

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2015-000789

RECEIVED

DEC 18 2015

SC Court of Appeals

Betsy L. Spriggs, ... Respondent,

v.

H. Wesley Kirkland, Jr. as Personal Representative of the
Estate of James Walker, ... Appellant.

RECORD ON APPEAL

James B. Lybrand
McDonald, McKenzie, Rubin,
Miller and Lybrand, L.L.P.
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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Betsy L. Spriggs,)

Plaintiff,)

vs.)

James Walker,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-40-07858

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Betsy L. Spriggs,)

Plaintiff,)

vs.)

H. Wesley Kirkland, Jr., as
Personal Representative of the
Estate of James Walker,)

Defendant.)

ORDER CHANGING CAPTION

RICHLAND COUNTY
FILED
2013 MAR -4 PM 4:44
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER COMES BEFORE THE COURT upon Motion L. Lisa McPherson, Attorney for the Plaintiff, to Amend the caption in this matter upon notice to Attorney for the Defense, as to the amendment.

A Summons and Complaint were filed with this Court on November 8, 2010. On October 27, 2011, subsequent to the filing of the pleadings, Defendant died from unrelated causes, and H. Wesley Kirkland, Jr., was appointed as Personal Representative of Mr. Walker's Estate on August 9, 2012. It is necessary to amend the pleadings caption to correctly identify H. Wesley Kirkland,

Jr., as the Personal Representative for the Defendant's Estate.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED, that the Defendant in this action will be amended to H. Wesley Kirkland, Jr., as Personal Representative of the Estate of James Walker.

IT IS SO ORDERED.

A handwritten signature in dark ink, appearing to read "G. Thomas Cooper, Jr.", is written over a horizontal line.

The Honorable G. Thomas Cooper, Jr.
Fifth Judicial Circuit

March 4, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Betsy L. Spriggs,)
)
Plaintiff,)
)
vs.)
)
James Walker,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CA NO.: 2010-CP-40-07858

ORDER GRANTING NEW TRIAL
ABSOLUTE

RICHLAND COUNTY
FILED
2015 MAR 16 AM 9:33
JEANNETTE W. MOORE
C.C.P. & G.S.

This matter came before me upon Plaintiff's Motion for New Trial Absolute filed on September 19, 2013. Plaintiff argued, in part, that the jury improperly considered matters outside the scope of the evidence. This position is based on the list of questions sent out by the jury only forty (40) minutes after deliberations in the two-and-a-half-day trial began. Those questions were as follows:

- 1) "Where [sic] the police report?"
- 2) "Have [sic] Mr. Walker insurance paid for any medical bills?"
- 3) "When did Ms. Spriggs consult a attorney?"
- 4) "Did Ms. Spriggs received worker-Comp [sic]?"
- 5) "Where is the defendant [sic] paperwork?"

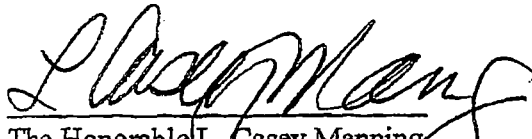
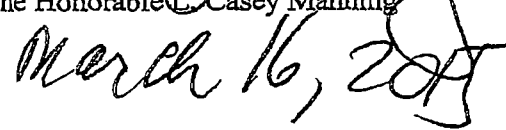
In response to these questions, the jury was instructed, in part, as they had been instructed before commencing deliberations, that they could not base their verdict on sympathy or on other factors but that their verdict must be based only on the evidence and testimony presented. They were then sent back to continue deliberations with the further instruction that they were to continue without further discussion of these matters. The jury announced that it had reached a verdict for the Defense only five (5) minutes later.

Subsequent to Plaintiff's Motion being filed, a hearing at which counsel for both Plaintiff and Defendant appeared and made oral arguments. The matter was taken under advisement.

Based on all facts and circumstances, this Court hereby finds and concludes that the jury did, in fact, improperly consider matters outside the record in reaching its verdict and further finds that for this reason, Plaintiff's Motion for a New Trial Absolute should be granted.

AND IT IS SO ORDERED.

July __, 2014


The Honorable L. Casey Manning


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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 10-CP-40-7858Betsy SpriggsJames Walker

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Verdict for the defendant.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge Lisa McPhersonJudge Code 2001Date 9-12-13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class or placed in the appropriate attorney's box on this 13th day of Sept., 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Lisa McPherson
ATTORNEY(S) FOR THE PLAINTIFF(S)

Ronald Alexander
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Janette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Betsy L. Spriggs,

Plaintiff(s)

vs.

James Walker,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 40 - 7858

(Please Print)

Submitted By: Cynthia K. Mason, Esquire

Address: McWhirter, Bellinger & Associates, P.A.
119 East Main Street
Lexington, SC 29072-3420SC Bar #: 71107
Telephone #: (803) 359-5523
Fax #: (803) 996-9080
Other:
E-mail: cindi@mcwhirterlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case # 20 - CP -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Label (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstates Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: Cynthia K. MasonDate: November 8th, 2010.

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

RECEIVED
JAN 19 2011
ROBERT SESSOMS, JR.
CLAIMS ATTORNEY

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
Betsy L. Spriggs,)
Plaintiff,)
vs.) SUMMONS
James Walker,)
Defendant.)

RICHLAND COUNTY
FILED
2010 NOV - 8 PM 4:35
JEANELLE M. McBRIDE
C.C.P. & G.S.

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or her attorney, Cynthia K. Mason, at her office, 119 East Main Street, Lexington, SC 29072-3420, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

McWHIRTER, BELLINGER & ASSOCIATES, P.A.

By:

Cynthia K. Mason
Cynthia K. Mason
119 East Main Street
Lexington, SC 29072-3420
(803) 359-5522 Phone
(803) 996-9080 Fax
cindi@mcwhirterlaw.com
Attorney for the Plaintiff

RECEIVED
JAN 19 2011
BOBBY SASSONS, II
CLAIMS ATTORNEY

Lexington, South Carolina

November 8, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betsy L. Spriggs,

Plaintiff,

vs.

James Walker,

Defendant.

IN THE COURT OF COMMON PLEAS

COMPLAINT

(Jury Trial Requested)

JEANELLE W. McBRIDE
C.P. & G.S.

2010 NOV -8 PM 4:35

RICHLAND COUNTY
FILED

The Plaintiff would respectfully show:

1. Plaintiff is a resident of the County of Richland, State of South Carolina
2. Upon information and belief, the Defendant, James Walker, is a resident of the County of Lexington, State of South Carolina.
3. On or about February 4, 2008, the Plaintiff, Betsy L. Spriggs, was the owner and operator of a 2005 Toyota sedan bearing SC license plate number 135 WKB. The Defendant, James Walker, was the owner and operator of a 1997 four-door Chrysler truck bearing SC license plate number 567 XBO.
4. On or about February 4, 2008, Plaintiff was traveling north on Bull Street near the intersection of Confederate Avenue in the right outermost lane of travel. At the same time and place, the Defendant, also traveling north on Bull Street and in the same lane of travel, ran into the back of Plaintiff's vehicle while the Plaintiff was stopped in traffic.
5. As a result of this collision, the Plaintiff suffered great physical harm and injury to her back and other body parts which has caused and will in the future cause the Plaintiff to undergo much physical pain, suffering, mental anguish, emotional distress, permanent injury, disfigurement, scarring, and permanent impairment of health and bodily efficiency, has caused and will in the future cause the Plaintiff to have to spend money for medical services, and has caused and will in the future cause the Plaintiff to lose money in the nature of wages or earnings.

RECEIVED
JAN 19 2011
JOBBY JOHNSON, JR.
PLAINTIFF'S ATTORNEY

6. The Defendant was negligent, careless, reckless, and grossly negligent at the time and place above mentioned in the following particulars:

- a) In failing to maintain a proper lookout;
- b) In driving too fast for conditions;
- c) In failing to take evasive action so as to avoid striking the Plaintiff's automobile;
- d) In failing to apply his brakes, if any he had;
- e) In failing to sound his horn;
- f) In driving said vehicle in utter disregard of the rights and safety of the Plaintiff and others lawfully using the public highway at the time and place aforesaid; and
- g) In such other particulars as the evidence at trial may show.

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff, said acts being in violation of the statutory and common laws of the State of South Carolina.

7. Plaintiff is informed and believes that she is entitled to judgment against the Defendant in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages, for punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

McWHIRTER, BELLINGER & ASSOCIATES, P.A.

By:

Cynthia K. Mason

Cynthia K. Mason
119 East Main Street
Lexington, SC 29072-3420
(803) 359-5522 Phone
(803) 996-9080 Fax
cindi@mcwhirterlaw.com
Attorney for the Plaintiff

Lexington, South Carolina
November 8, 2010.

RECEIVED
JAN 19 2011
JURY DEPARTMENT
CIVIL DIVISION

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Betsy L. Spriggs,)
Plaintiff,)
vs.)
James Walker,)
Defendant.)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2010-CP-40-07858

ANSWER
(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2011 MAR 17 AM 10:21
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

State Farm as the alleged uninsured carrier on behalf of the Defendant James Walker
answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation contained in the Complaint not hereinafter specifically admitted or explained.
2. The allegations of Paragraphs One (1) and Two (2) of the Complaint are admitted.
3. The allegations of Paragraph Three (3) of the Complaint are admitted.
4. That the Defendant admits only so many of the allegations of Paragraph Four (4) of the Complaint as can be construed to allege that there was a very minor collision between the vehicle driven by the Plaintiff and the Defendant. The Defendant will further admit that his vehicle collided with the rear of the Plaintiff's vehicle while the Plaintiff's vehicle was stopped. The remaining allegations of Paragraph Four (4) of the Complaint are denied. The allegations of Paragraphs Five (5), Six (6), including Subparagraphs a) through g), and the remaining allegations of Paragraphs Six (6), Seven (7) and all other allegations of the Complaint are denied.

FOR A SECOND DEFENSE

5. The Defendant repeats and realleges Paragraphs One (1) through Four (4) above as if repeated verbatim and further alleges:

6. The Defendant would show that the collision alleged in the Complaint, by reason of mischance, was not foreseeable on the part of the Defendant by the exercise of due care and therefore the Defendant pleads an unavoidable accident and/or sudden emergency as a complete bar to this action.

