ANY OTHER OWNER I'VE EVER SEEN.
25 Q: OKAY. NOW, YOU'VE DISCUSSED THIS MATTER WITH MR.

- 1 CRAVEN, DENNIS CRAVEN, BEFORE TODAY, RIGHT?
- 2 A: A COUPLE YEARS AGO THAT WHENEVER THIS STARTED UP HE
- 3 HAD MENTIONED IT TO ME IF I REMEMBERED THE DEAL AT ALL
- 4 AND ...
- 5 Q: WHEN WAS THE LAST TIME YOU TALKED TO HIM ABOUT IT?
- 6 A: WELL, YESTERDAY HE TOLD ME HE WAS GONNA CALL ME UP
- 7 HERE AND ... BUT WE DIDN'T DISCUSS ANYTHING ABOUT IT. I
- 8 DON'T KNOW EXACTLY.
- 9 Q: SO YOU REALLY HAVEN'T DISCUSSED THIS CASE WITH ANYBODY
- 10 SINCE JUNE, JULY ... WELL, MAYBE AUGUST OR SEPTEMBER OF
- 11 2002. IS THAT ... IS THAT A FAIR STATEMENT?
- 12 A: THAT'S A FAIR STATEMENT.
- 13 Q: NOW, THIS TRUCK CAME INTO THE DEALERSHIP AT LEAST BY
- 14 APRIL 17, 2002 IN CASE YOU DIDN'T KNOW. HOW MANY TIMES
- 15 WAS THAT TRUCK SHOWN TO OTHER CUSTOMERS BEFORE JUNE
- 16 1, 2002? SIX WEEK PERIOD?
- 17 A: I HAVE NO IDEA, SIR.
- 18 Q: ARE THERE ANY RECORDS AS TO WHO WOULD HAVE LOOKED AT
- 19 THE TRUCK, POSSIBLY EVEN BOUGHT THE TRUCK, WHATEVER,
- 20 TOOK IT FOR A TEST DRIVE, ANYTHING LIKE THAT?
- 21 A: WELL, WE HAVE A SHEET THAT WE PUT DOWN OUR UPS EVERY
- 22 DAY BUT I DON'T KNOW WHAT THEY DO WITH THEM.
- 23 Q: OKAY. LET'S TALK ABOUT THAT FOR JUST A MINUTE. YOU JUST
- 24 ... YOU JUST SAID AN UP. OKAY?
- 25 A: OUR UP SHEET.

- 1 Q: WELL, I ... FOR US WHO ARE NOT REALLY TRAINED IN THE
- 2 AUTOMOTIVE FIELD, CAN YOU EXPLAIN TO US WHAT AN UP IS?
- 3 A: THAT'S WHEN YOU MEET SOMEBODY ON THE LOT AND TALK TO
- 4 THEM ABOUT VEHICLES.
- 5 Q: AND YOU'RE THE NEXT PERSON UP, IS THAT WHERE THAT
- 6 PHRASE COMES WITH ... FROM?
- 7 A: WELL, IF YOU PUT IT DOWN ON THAT SHEET AND WE JUST CALL
- 8 IT AN UP SHEET. OR THE UP LOG OR DAILY LOG, WHATEVER YOU
- 9 WANT TO CALL IT.
- 10 Q: SO YOU ... YOU WRITE DOWN THE PERSON'S NAME AND YOU
- 11 WRITE DOWN WHAT VEHICLE THEY'RE LOOKING AT. OR
- 12 SOMEBODY DOES.
- 13 A: YEAH. TELEPHONE NUMBER, ADDRESS.
- 14 Q: ALL THAT CONTACT INFORMATION.
- 15 A: CORRECT.
- 16 Q: AND WHO MAINTAINS THAT? I MEAN, YOU JUST KEEP IT AT
- 17 YOUR DESK OR DO YOU ...
- 18 A: OH, NO, SIR, THEY ... THEY KEEP IT AT THE OFFICE THERE
- 19 SOMEWHERE. I DON'T KNOW ...
- 20 Q: FAIR ENOUGH.
- 21 A: ... WHAT THEY DO WITH THEM.
- 22 Q: BUT ... BUT WHEN YOU GO IN AND ... IF I CAME IN TO BUY A
- 23 VEHICLE AND YOU GOT ALL MY INFORMATION DO YOU GO TO
- 24 THE SALES MANAGER'S DESK? DO YOU HAVE AN INDIVIDUAL
- 25 SHEET YOU KEEP AT YOUR DESK? DO YOU HAVE TO GO TO THE