FOR A THIRD DEFENSE

7. The Defendant repeats and realleges Paragraphs One (1) through Six (6) above as if repeated verbatim and further alleges:

8. The Defendant would show that the Plaintiff's injuries and damages, if any, were caused by the sole negligence of the Plaintiff and/or joint negligence with some other unknown third party and therefore, the Defendant pleads the sole and/or joint negligence of the Plaintiff and some unknown third party as a complete bar to this action.

FOR A FOURTH DEFENSE

9. The Defendant repeats and realleges Paragraphs One (1) through Eight (8) above as if repeated verbatim and further alleges:

10. If the Plaintiff sustained the injuries and/or damages which are alleged in her Complaint, which allegations are specifically denied, the Plaintiff's injuries and/or damages were due and proximately caused by the negligence, carelessness, recklessness, wilfulness and wantonness on the part of the Plaintiff in the following particulars:

- a) in failing to maintain a proper lookout;
- b) in stopping suddenly without any warning;

- c) in failing to keep her vehicle under proper control;
- d) in failing to operate her vehicle in a reasonable manner;
- e) in failing to go forward when it was safe to do so;
- f) in failing to properly observe the road and traffic conditions;
- g) in failing to take any evasive action by any means to keep from causing a collision with the Defendant's vehicle;
- h) in failing to exercise the last clear chance to avoid the collision;
- i) in failing to use the degree of care and caution that a reasonable and prudent person would use under the circumstances then and there prevailing;
- j) in not having her vehicle equipped with proper braking mechanisms and brake lights;
- k) in making an improper start and stopping for no reason;
- l) in failing to have her vehicle tuned up and maintained properly;
- m) in starting forward and then having her vehicle stop and pause in the roadway;
- n) in the assumption of the risk of known dangers attendant to her conduct which she freely and voluntarily assumed;
- o) in such other particulars as may be deduced through discovery or at the time of trial.

All of these acts were the direct and proximate cause of the injuries and damages sustained by the Plaintiff, said acts being in violation of the statutory laws of the State of South Carolina.

Accordingly, the Defendant pleads the negligence, recklessness, carelessness, wilfulness and wantonness on the part of the Plaintiff as a complete bar to this action. Since such negligence, recklessness, carelessness, wilfulness and wantonness on the part of the Plaintiff is greater than

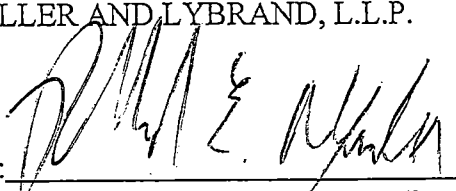
50% and outweighs any negligence on the part of the Defendant, the Plaintiff should be barred from recovery or the amount of his recovery be diminished by the Plaintiff's own negligence, recklessness, carelessness, wilfulness and wantonness.

FOR A FIFTH DEFENSE

11. The Defendant would show that the Plaintiff's claim for punitive damages is violative of the due process and equal protection clauses of the United States Constitution and the Constitution of the State of South Carolina.

WHEREFORE, having fully answered the Complaint, the Defendant prays that the Complaint be dismissed and the Defendant be awarded costs and for such other and further relief as this Court deems just and proper.

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.

By: 

RONALD E. ALEXANDER
Attorney for Defendant
1704 Main Street
P. O. Box 58
Columbia, SC 29202
(803) 252-0500

Columbia, South Carolina

March 15, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Betsy L. Spriggs,

Plaintiff,

James Walker,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-40-07858

CERTIFICATE OF SERVICE

2011 MAR 17 AM 10:21
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

I, Selena Coggins, an employee in the Law Firm of McDonald, McKenzie, Rubin, Miller and Lybrand, L.L.P., do hereby certify that one copy of the Defendant's Answer, Interrogatories and Request to Produce were duly served upon the person(s) listed below by depositing said paper(s) in the United States Mail, Columbia, South Carolina, on the 15th day of March, 2011, with the first class postage duly affixed, and a return address clearly indicated on the envelope,

addressed as follows:

Lisa L. McPherson, Esquire
McWhirter, Bellinger & Associates, P.A.
119 East Main Street
Lexington, SC 29072-3420

Selena C Coggins
SELENA C. COGGINS

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Betsy L. Spriggs)

Plaintiff,)

vs.)

James Walkre)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-07858

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

L. Lisa McPherson, Bar No. 7932

Address:

119 East Main Street, Lexington, SC 29072

Phone: 803.359.5522 Fax 803.996.9080

E-mail: Lisam@McWhirterlaw.com Other: _____

Defendant's Attorney:

Ronald E. Alexander, Bar No. _____

Address:

P.O. Box 58, Columbia, SC 29202

Phone: 803.252.0500 Fax 803.929.3530

E-mail: ronald@mrmrml.com Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Caption

Estimated Time Needed: 20 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

L. Lisa McPherson
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 31, 2013
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

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

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Betsy L. Spriggs,)
)
Plaintiff,)
)
vs.)
)
James Walker,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CA NO.: 2010-CP-40-07858

**MOTION TO AMEND
PLEADINGS**

RICHLAND COUNTY
FILED
2013 FEB - 1 PM 3:17
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO: RONALD E. ALEXANDER, ATTORNEY FOR THE DEFENDANT.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff above-named, by the undersigned attorney, will move before the Judge of the above-referenced court as soon as counsel may be heard, for an Order to Amend the Pleadings.

A Summons and Complaint were filed with this court on November 8, 2010. An answer was filed by Ronald E. Alexander on behalf of State Farm Insurance Company, the underinsured carrier for the Plaintiff. Plaintiff has settled with the liability carrier for the Defendant and the only remaining claim is for the Plaintiff's underinsured motorist coverage.

On October 27, 2011, the Defendant died from unrelated causes, and H. Wesley Kirkland Jr. was appointed as Personal Representative to Mr. Walker's Estate on August 9, 2012.

Plaintiff moves to amend the pleadings caption to correctly identify H. Wesley Kirkland, Jr., as the Personal Representative of the Estate of James Pinkney Walker.


L. Lisa McPherson
McWhirter, Bellinger & Associates
119 East Main Street
Lexington, SC 29072
803.359.5522 - Office 803.359.1248 - Fax
Attorney for Plaintiff

January 31, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

Betsy L. Spriggs)

CASE NO.: 2010-CP-40-07858

Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

H. Wesley Kirkland, Jr., as Personal
Representative of the Estate of James Walker)

Defendant.)

Plaintiff's Attorney: L. Lisa McPherson, Bar No. 7932 Address: 119 East main Street, Lexington, SC Phone: 803.359.5522 Fax 803.996-9080 E-mail: Lisam@mcwhirterlaw.com Other: _____	Defendant's Attorney: Ronald E. Alexander, Bar No. _____ Address: PO Box 58, Columbia, SC 29201 Phone: 803.252.0500 Fax 803.929-3530 E-mail: ronald@mmrml.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for New Trial Estimated Time Needed: 15 Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 09-19-13 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Betsy L. Spriggs,)

Plaintiff,)

vs.)

H. Wesley Kirkland, Jr., as
Personal Representative of the
Estate of James Walker,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CA NO.: 2010-CP-40-07858

PLAINTIFF'S MOTION FOR
NEW TRIAL ABSOLUTE

RICHLAND COUNTY
FILED
2013 SEP 19 PM 12:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

Pursuant to Rule 59 of the *South Carolina Rules of Civil Procedure*, Plaintiff Betsy L. Spriggs, by and through her attorneys, moves this honorable Court for an Order granting a New Trial Absolute.

The authority of a circuit court judge to correct, modify, or interfere with the verdict of a jury in a case properly triable by jury is embraced in and limited to the power to grant new trials. *Camden v. Hilton*, 360 S.C. 164, 600 S.E.2d 88 (Ct. App. 2004). If the trial court believes the jury's verdict is incorrect and therefore erroneous, the court can avoid it only by setting it aside and granting a new trial. *Id.* Where a verdict is so grossly inadequate as to be the result of passion, caprice, prejudice or some other influences outside the evidence, the trial judge must grant a new trial absolute. *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993). In *Sullivan v. Davis*, 317 S.C. 462, 454 S.E.2d 907 (Ct. App. 1995) the court of appeals held that where it was apparent from the verdict the jury did not follow the judge's instructions to disregard the existence of insurance, a new trial absolute was the *only* remedy the trial court could order. For the reasons more fully explained below, the Plaintiffs submit that the jury failed in its duty to disregard the existence of insurance, and that, therefore, Plaintiff must be afforded the opportunity to retry her case.

Plaintiff asserts that this Court has two reasons to set aside the jury's verdict and grant a new trial. First, the jury's verdict is perverse, as evidenced by their questions to the Court attached as EXHIBIT A. Second, the jury's verdict is contrary to the preponderance of the evidence. Following a brief recitation of the evidence presented to the jury, both reasons in support of a new trial are

addressed in turn.

FACTS PRESENTED TO THE JURY

The matter before this Court was an ~~abstract~~-liability rear-end wreck case that occurred when Defendant struck Plaintiff while she was stopped in traffic for a red light. Plaintiff was on the job when the wreck occurred.

The only question for the jury was that of damages. Specifically, the jury was to determine what, if any, injury and/or aggravation of pre-existing condition was ~~caused~~ by the wreck, along with considering other elements of Actual damages, including pain and suffering, lost wages, mental anguish, permanency, and loss of enjoyment of life.¹

Plaintiff introduced testimony regarding medical bills, including for neck surgery, that exceeded \$89,000.00, lost wages that exceeded six (6) figures, and two treating doctors' video depositions in which both opined to a reasonable degree of medical certainty that the wreck caused Plaintiff to become symptomatic and to require surgery. Both doctors agreed that the Plaintiff has suffered a 26% Whole-Person Permanent Impairment Rating. Additionally, a friend, an ex-boss, and a family member all unanimously testified that Plaintiff had not expressed any health problems or limitations before the wreck.

Defendant's focus during trial, through cross-examination and introduction of testimony, was on minimal property damage, on Plaintiff's pre-existing degenerative disc issues, and on her past treatment for neck and back problems. The Defense presented two witnesses: the police officer and the live-in girlfriend of the deceased Defendant. The police officer testified that he saw "noticeable" damage to the front of the Defendant's vehicle. In stark contrast, the girlfriend denied seeing any damage.

A. *The jury considered matters outside the scope of the evidence presented at trial in violation of the law charged to them by the trial court.*

After two-and-a-half days of trial, the jury was charged with the law of the case, and sent back to have lunch and begin deliberations around 12:30pm. At approximately 1:10 p.m., they jury was brought back into the courtroom for the judge to address written questions that Madam Forelady presented to the bailiff. There were five (5) questions. See EXHIBIT A. The questions were as

¹Counsel for the Plaintiff withdrew the contention for punitive damages prior to the commencement of the trial.

follows:

1. "Where[sic] the police report?"
2. "Have[sic] Mr. Walker insurance paid for any medical bills?"
3. "When did Ms. Spriggs consult a attorney?"
4. "Did Ms. Spriggs received worker- Comp[sic]?"
5. "Where is the defendant[sic] paperwork?"

In response to their questions, the jurors were instructed, as they had been instructed in part before commencing deliberations, that they could not base their verdict on sympathy or other factors but that their verdict must be based only on the evidence and testimony presented; that they had heard all the testimony and seen all the evidence that it was going to hear or see; that their questions raised improper matters not in evidence and not to be considered; that the matters were not to be discussed further; that if the matters were, in fact, again raised in deliberations, the foreperson was to report that to the judge; and that they were to continue deliberations based on the testimony and evidence presented. Within five (5) minutes of being sent back to re-commence deliberations, the jury announced that it had reached a verdict. That verdict was for the Defendant.

This jury improperly considered not one, not two, but five (5) factors that were improper and prohibited by both charges by the Court. Additionally and importantly, it is clear, based on the short amount of time before the foreperson sent out the note (approximately forty-five minutes during which they, also, ate lunch), that insurance and other matters outside the scope of the evidence were discussed at the commencement of or at least very early in the first, brief deliberation. The jury then, for the second time, disregarded the Court's instruction, returning a verdict in less than five (5) minutes following being instructed to re-commence deliberation.

In spite of the Court's original and subsequent instructions, it is indisputable that the jury improperly considered factors other than the testimony and evidence that was presented in the trial, and that they did so twice. In light of *O'Neal v. Bowles*, *supra*, and *Sullivan v. Davis*, *supra*, the only remedy for a verdict infected by improper considerations outside the scope of the evidence presented by the parties is a new trial.

In the unfortunate circumstance where, as here, the jury renders a verdict in utter disregard of the instructions given by the trial court, it is error for the court, on motion, not to grant a new trial. *Southeastern Mobile Homes, Inc. v. Walicki*, 282 S.C. 298, 317 S.E.2d 773 (Ct. App. 1984), *Sullivan v. Davis*, *supra*.

B. The damages presented to the jury, along with medical opinions, weighs in favor of a verdict for the Plaintiff, even in a light most favorable to the Defendant.

Plaintiff's medical expenses alone were \$89,000, and her treating doctors related all of her treatment to the wreck and also opined that her treatment was both reasonable and necessary. Plaintiff also introduced lost wages, corroborated by those same treating doctors, that she incurred lost wages exceeding six (6) figures. Moreover, both doctors agreed that Plaintiff has suffered a twenty-six (26) percent whole person rating due to the loss of function, use and range of motion of her neck. Additionally, a friend, an ex-boss, and a family member all unanimously testified that Plaintiff had not expressed any health problems or limitations before the wreck. Under oath, none of these witnesses testified that they were ever aware of Plaintiff having any prior neck or back pain. Plaintiff had not see a doctor for neck or back pain for at least two years prior to the wreck.

The Defense called the investigating officer, now a detective, to testify. While the officer had no specific recall of the wreck, he relied on the accident report he wrote at the scene to refresh his recollection as to the property damage to both vehicles. The officer testified that the damage to Defendant's vehicle was both noticeable and much more substantial than the damage to Plaintiff's vehicle. In addition, the officer testified that while Plaintiff refused medical attention at the scene it is not at all uncommon for people in car wrecks to decline treatment initially, but turn out to be very badly injured and require treatment in the days, weeks or months following the wreck.

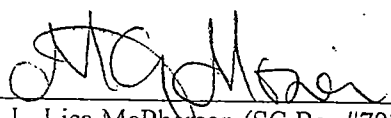
For the jury to award a defense verdict in a stipulated liability case with as much evidence of damages as was presented to this jury is contrary to reason, and can only be explained by failure to understand the law as it was charged. A trial judge not only has the discretion to grant a new trial but a duty to do so when he finds the verdict is contrary to the fair preponderance of the evidence. *Jessup v. Hansen*, 289 S.C. 54, 344 S.E.2d 618 (Ct. App. 1986), *Watford v. South Carolina State Highway Dept.*, 269 S.C. 130, 236 S.E.2d 558 (1977).

For the foregoing reasons, Plaintiff respectfully requests that this Court issue an Order granting a New Trial Absolute.

Signature page following

Respectfully Submitted,

McWHIRTER, BELLINGER, & ASSOCIATES, P.A.

BY: 

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Attorneys for the Plaintiff

Lexington, South Carolina

September 18, 2013

EXHIBIT A

Sept 12, 2013

- 1 Where the police report?
- 2 Have Mr. Walker insurance paid for any medical bill?
- 3 When did Ms. Spriggs consult a attorney?
- 4 Did Ms Spriggs received worker-comp?
- 5 Where is the defendant paper work?

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2010-CP-40-07858

Betsy L. Spriggs,)
Plaintiff,)
vs.) Transcript of Record
H. Wesley Kirkland as)
Personal Representative for)
the Estate of James Walker,)
Defendant.)

September 10 - 12, 2013
Columbia, South Carolina

B e f o r e:

The Honorable Casey Manning, Judge

A p p e a r a n c e s:

Lisa McPherson, Esq.
Melissa Mosier, Esq.
Attorneys for the Plaintiff

Ronald Alexander, Esq.
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

1 the estate of James Walker, I thank you in advance for your
2 attention. We're going to be fairly brief, we think. You
3 heard the issues already: One, not much property damage,
4 if any, to the vehicles; they bring up this thing -- you
5 see Mr. Walker's not here to defend himself, so they can
6 say a lot of things about him. There's no evidence he was
7 doing anything on the phone at the time of the impact. He
8 was calling -- we don't know. There's just no evidence on
9 that very issue that they say he used his cell phone.

10 \$89,000 in medical treatment. They are going to say
11 this car -- the front end was hanging down and it's one of
12 his friends, Ms. Patricia Whetstone, who was a common-law
13 wife, will come and say the car wasn't damaged like that.
14 And we also have the police officer who investigated under
15 subpoena. He may come in and tell you a little more about
16 the -- the accident.

17 So -- now in this case, we've admitted Mr. Walker, you
18 know, ~~lived for a couple of years and died, unrelated~~
19 causes. And he did hit her in the rear, so he's admitted
20 simple negligence. But he did not admit liability for the
21 accident or that he caused this woman to be injured the way
22 she claims to be injured.

23 She starts with one doctor, and at the end I'll count
24 up, but probably no less than 10/15 different doctors had
25 treated her. She had all kind of medications. She was

1 THE COURT: And Ron, I think you pled for comparative
2 negligence, kind of?

3 MR. ALEXANDER: Yeah.

4 THE COURT: That's out the window, too.

5 MR. ALEXANDER: Yes, sir.

6 THE COURT: So it will be a straight -- so the verdict
7 form should be actual damages, period? The verdict form?

8 MR. ALEXANDER: Yes, sir.

9 THE COURT: All right. And we'll have time this
10 afternoon for a little charge conference. I might go ahead
11 and copy, basically, what I'm going to do. It's very
12 vanilla. If you have any specific requests, you'll let me
13 know. But we'll go over it this afternoon.

14 MS. MCPHERSON: Just on aggravation of a preexisting
15 condition ---

16 THE COURT: Yeah. I -- I've got all that. I -- I
17 think I got everything you're going to need.

18 Ron, do you have your usual necessary medicals?

19 MR. ALEXANDER: Usual ---

20 THE COURT: I think I have it. Well, let's go to
21 lunch, and we'll have plenty of time. You got maybe
22 another witness, 20 minutes, direct and cross?

23 MS. MCPHERSON: Yes, sir.

24 THE COURT: And you've got one?

25 MR. ALEXANDER: May have two. May have two. The

1 -- they're not pursuing punitive damages, right?

2 THE COURT: Yeah, yeah. Okay. Okay.

3 MR. ALEXANDER: They have not met the burden to go
4 before the jury for actual damages.

5 THE COURT: All right. Well, you don't necessarily
6 need to respond. I think there's sufficient evidence in
7 the record for the matter to go to a jury. And I do
8 believe that you've withdrawn -- and if I read the
9 pleadings right, you -- you sort of pled comparative
10 negligence, but you withdraw that; is that correct?

11 MR. ALEXANDER: Yes, sir.

12 THE COURT: Yeah. All right.

13 MR. ALEXANDER: We did withdraw that.

14 THE COURT: And you're withdrawing punitive damages;
15 is that correct, Ms. McPherson?

16 MS. MCPHERSON: Yes, sir.

17 THE COURT: So what does that leave us with? That
18 clears everything up, does it not?

19 MR. ALEXANDER: Yes, sir.

20 THE COURT: We'll take a few minutes, go to the
21 bathroom, and refresh yourselves, we'll put it that way.
22 And then we'll come back and get started.

23 Do we need to discuss the testimony of the young lady?
24 Have y'all talked about that enough or ---

25 MR. ALEXANDER: Y'all want to talk to her? She's here

1 this, a wreck case: negligence, proximate cause, and
2 damages.

3 In this case, we don't have to worry about the first
4 part, negligence, because the Defendant has admitted that
5 he was at fault. He ran into the back of the Plaintiff.
6 But by the greater weight or the preponderance of the
7 evidence -- and I'll explain that later on in my charge --
8 the Plaintiff must prove that his negligence, running into
9 the back of her -- the Defendant's running into the back of
10 Ms. Spriggs was the proximate cause of her damages.

11 So there's two things you're concerned with here
12 today: proximate cause and damages. Okay? That make
13 sense?

14 (No audible response.)

15 THE COURT: And the lawyers will argue to you about
16 this. But you don't have to worry about who was at fault,
17 that's what I'm saying in very simple terms.

18 So with that brief introduction, I would invite your
19 keen and close attention to the closing arguments on behalf
20 of the parties. We'll first hear from Ms. McPherson, then
21 Mr. Alexander, then Ms. Mosier. Thank you all so very
22 much. Ms. McPherson?

23 MS. MCPHERSON: Thank you, Your Honor. Madam
24 Forelady, ladies and gentlemen of the jury, I first want to
25 thank you. I want to thank you for Melissa and me, and I

1 these records have become so important.

2 Ms. Whetstone: And I think she came in and she told
3 you what her husband said, "I've been in a little accident.
4 Nobody was hurt." And that's all there was to it.

5 The phone issue: Mr. Walker never said he was on the
6 phone. The only testimony we have, and we can't contradict
7 this, she says when she looked back in the mirror, he was
8 on the phone. He had to pick up the phone, but he -- those
9 are sort of minor issues.

10 But understand, when Mr. Walker is being the one
11 that's being sued here, there -- there's sort of making
12 light of him, but he's just an average person out there,
13 has an average little bump or even if that much. And then
14 all of a sudden, "kapow," they're coming in front of the
15 jury asking for \$400,000, or 144,000, 234,000, with an
16 accident where the police officer said nobody reported an
17 injury and that there wasn't any major property damage,
18 minor property damage. So y'all think about that.

19 Now, the judge, he's the -- the -- the judge of the
20 law, and in a sense, he serves as referee. But he's going
21 to tell y'all the law, and one of the things he's going to
22 read to you is about this proximate cause.

23 Now, to Mr. Walker's credit -- now, he lives for a
24 short time -- or actually, for a short time -- he lived for
25 a couple of years after this accident. He says I hit her

1 in the rear. He says that. He's -- he's not being
2 dishonest. He's been honest the whole time. He said he
3 hit her in the rear. He's not saying she backed into him
4 or she didn't take off. So he admitted that.

5 But proximate cause -- and Lisa read some of this to
6 you -- it says "... foreseeable risk of the negligence.
7 The touchstone of proximate cause in South Carolina is
8 foreseeability. And foreseeability of some injury from a
9 negligent act or omission is a prerequisite to its being a
10 proximate cause of an injury for which recovery is sought.
11 The standard by which foreseeability is determined is
12 looking to the natural and probable consequences of the
13 complained act."

14 If you take what Ms. Whetstone said, "I'm in an
15 accident. There ain't much property damage", nobody
16 complains to her, then this is not the proximate cause of
17 this accident. It's not where one -- where he was drinking
18 or either that they can prove that he was on the cell
19 phone, not paying attention and run through a light and hit
20 somebody, but this is a bump, a tap, out there on Bull
21 Street in the intersection with Confederate.

22 (As read) "His liability cannot rest on mere
23 possibilities. The actor cannot be charged with that which
24 is unpredictable or that which should not be expected to
25 happen. In determining whether the consequence is one that

1 THE COURT: (To all counsel) The only other thing,
2 ladies and gentlemen, I thought of while y'all were making
3 argument was that me to give a charge on deposition
4 testimony. I didn't mention that, but I think it's
5 appropriate. That's the only other thing I think that
6 crossed my mind while y'all were arguing.

7 Let's take a little break and we'll come in about 10
8 minutes.

9 (Off the record at 11:40 a.m.)

10 (Back on the record at 11:49 a.m.)

11 (Brief pause.)

12 (Jury enters the courtroom at 11:50 a.m.)

13 THE BAILIFF: The jury's seated, Your Honor.

14 THE COURT: Thank you, sir. Welcome back, Madam
15 Forelady, members of the jury.

16 Now, ladies and gentlemen, under our constitution and
17 the code of laws, you and I have separate and distinct
18 duties. Only you, the jury, can make the findings of fact
19 in this case. I am not permitted to indicate to you how I
20 may feel about the testimony or the evidence presented; and
21 throughout the trial, I've attempted to be fair and
22 impartial toward all of the parties involved.

23 Now, members of the jury, to determine the facts in
24 this case, you will have to evaluate the credibility, which
25 means the believability, of each witness.

1 In considering whether to believe a witness's
2 testimony about a particular matter, you may consider what
3 was the manner and appearance of the witness who testified?
4 Was he or she straightforward or hesitant in answering?
5 Was the testimony of a witness consistent or inconsistent?
6 How did the witness come to know the facts that he or she
7 testified to, or what was his or her ability to know these
8 facts? Is there some reason a witness would want to give
9 testimony which would help or hurt one side or the other?
10 In other words, was the witness biased or prejudiced? And
11 was the testimony of a witness strengthened or weakened by
12 other testimony or evidence?

13 Now, members of the jury, you can believe as much or
14 as little of each witness's testimony as you think proper.
15 You may believe the testimony of a single witness against
16 that of many witnesses or just the opposite. Of course,
17 you do not determine the truth merely by counting the
18 number of witnesses presented by each side. Throughout
19 this process, you have but one objective, to seek the
20 truth, regardless of its source.

21 Now, the same constitution and laws that designate you
22 the finders of the facts also make me the instructor of the
23 law. Now, you must accept the law as I give it to you. If
24 I'm wrong, there's another time and place for that error to
25 be corrected. In this case, you must apply the law as I

1 give it to you, and this means you should not be consumed
2 with what you may think the law should be or, for that
3 matter, neither can I; but only concerned with what the law
4 is and is as I tell it to you.

5 Now, members of the jury, as I've explained to you
6 earlier, this is an automobile wreck case. The Plaintiff
7 is seeking compensation for her injuries and damages. In
8 order for the Plaintiff to receive the compensation sought,
9 she must prove her claims or her claim by the greater
10 weight or the preponderance of the evidence.

11 Now, what we mean by the "greater weight of the
12 evidence" can be illustrated by imagining a traditional set
13 of scales. As a young boy growing up in Dillon County, my
14 father and I used to go to the butcher shop. The same sort
15 of scales you see on the statute of justice.

16 Now, when the case begins, the scales are even. After
17 all the evidence has been presented, if the scales should
18 remain even or should tip even slightly in favor of the
19 Defendant, then the Plaintiff will have failed to meet her
20 burden of proof, and your verdict will be for the
21 Defendant. Now, if, on the other hand, the scales
22 should tip even slightly in favor of the Plaintiff, then
23 she will have met her burden of proof, and your verdict
24 would be for the Plaintiff.

25 Of course, members of the jury, there's no way to

1 weigh evidence except through the exercise of your good
2 common sense and judgment. It is entirely a mental
3 process, and the evidence to which you should give the most
4 weight to is that which convinces you of it's truth,
5 regardless of whom or what source it may come.

6 Now, I explained earlier that in a case such as this,
7 a negligence case or wreck case, there's three things that
8 must be proven by the greater weight or the preponderance
9 of the evidence by the Plaintiff: One, that the Defendant
10 was negligent. Well, we don't have to consider that here
11 in this case because fault, or negligence, has been
12 committed -- or admitted; two, proximate cause; and three,
13 damages. Okay.

14 Now, let me tell you a little bit about proximate
15 cause. Negligent conduct is the proximate cause of an
16 injury, if that injury is within the scope of the
17 foreseeable risk of the negligence. The touchstone of
18 proximate cause in South Carolina is foreseeability.

19 Foreseeability of some injury from a negligent act or
20 admission is a prerequisite to its being a proximate cause
21 of the injury for which recovery is sought. The standard
22 by which foreseeability is determined is that of looking to
23 the natural and probable consequences of the complained
24 act.

25 While it is not necessary that the actor must have

1 contemplated or could have anticipated the particular event
2 that occurred, liability cannot rest on mere possibilities.
3 The actor cannot be charged with that which is
4 unpredictable or that which could not have -- could not be
5 expected to happen.

6 In determining whether a consequence is one that is
7 natural and probable, the actor's conduct must be viewed in
8 light of the attendant circumstances. The law defines
9 proximate cause of an injury to be something that produces
10 a natural chain of events which, in the end, brings about
11 the injury. In other words, proximate cause is the direct
12 cause, without which the injury would not have occurred.

13 Foreseeability of some injury from a negligent act or
14 omission is a prerequisite to its being a proximate cause
15 of the injury for which recovery is sought. The law
16 requires only reasonable foresight. When the injury
17 complained of is not reasonably foreseen in the exercise of
18 due care, there is no liability. It is not required that
19 the specific injury be foreseen, only that some injury
20 might result from the negligence, that is, from the wreck.

21 In order to establish liability, it is not necessary
22 that the party charged with negligence should have
23 contemplated the particular event that occurred. It is
24 sufficient that the Defendant should have foreseen that his
25 negligence would probably result in the injury of some kind

1 to someone. The wrongdoer may be held liable for anything
2 which, after the injury is complete, appears to have been a
3 natural and probable consequence of this negligence.

4 If the actor's conduct is a substantial factor in
5 bringing about harm to another, the fact that the actor
6 neither foresaw nor should have foreseen the extent of the
7 harm or the manner in which it occurred does not prevent
8 him from being held liable.

9 Now -- so you got negligence, proximate cause as I
10 explained it to you. The next step is damages. Now, what
11 are damages? And in this case, we're only concerned with
12 what we refer to as "actual damages," members of the jury.

13 Now, actual damages are intended to compensate the
14 injured party, that is, to put her as nearly as possible in
15 the same position that she was in before the incident
16 occurred. In other words, actual damages include all
17 losses and expenses that the Plaintiff has suffered because
18 of the Defendant's carelessness. They are also called
19 "compensatory damages."

20 Now, members of the jury, actual damages for a
21 Plaintiff that's been physically injured include: pain and
22 suffering, both past and future; as well as mental anguish;
23 impairment of health or physical condition; and
24 disfigurement. The Plaintiff may also claim lost wages due
25 to absence from work and reduced earning ability for the

1 future. The Plaintiff may further claim any medical
2 expenses or medication expenses.

3 As with all of the facts in this case, the Plaintiff
4 must prove her actual damages by the greater weight or the
5 preponderance of the evidence. The amount of actual
6 damages is that amount of money that will put the injured
7 person in as near as the same position as she would have
8 been had she not been injured.

9 Now, members of the jury, there are two types of
10 evidence in most cases, direct and circumstantial evidence,
11 and I'll explain those to you just briefly. There are two
12 kinds of evidence recognized by our laws. Evidence may be
13 either direct or circumstantial. These two kinds of
14 evidence apply to the parties alike, that is to both sides,
15 the Plaintiff and the Defendant; and both are equally good
16 in the law if they meet the test of the law.

17 On a particular factual point, you may have direct
18 evidence, circumstantial evidence, or a combination of
19 these kinds of evidence. Direct evidence proves a fact
20 without an inference, and if true, conclusively establishes
21 that fact. Direct evidence is testimony of a person who
22 has perceived certain facts by means of his senses and
23 comes in to testify what he perceived. If you, the jury,
24 believe the evidence, to which he testifies or she
25 testifies, the evidence will conclusively establish a

1 particular fact.

2 Now, circumstantial evidence proves a fact from which
3 an inference of the existence of another fact may be drawn.
4 An inference is a deduction of fact that may logically and
5 reasonably be drawn from another fact or group of facts.
6 In other words, you may infer that a particular event
7 occurred based on proof of circumstances warranting such an
8 inference. The proof as to circumstantial evidence is
9 sufficient if shown by the preponderance of the evidence or
10 the greater weight of the evidence. The conclusion reached
11 in the minds of you, the jury, must be the most probable
12 and reasonable one.

13 Now, members of the jury, when one person is injured
14 by the negligent acts of another, the injured person shall
15 be entitled to be fully compensated for all injuries
16 directly or proximately resulting from any negligent acts
17 or omissions. In determining the amount of compensation
18 for injuries suffered by the Plaintiff as a result of the
19 Defendant's negligence, it is proper to consider the
20 following: One, the expenses incurred for all necessary
21 medical treatment; the loss of time from work and income
22 which resulted therefrom; the impairment of the injured
23 person's ability to work and earn a livelihood; the
24 character of the injury; and the amount that would be
25 necessary to make the injured person whole as respects

1 permanent injuries; the physical and mental pain and
2 suffering endured by the injured party, and such pain and
3 suffering as is reasonably certain will, of necessity,
4 result in the future from the injury.

5 Now, the injured party may recover for mental anguish
6 brought about by bodily injury and suffering. If you find
7 that the injured party's entitled to recover damages, you
8 may consider as an element of those damages such pain and
9 suffering and mental anguish that you find, to a reasonable
10 certainty, will occur in the future as a result of the
11 injuries. In excessive mental anguish, you may take into
12 account anxiety or worry about the possible future
13 occurrence or condition resulting from the injuries that
14 the Plaintiff received, if you are satisfied, to a
15 reasonable certainty, that the Plaintiff will suffer such
16 anxiety and worry.

17 Now, members of the jury, pain and suffering is a
18 material element of damages on which a recovery may be
19 based. Pain and suffering have no market value. They are
20 not capable of exact measurement and there's no fixed rule
21 or standard whereby damages for them can be measured.
22 Therefore, the amount of damages to be awarded for pain and
23 suffering must be left to the judgment of you, the jury.

24 Now, members of the jury, there's some testimony about
25 a pre-existing injury or condition. I need to charge you

1 on that or tell you the law that applies to this particular
2 situation. If a Plaintiff is suffering from a preexisting
3 injury or condition and the preexisting injury or condition
4 is aggravated by injury sustained in a subsequent accident
5 for which you find the Plaintiff should be compensated, the
6 Plaintiff would be entitled to be compensated for the
7 aggravation of the pre-existing injury or condition, as
8 well as for any new or additional injuries sustained in the
9 subsequent accident; provided, of course, such aggravation
10 or new injury is a natural and proximate result of the
11 negligent acts or omissions of the Defendant.

12 A damage award is the law's way of giving a money
13 value for actual losses directly or proximately caused by
14 the Defendant. The basic measure of damages is the amount
15 needed to fully compensate the Plaintiff for the losses
16 proximately caused by the Defendant's negligence. It is to
17 put the Plaintiff in the same position she would have been
18 in but for the accident.

19 An injured person is entitled to recover full
20 compensation for all damages which proximately or directly
21 result from the Defendant's negligent acts. This is so,
22 even if the person injured may have -- this is so, even if
23 the person's injuries may have been aggravated by reason of
24 a pre-existing physical or mental condition, or rendered
25 more difficult to cure by reason of the state of health, or

1 more serious because of a disease. The Defendant cannot
2 invoke pre-existing condition of the person injured for the
3 purpose of escaping the consequences of his own negligence
4 or reducing the damages for which he is liable.

5 A person who has a condition or disability existing at
6 the time of an injury is not entitled to recover damages
7 for such a condition; however, she is entitled to recover
8 damages for any aggravation or enhancement of such
9 condition or disability proximately resulting from the
10 negligence of the Defendant. This is true even if the
11 person's condition or disability made her more susceptible
12 to injury, and even if a normally healthy person would not
13 have suffered any substantial injury. Where a pre-existing
14 disability or condition is so aggravated, the Plaintiff is
15 entitled to be -- to recover and the Defendant is liable
16 for those injuries that were caused by any aggravation.

17 Now, members of the jury, I further charge you that
18 you have heard evidence that the Plaintiff received
19 treatment or care from various sources. I charge you that,
20 in reference to these treatments -- to this treatment, the
21 burden is on the Plaintiff to show that the treatment she
22 received was reasonably necessary for proper treatment of
23 her injuries and that the charges made for such treatment
24 were reasonable.

25 In this respect, I further charge you that if the

1 Plaintiff fails to meet the burden of proof in proving that
2 the treatment she received was reasonably necessary for
3 proper treatment of her injuries, or if the Plaintiff has
4 failed to meet the burden of proof in proving that the
5 charges made for such treatment were a reasonable amount,
6 you should disregard evidence of the cost of such treatment
7 and not consider the same should you render a verdict in
8 favor of the Plaintiff.

9 Now, members of the jury, we had at least two experts,
10 I do believe, that testified in this case: Dr. Boyd and
11 Dr. Lembo, I think they were. Now, in considering the
12 opinion of an expert that has been admitted in this case, I
13 instruct you as follows: You should consider the factual
14 evidence first. An expert may base his opinion upon
15 factual evidence presented at trial. Or alternatively, the
16 expert may base the opinion upon facts and data not in
17 evidence. You may consider the expert opinion if you find
18 that the testimony is based upon facts which are reasonably
19 relied upon by experts in that particular field, that is
20 the field of practice of the doctors that testified by way
21 of deposition.

22 You must consider expert testimony in the same manner
23 as you do any other testimony and give it the weight to
24 which you believe it is entitled when considered with all
25 the other evidence in the case since testimony is given for

1 the purpose of helping you understand the evidence and not
2 for the purpose of controlling your judgment.

3 The value of expert testimony does not depend upon the
4 skill or knowledge professed by the expert, but upon the
5 skill and knowledge he or she actually possesses. It is
6 for you to judge whether he or she possesses such
7 knowledge. In this regard, you may consider his or her
8 training, experience, ability to communicate his or her
9 ideas to you, the logic of his or her opinion, the factual
10 support for his or her opinion, and all other factors that
11 you would judge and weigh the testimony of other witnesses.

12 The value and effect of expert testimony are matters
13 solely to be estimated by you, the jury. No mere opinion
14 of an expert can be accepted as in and of itself truthful
15 or reliable. Such testimony should be weighed by you and
16 convince you of your judgments by a preponderance, a
17 greater weight of the evidence, and with the same force and
18 effect as any other fact proved in this case before you can
19 rely upon it as the basis of a verdict.

20 You have heard the testimony of a witness who has
21 special knowledge, skill, experience or training or
22 education in their particular field of medicine, that is
23 Dr. Lembo and Dr. Boyd, I think it was, who have given
24 their opinion as an expert as to matters of which they are
25 skilled. In determining the weight to be given such

1 opinion, you should consider the qualifications and
2 credibility of the experts and the reasons given for their
3 opinions. You are not bound by such opinions. Give it the
4 weight, if any, to which you deem it is entitled.

5 Now, members of the jury, when one relies on medical
6 testimony to show a causal connection between an injury and
7 a subsequent condition, the testimony must meet the "most
8 probable" rule. It is not sufficient that the malady in
9 question possibly or could have or might have resulted from
10 the injury. The medical expert must go further and testify
11 that taking into -- considering all of the facts, it is his
12 or her professional opinion that the result in question
13 most probably came from the cause alleged; that is, did the
14 doctors say that the accident caused the difficulties for
15 the Plaintiff.

16 Now, I further charge you, members of the jury, that
17 during the trial of this case, we have had testimony by way
18 of deposition of witnesses taken outside the courtroom.
19 These witnesses may or may not appear in person before you.
20 The deposition was taken in the manner prescribed by law,
21 and you will consider the testimony from the depositions
22 just as if the witnesses were here, upon the stand
23 testifying. You take this deposition testimony in
24 connection with all other testimony, and you assess the
25 credibility of the witness from anything that is in the

1 record that will aid you in doing so. You consider that
2 deposition testimony that is in the record that will aid
3 you in doing so. You consider that deposition testimony
4 along with other -- with the testimony of the other
5 witnesses who have appeared in person, and you determine
6 from all the evidence in the case -- whether by witnesses
7 present or by depositions, or whether by exhibits in the
8 case -- what the truth of this controversy is according to
9 the facts as you find them to be; and then apply the law as
10 I give it to you, members of the jury.

11 Now, the Plaintiff has the burden of proving her
12 actual damages by the greater weight of the evidence, but
13 this does not mean that she must prove them to a
14 mathematical certainty or produce evidence of the precise
15 amount of damages she has suffered. Rather, the evidence
16 put forth by the Plaintiff should be such as to enable you,
17 the jury, to determine what amount of damages is fair,
18 just, and reasonable.

19 Now, in deciding an amount of money to include in your
20 reward of future damages if you've been convinced by the
21 preponderance or greater weight of the evidence, members of
22 the jury, it will be necessary for you to decide the
23 probable life expectancy of the Plaintiff. To aid you in
24 making this determination, you may consider as evidence a
25 mortality table. Life expectancy is merely an estimate of

1 the probable average remaining length of life of all
2 persons in our state of a given age, and that estimate is
3 based on a limited record of experience. You will take
4 into consideration the Plaintiff's age and life expectancy.

5 The evidence in this case has established that the
6 Plaintiff, Ms. Spriggs, is 51 years of age. According to
7 the governing mortality tables, the Plaintiff has a life
8 expectancy of an additional 28.67 years as indicated in
9 section 19-1150 of the South Carolina Code of Laws. The
10 mortality tables received in evidence may be considered in
11 your determining how long the Plaintiff may be expected to
12 live.

13 Now, Madam Forelady and members of the jury, I further
14 instruct you that a verdict in this case cannot be based
15 upon sympathy, passion, prejudice, or emotion, or some
16 other consideration not found in the evidence.

17 And Madam Forelady, to aid you in rendering a verdict,
18 I've prepared what we commonly refer to as the "verdict
19 form." It says, State of South Carolina, County of
20 Richland, Betsy L. Spriggs, Plaintiff vs. Wes Kirkland, as
21 the personal representative of the Estate of James Walker,
22 Defendant, in the Court of Common Pleas, Fifth Judicial
23 Circuit. It gives the case number and says "verdict form."

24 Now, I had to list two possible verdicts. I had to
25 list one before the other, so take no special note of which

1 one I listed first. I can't list them both at the same
2 time, of course.

3 But for number one, I've listed (as read): "We, the
4 jury, find for the Plaintiff in the amount of 'blank'
5 actual damages." If you've been convinced by the greater
6 weight or preponderance of the evidence that Ms. Spriggs is
7 entitled to a verdict because he was negligent, they've got
8 to prove to you by the greater weight the proximate cause
9 of the damages, you will write that number above the line
10 that says actual damages. So you'd write the actual words,
11 the amount if you award, and then you put the number in
12 this little parentheses that has the dollar sign by it.

13 Or, if on the other hand, if from all the evidence
14 you've heard you are not convinced that the Plaintiff met
15 her burden of proof by the greater weight or preponderance
16 of the evidence that although Mr. Walker was negligent that
17 his negligence was not the proximate cause of her injuries
18 and damages, you could find for the Defendant. That makes
19 sense, doesn't it?

20 So this is what I need for you to do: Whatever your
21 verdict is, it must be unanimous, of course, all 12 of you
22 must agree. I need you to go to the jury room. Don't
23 discuss this case yet. There's a possibility I might have
24 to bring you back out here and tell you a little bit more
25 about this situation. But for right now, go to the jury

1 room. Don't talk about the case. The time to begin your
2 deliberations will be when the bailiff -- he'll collect all
3 the evidence that's been introduced in this case, all the
4 exhibits, along with this verdict form; he'll hand you
5 that, Madam Forelady, and that will be your signal to begin
6 your deliberations.

7 But until then, once again, don't talk about this
8 case. The time to do so is when you receive the verdict
9 form along with all the exhibits. So please retire to the
10 jury room, and we should be able to get this to you in just
11 a few moments.

12 (Jury exits the courtroom at 12:13 p.m.)

13 THE COURT: All right. Any exceptions or additions
14 for the Plaintiffs -- for the Plaintiff?

15 MS. MCPHERSON: No, sir.

16 THE COURT: Mr. Alexander?

17 MR. ALEXANDER: Your Honor, only one, just for the
18 record, is about the ---

19 THE COURT: That charge of mitigation?

20 MR. ALEXANDER: --- charge of mitigation. And the
21 only other thing is, Judge, just the thing about as far as
22 damages, not awarding -- I don't think the Court said
23 "speculative," but you did say some other terms. And
24 that's the only other ---

25 THE COURT: Okay. That's fine.

1 MR. ALEXANDER: I understand.

2 THE COURT: You're covered. I'm not going to bring
3 them back out for that.

4 MR. ALEXANDER: Okay.

5 THE COURT: It can't be based on conjecture or
6 something like that. I think I had that language in there.

7 MR. ALEXANDER: Okay.

8 THE COURT: Did I? I think I did. Y'all make sure
9 all the exhibits that are in should be in. I don't think
10 we marked anything for ID that did not go in. I'm not
11 sure, let's check everything. Make sure what's in, what
12 the jury's going to get should go back to them.

13 And where's the verdict form one more time?

14 MS. MCPHERSON: The stuff marked ID ---

15 THE COURT: Okay. What is marked ID shouldn't go in.
16 We'll just hold it out. It's a possibility they could ge
17 back there, they say, "Where is it," and I'll let y'all
18 decide whether y'all want it to go back. If you decide, I
19 can bring them back out and say unless it's actually
20 admitted, you can't see it. This is ID. We'll take that
21 up if it comes about. - - -

22 Is that right? I think some of the -- maybe somebody
23 cross-examined -- maybe some of your medical records was
24 for ID only, were they not?

25 MS. MCPHERSON: All of them.

1 MR. ALEXANDER: All of them.

2 THE COURT: Okay. All right. So this is all that
3 goes in.

4 MS. MCPHERSON: Yes, sir.

5 THE COURT: All right. That's good. Let's wait until
6 Mr. Addison comes back.

7 (Off the record at)

8 (On the record at 1:27 p.m.)

9 THE COURT: So a note from the jury, maybe I got it 15
10 minutes ago. Five questions: First one is, "Where is the
11 police report?" Two, "Have Mr. Walker's insurance paid for
12 any medical bills?" Three, "When did Ms. Spriggs consult
13 an attorney?" Four, "Did Ms. Spriggs receive Worker's
14 Comp?" And five, "Where is the Defendant's paperwork?"

15 Now, I might need to ask the forelady what do you mean
16 by the Defendant's paperwork, that could be the pleadings.
17 But basically, the bottom line, you can't consider any of
18 these questions that you just asked me, ladies and
19 gentlemen. The police report doesn't go into evidence.
20 It's not in evidence. Mr. Walker -- that's not relevant.
21 You gotta set a value on this case and the question is
22 whether or not they proved to you beyond -- by the greater
23 weight or preponderance of the evidence that the proximate
24 cause -- responsible for her injuries, something like that.
25 But I'll bring them out so we can eyeball them, go

1 down the questions, say I can't do that, you can't consider
2 that. And the last thing I told them, I'll remind them,
3 was I charge you the verdict in this case cannot be based
4 upon sympathy, passion, prejudice, or emotion; or some
5 other consideration not found in the evidence. And that's
6 the catchall. This ain't in evidence. Is that good
7 enough?

8 So I'll bring them out, go through it a little bit,
9 repeat to them what I said to y'all. We'll eyeball them,
10 send them back, talk about it some more and then tell them
11 to resume whatever. Bring them in, Jim.

12 COURT CLERK: Yes, sir.

13 (Jury enters at 1:30 p.m.)

14 THE BAILIFF: The jury's seated, Your Honor.

15 THE COURT: All right. Thank you, Mr. Addison.

16 Welcome back, Madam Forelady and members of the jury.
17 And Madam Forelady, I hand you a copy of the note that I
18 received from you about, I don't know, 10/15 minutes ago.

19 And let me read them for everybody's benefit: Number
20 one, "Where is the police report"? Number two, "Has Mr.
21 Walker's insurance paid for any medical bills?" Three,
22 "When did Ms. Spriggs consult an attorney?" Four, "Did Ms.
23 Spriggs receive Worker's Comp?" And five, "Where is the
24 Defendant's paperwork?"

25 First of all, I start off by telling you the last

1 thing I said to y'all, members of the jury, that a -- I
2 charge you that a verdict in this case cannot be based upon
3 sympathy, passion, prejudice, or emotion; or some other
4 consideration not found in the evidence. That's very
5 important.

6 Number one, the police report is not in evidence. The
7 officer testified to what happened, what he saw, what he
8 observed. You've got to go by his testimony and his
9 testimony alone. Okay. Number two, lawyers in this state
10 aren't even allowed to mention insurance. Okay. You can't
11 consider that at all. If you go back in and even discuss
12 or bring insurance up, you need to let me know, Madam
13 Forelady, and I'll have to declare a mistrial. Number
14 three, "When did Ms. Spriggs consult the lawyer?" That's
15 not in evidence either. It doesn't matter. Number four,
16 "Did Ms. Spriggs receive Worker's Comp?" Once again, not
17 in evidence. It doesn't matter. You can't consider it.
18 Number five, "Where is the Defendant's paperwork?" That's
19 the only question I have. I don't know what you mean by
20 the Defendant's paperwork. You gotta help me out a little
21 bit about that.

22 But let me -- let -- let me make it easier for
23 everybody: You've got to base your decision, ladies and
24 gentlemen, on the testimony that you've heard from the
25 witnesses, the exhibits that have been introduced into

1 evidence, and what I told you the law is that applies to
2 this case. All these questions don't have anything to do
3 with your ability to reach a fair and impartial verdict.
4 Okay.

5 You gotta base your decision on the testimony of the
6 witnesses, the exhibits that have been introduced into
7 evidence, and the charge I gave you; and considering the
8 arguments of the lawyers to try to persuade you to agree
9 with their version of the facts.

10 The simple question you need to answer is this: Did
11 Mr. Walker running into the back of Mr. Spriggs, was that
12 the proximate cause of her damages? Okay? You gotta be
13 convinced by the greater weight or preponderance of the
14 evidence.

15 Three things that the Plaintiff must prove:
16 Negligence, that's conceded; two, proximate cause. They
17 gotta prove that to you by the greater weight or
18 preponderance of the evidence; and damages got to be proved
19 by the greater weight or preponderance of the evidence.

20 In short, you gotta make your decision based on what
21 you've heard in this courtroom and no other consideration
22 outside of the evidence. And all these questions are,
23 basically, outside of the evidence.

24 So once again, you gotta base your decision on what
25 you've heard from the witness stand, the exhibits, the

1 arguments of the lawyers, and the charge I gave to you.

2 Anything else -- for you to go back to that jury room
3 now and start talking about the police report or Worker's
4 Comp or insurance or when did Ms. Spriggs get a lawyer, any
5 of these questions, it would be unfair to either side for
6 you to do so.

7 Now, with that instruction -- and I want y'all to
8 relax. It's not easy to be a juror. But you gotta go back
9 in and make up your mind on the evidence that you've heard
10 and the law that I gave you to guide you by in making a
11 decision.

12 So I need you to go back in. Don't start talking
13 about this case yet. I gotta discuss with the lawyers what
14 I just told you all before I can tell you to resume your
15 deliberations. Okay? Just relax about it. It's not easy,
16 but you do the best you can.

17 (Jury exits the courtroom at 1:35 p.m.)

18 THE COURT: Any exceptions or additions from the
19 Plaintiff?

20 MS. MCPHERSON: No.

21 THE COURT: Mr. Alexander?

22 MR. ALEXANDER: None, Your Honor.

23 THE COURT: Well, you know, folks, one day maybe we'll
24 be allowed to talk about all this stuff, but right now, we
25 can't. We all know that.

1 (To Court Clerk) So, Jim, tell them they may resume
2 their deliberations.

3 And we'll just be at ease and see what happens. But
4 what happens is you both did a good job and it makes it
5 difficult. That's why they're going -- I'm just telling
6 you, that's what I think.

7 So I commend both of you for the good job you did.
8 And it's not unusual for 12 people to get back there and
9 one lady probably works somewhere and the guy had Worker's
10 Comp stuff and all this. This is where it comes from. But
11 I think I've said, I think, equally what I should have said
12 for both sides. We'll just be at ease and maybe we'll be
13 out of here by Sunday or something like that.

14 (Marked Court's Exhibit No. 4, Juror note.)

15 (Off the record at 1:36 p.m.)

16 (On the record 1:47 p.m.)

17 THE COURT: Well, I think I might have mentioned to
18 Ms. McPherson and Ms. Mosier before you got back over here,
19 I'm going to give either side 10 days.

20 MR. ALEXANDER: Thank you.

21 THE COURT: I have no idea what it is, but those
22 questions, you know, they bother me so much. So I'll give
23 you 10 days, either side, to think about what you want to
24 do and I'll have a hearing if you want to later on.

25 All right. Bring the jury in.

1 (Jury enters the courtroom at 1:48 p.m.)

2 THE BAILIFF: The jury's seated, Your Honor.

3 THE COURT: Thank you, sir. Mr. Truitt --

4 THE COURT CLERK: Yes, Your Honor. Madam Forelady, if
5 the jury has reached a verdict, would you hand it to me,
6 please.

7 (The forelady complies.)

8 THE COURT CLERK: Thank you.

9 (The clerk hands it to the Court.)

10 THE COURT: All right. You can publish it.

11 THE COURT CLERK: Yes, sir. (As read) "The State of
12 South Carolina, in the County of Richland, in the Court of
13 Common Pleas, Case No. 2010-CP-40-7858, Betsy Alice
14 Spriggs, Plaintiff, vs. Wes Kirkland, as the personal
15 representative of the Estate of James Walker, Defendant.
16 The verdict is we, the jury, find for the Defendant; signed
17 Cathy Davis, on this 12th day of September, 2013.

18 Madam Forelady, is this your verdict and the verdict
19 of the entire jury?

20 FORELADY: Yes.

21 ~~THE CLERK:~~ Thank you.

22 THE COURT: Anything further from the jury on behalf
23 of the Plaintiff? Poll the jury, anything? Y'all are
24 good?

25 (No audible response.)

1 THE COURT: Anything on behalf of the Defendant, Mr.
2 Alexander?

3 MR. ALEXANDER: No, sir, Your Honor.

4 THE COURT: Madam Forelady and members of the jury,
5 I've said this many times, and I'll repeat it because this
6 is the way I feel: You don't know how difficult it is to
7 be on a jury and sit in judgment of your fellow citizens
8 until you actually sit on a jury. I've done that myself.
9 It's not an easy thing to do. But there's no enemies to
10 punish, no friends to reward. You try to do the best you
11 can. I get the impression that's what y'all did.

12 Nobody has any reason to question or disagree with
13 your verdict. That's what you all collectively reached as
14 a jury.

15 So I got good news and bad news for you. Which would
16 you like to hear first?

17 JUROR: Bad.

18 THE COURT: There's no bad news, ladies and gentlemen.
19 But I take this opportunity to thank you on behalf of Ms.
20 McPherson, Ms. Mosier, Mr. Alexander, and all the parties
21 involved in this case for your patriotic service of this
22 situation -- or this case.

23 So I think the good news is I can let you go home, and
24 you don't have to come back tomorrow or anytime within the
25 next three years. But I hope that somewhere along the way

1 in the future I should run into y'all, maybe at the Publix
2 or the Wal-Mart somewhere, if y'all stop me -- see me,
3 don't stop me, just keep going and leave me alone. I'm
4 kidding about that. I'd be proud if you stopped and said
5 Judge Manning, I was on that jury that we had that case in
6 front of you two years ago or three years ago, whatever it
7 would be.

8 But I thank you all individually and collectively and
9 I appreciate your patriotic service to your country. And
10 you're free to go back --

11 (To the Clerk) Well, Jim, do they need to go back
12 downstairs or can you give them what they need in the jury
13 room?

14 THE COURT CLERK: I just need them to go to the jury
15 room.

16 THE COURT: All right. Go to the jury room. Mr.
17 Truitt will give you some information that verifies that
18 you were in fact on this jury. And that might be helpful
19 for some of you that have spouses or significant others.

20 Anyway, I hope you have a pleasant weekend. And thank
21 you so very much, members of the jury, once again.

22 (Jury exits at 1:51 p.m.)

23 (Brief off-the-record statement by the Court.)

24 THE COURT: Ms. McPherson, I give you 10 days to file
25 whatever motions you have. But obviously, it should be

1 along the lines that, gee whiz, they had to consider
2 something they shouldn't have.

3 And maybe I'm -- if I get it scheduled, I might -- I'm
4 just thinking out -- out of the box maybe, that if it would
5 be helpful, I would consider like, okay, based on
6 everything, I might let y'all mediate it or something like
7 that before we actually bring it back up. I'm thinking
8 along those lines.

9 This is a UIM case anyway, isn't it? That's what I'm
10 thinking. But you got 10 days.

11 You both did a good job. You just never know what a
12 jury's gonna do. So Ms. Spriggs, don't feel bad about any
13 of this. This is the way it goes in the courtroom
14 sometimes. And you know, you see one jury that give a
15 defense verdict, and the next jury, with the same set of
16 facts, give a plaintiff's verdict. You just never know.

17 But I wish you the very best. Good luck to you.

18 MS. SPRIGGS: Thank you.

19 THE COURT: Okay. Thank you all so very much.

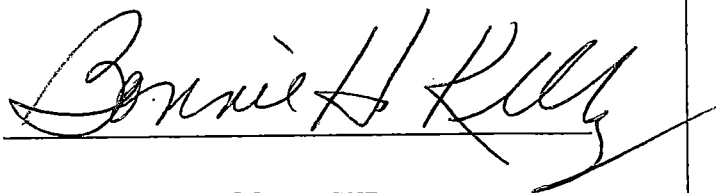
20 (Off the record at 1:53 p.m.)

21
22 -- END OF TRANSCRIPT RECORD --
23
24
25

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 10th through the 12th day of September, 2013.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly", is written over a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

July 11, 2015

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 BETSY SPRIGGS,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 JAMES WALKER ET AL,) 2010-CP-40-07858
9 DEFENDANTS.)

10

11 OCTOBER 17, 2013

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 LISA L. MCPHERSON, ESQ.

20

21

22 FOR THE DEFENDANT:

23 RONALD E. ALEXANDER, ESQ.

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1 (The following proceedings were held on
2 October 17, 2013.)

3 THE COURT: All right, Ms. McPherson, I think this
4 is your motion now?

5 MS. MCPHERSON: It is. Thank you, Your Honor. I
6 believe, really, the basis of our motion and arguments are
7 fully set forth in the motions, so I'll be brief.

8 THE COURT: Okay.

9 MS. MCPHERSON: Judge, when this trial went on for
10 two and half days, I believe, the jury went out to
11 deliberate at about 12:30. They had lunch to eat. At five
12 minutes approximately after, they sent a note out. They
13 came back in and they asked all the big and wrong questions,
14 not just one.

15 THE COURT: All right. .

16 MS. MCPHERSON: Their questions were, Where is the
17 police report? Has Mr. Walker's insurance paid for any of
18 the medical bills? When did Ms. Spriggs consult an
19 attorney? Did Ms. Spriggs receive worker's comp? Where is
20 Defendant's paperwork? It's unclear what number five means
21 exactly. I think that alone, with all the others, was
22 improper for the jury to consider and led to a verdict that
23 they reached literally within a couple of minutes of walking
24 back into the jury room. While it's not always true that
25 deliberations would be a factor in considering whether or

1 not the jury's verdict should be overturned and a new trial
2 granted, common sense tells us some key things here. They
3 ate lunch in that time before they sent the note out. It,
4 at least, was considered very early in the commencement of
5 any deliberations that they actually began if not brought up
6 immediately. Then, of course, the Court instructed them
7 that all of those things were improper, they couldn't
8 consider it and within about --

9 THE COURT: Ten minutes.

10 MS. MCPHERSON: Yeah, very short, they reached it.

11 THE COURT: Okay.

12 MS. MCPHERSON: I think that, basically, implies
13 that they really didn't deliberate at all after that and
14 believed that those five things --

15 THE COURT: Or, at least, in the deliberation, the
16 note would suggest they considered things that were outside
17 of the record and shouldn't have been in the deliberations
18 at all.

19 MS. MCPHERSON: Absolutely, Judge. And I think,
20 you know, we may have all -- it's not uncommon for a jury to
21 come back and ask about insurance, but, my goodness, to ask
22 all five of these things, they clearly -- they twice, I
23 believe, disregarded the instructions of the Court. They
24 reached their verdict for the Defendant when --

25 THE COURT: It's admitted liability.

1 MS. MCPHERSON: Admitted liability. And we had
2 doctors who gave proximate cause --

3 THE COURT: Negligence, not --

4 MR. ALEXANDER: Negligence, not liability.

5 THE COURT: I'll give you a chance.

6 MR. ALEXANDER: I'm sorry, Judge.

7 MS. MCPHERSON: Judge, I've been provided this
8 morning with an affidavit --

9 THE COURT: I'm sorry. Go ahead.

10 MS. MCPHERSON: I was provided an affidavit this
11 morning by Mr. Alexander. I think the rules actually
12 require that I have a 10-day notice, but I don't have any
13 problem going forward this morning.

14 I would like to address a few of the things in
15 that memorandum. He argues that the jury's questions did
16 not prejudice the outcome of the case. I don't think any
17 reasonable person could believe that that's true.

18 THE COURT: Are you saying Mr. Alexander is
19 unreasonable?

20 MS. MCPHERSON: I think he's taking an reasonable
21 position when he argues that and that the amount of time is
22 irrelevant. And under certain circumstances, that may be
23 true, but when you consider the totality of the
24 circumstances here, I believe it's extremely relevant.

25 THE COURT: Okay.

1 MS. MCPHERSON: He further argues that Ms.
2 Whetstone, who is the girlfriend or common law wife of the
3 deceased Defendant, that this man, her husband, the
4 Defendant, didn't foresee the injuries. I don't think
5 that's the standard, that he would have foreseen the
6 specific injuries.

7 He further argues that the Plaintiff has not
8 presented any evidence to prove that the jury made its award
9 made on passion, caprice or prejudice. They may not have
10 made it on those three things, but I think it's clear they
11 made it on "other factors, which is well documented in the
12 questions.

13 His second argument is that the jury's questions
14 did not affect the outcome of the case. That would be,
15 again, I think an unreasonable position taken in light of
16 all the circumstances and how this played out.

17 Judge, based on all of those reasons and the case
18 law we've cited in our motion, including Sullivan v. Davis,
19 O'Neal v. Bowles, I believe that it is not only -- I think
20 it's a matter whether the trial court has a duty to grant it
21 because it's so clear the jury considered these improper
22 factors. Thank you, Your Honor.

23 THE COURT: Okay.

24 Mr. Alexander.

25 MR. ALEXANDER: May it please the Court, Your

1 Honor?

2 THE COURT: Yes, sir.

3 MR. ALEXANDER: And I do have some affidavit -- I
4 have a memo that I'd like to pass up and, also, a copy of
5 the cases the Plaintiff relied on.

6 THE COURT: Yes, sir.

7 MR. ALEXANDER: In the motion, we have some of the
8 grounds, but as far as the questions in and of themselves,
9 at least, argument can be made that they did listen to your
10 instructions. You instructed them well on the law. They
11 ordered lunch. It's not unusual for juries to come out with
12 questions. And the thing about the police report, that's
13 really sort of harmless because that's something that comes
14 up a lot and I think your charge took care of that. They
15 didn't spend another hour or two wondering about that.

16 Has Mr. Walker's insurance paid any medical bills?
17 That, also, seems a common question that juries ask. Not
18 meaning they're dwelling on that. It showed they didn't
19 dwell on that and they took him 10 minutes and came back
20 with a verdict for the Defendant.

21 When did Ms. Spriggs consult an attorney? Same
22 thing. I think some of the evidence -- some of the
23 cross-examination --

24 THE COURT: Mr. Alexander, the fact that -- the
25 question about the police report is innocuous. The question

1 about if she consulted an attorney and when she consulted an
2 attorney is innocuous. But what concerns me is the
3 insurance question and worker's compensation question. And
4 I remember when we selected this jury -- and this is off the
5 top of my head, there was a debate between the two parties
6 about whether or not I should instruct the voir dire
7 questions that might even break up the concept of worker's
8 comp because somebody in the jury had worked for -- you
9 remember this, somebody on the panel had worked for either
10 an insurance company or had been adjustor or something like
11 that. So I carefully crafted the question so that it would
12 try to cover everybody, but yet not specifically mention
13 insurance.

14 So my concern would be the worker's comp question
15 as well as the insurance question.

16 MR. ALEXANDER: And what I said about the worker's
17 comp, Judge, the only way -- and I think the Court dealt
18 with that, is I think accidentally in one of the depositions
19 the Plaintiffs published it came in worker's compensation.
20 One time is all I heard. And I know it wasn't -- they
21 didn't want to do it, but it came in their deposition.

22 But still, if the jury went back there and if they
23 -- to say that they -- and they seemed an attentive group.
24 I mean, I didn't see six or seven sleeping.

25 THE COURT: No, they were. They were.

1 MR. ALEXANDER: And if they listened to your
2 charge the whole time. I mean, what my experience has been
3 is that these questions, they may have come from one juror,
4 they may have come from two or three of them, but I'm like
5 you, the two on insurance and worker's comp, the worker's
6 comp, I think you handled that. And I guess my concern
7 would have been they would have been more influenced if they
8 would have come back out again and said we can't reach a
9 verdict, we want to know these things, but they didn't.

10 THE COURT: All right.

11 MR. ALEXANDER: They were very civil. Every case
12 that the Plaintiff's attorney relied on deals with when the
13 Court determined that the verdict was inadequate. There was
14 one they found for the Defendant. This is Waterford v.
15 Highway Department. Justice Ness reversed the granting of a
16 new trial. And it seems like most of the other cases talked
17 about that. And this was a case -- and it is confusing as
18 far as admitting liability and admitting negligence. But we
19 never admitted liability for the accident, just simple
20 negligence.

21 THE COURT: I think the jury was fairly well
22 instructed on that part.

23 MR. ALEXANDER: I think so.

24 THE COURT: I think that, yeah.

25 MR. ALEXANDER: And I think your proximate cause

1 charge was excellent, which I argued. And to me that was a
2 whole --

3 THE COURT: Oh, thank you for compliment.

4 MR. ALEXANDER: What I was fixing to say, Judge,
5 it was a brilliant charge on proximate cause. One of the
6 best I've ever seen. In face, I use a lot of it. And if
7 the jury had heard all that and they heard proximate cause,
8 I mean, they could go back and 45 minutes of eating and made
9 these decisions. And they sort of made a decision.
10 Somebody else said, well, ask about this, this and this.

11 THE COURT: Well, my only concern is this, Mr.
12 Alexander, your argument is well taken. My concern would be
13 on the insurance question and the worker's comp question.
14 The questions that came from the foreperson indicated and
15 when we eyeballed the jury, indicated they had already
16 discussed these matters. They had already discussed these
17 matters before they wrote the question down. That's what
18 really concerns me, if that makes sense. In other words,
19 they were deliberating with these questions in mind before
20 they wrote the questions down. They came out and then I
21 instructed them. You've got to disregard all of that.

22 So from both of your standpoints, nobody was in
23 the jury room with them, but the question seems to suggest
24 to me that they had discussions about insurance and worker's
25 comp during the course of their deliberations before they

1 were told to disregard it. So how do I unring the bell, so
2 the speak, is my question to you, Mr. Alexander?

3 MR. ALEXANDER: Well, Your Honor, one thing is
4 that if -- I mean, as far as I know there have not been any
5 affidavits from any of the jurors where there was any
6 improper juror misconduct. And reading the eyes, you may
7 can read the eyes, I couldn't tell -- that's what I mean one
8 of the cases deals with that, that there was really no
9 evidence that the jury, other than we speculate -- and
10 that's where they talk about the time. So that's what I'm
11 saying, I don't think that's just enough, just a feeling,
12 particularly when the evidence was clear. It was a minor
13 property damage, huge medicals. And a lot of times, Judge,
14 that is just -- that equation has come into a case where
15 it's been for the Defendant.

16 But we tried a case where there were no other
17 proximate cause issues. Had a young man, had a surgery and
18 the jury came back and proximate cause and tied it all up.
19 So I think this jury got it right, it's just the Plaintiff
20 didn't meet all the burdens. And I would submit you may be
21 right, they did spend an inordinate amount of time on
22 insurance and worker's comp, but I don't think we have any
23 evidence of that other than just sort of a gut feeling. And
24 I just would hope, Your Honor, that you would uphold the
25 jury's verdict based on all the other factors, the evidence

1 they heard, the way they behaved during the trial. I think
2 they were very respectful. They seemed like a pretty good
3 jury.

4 THE COURT: All right. I don't disagree.

5 MR. ALEXANDER: Okay. Thank you.

6 THE COURT: Anything further?

7 MS. MCPHERSON: No, sir.

8 THE COURT: All right. What I'm going to do is
9 think about it for a couple of days. I'll read the cases
10 that were submitted and I'll let you know my decision in due
11 course. This is one of those strange cases that we run
12 into. But I've got to make a decision one way or another.
13 I'll think about it a couple of days and notify y'all both.
14 Thank you both.

15 MR. ALEXANDER: Thank you, Your Honor.

16 MS. MCPHERSON: Thank you.

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18 END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

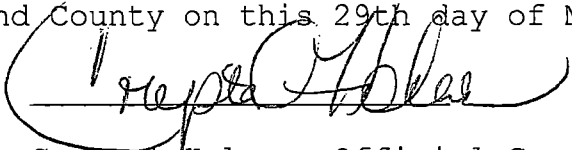
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Betsy Spriggs Vs. James Walker
5 et al. Case No. 2010-CP-40-07858, at the Richland County
6 Courthouse, October 17, 2013.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 13 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 29th day of May, 2015.

15 
16 Crystal Holmes, Official Court Reporter

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Sept 12, 2013

- 1 Where the police report?
- 2 Have Mr. Walker insurance paid for any medical bill?
- 3 When did Ms. Spriggs consult a attorney?
- 4 Did Ms Spriggs received worker-comp?
- 5 Where is the defendant paper work?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2015-000789

H. Wesley Kirkland, as Personal Representative of the Estate of James Walker,

Appellant,

v.

Betsy L. Spriggs,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned Attorney for the Appellant certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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December 2, 2015