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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

22352

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

RECEIVED

DEC 31 2015

SC Court of Appeals

Appellate Case No.: 2015-000409

Benjamin K. Henderson, ... Appellant,

-v-

Patricia Greer, ... Respondent

RECORD ON APPEAL

William F. Barnes, III
PETERS, MURDUAGH, PARKER, ELTZROTH,
& DETRICK, P.A.
101 Mulberry Street, East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
ATTORNEY FOR APPELLANT

A. Shane Massey, Esquire
Nance, McCants & Massey
Post Office Box 2881
Aiken, SC 29801
ATTORNEY FOR RESPONDENT

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FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691**

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

2/9/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 2-9-15, and a copy mailed first class or placed in the appropriate attorney's box on 2-9-15, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III PO Box 457 101 Mulberry
Street East Hampton, SC 29924-0457

ATTORNEY(S) FOR THE PLAINTIFF(S)

Anthony Shane Massey PO Box 2881 Aiken, SC 29802
Karl Stephen Brehmer PO Box 7966 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN K. HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
) Case No. 2012-CP-02-1691
)

ORDER

FILED 2-9-15

L. J. England
Clerk

Anita Knapke / as
Deputy Clerk

The Plaintiff, Benjamin K. Henderson, moves this Court for a new trial *nisi additur* pursuant to SCRPC 59, or, in the alternative, for a new trial pursuant to SCRPC 59. SCRPC 59(f) provides that the Court may, in its discretion, rule on the motion without oral arguments.

This action was tried before a jury in Aiken County on October 13-14, 2014. Following the Defendant's case, the Court granted a directed verdict on the issue that the Plaintiff was not comparatively negligent. Following the conclusion of testimony, argument, and charge, the jury found Defendant, Patricia Greer, negligent and that her negligence proximately caused Mr. Henderson's damages. The jury's verdict awarded the Plaintiff \$5,531.20 in actual damages. This amount was the exact amount of the Plaintiff's medical expenses as contained in Plaintiff's Exhibit 12.

Whether or not the Plaintiff suffered further actual damages due to pain and suffering caused by the Defendant's negligence is a question of fact for the jury. In ruling on a motion for a new trial *nisi additur*, the trial judge must consider the adequacy or excessiveness of the verdict in light of the evidence presented. Compelling reasons must be given to justify invading the jury's province in this manner.

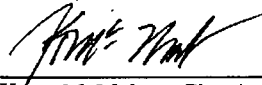


Considering all of the evidence and testimony presented at trial, the jury could have reasonably determined the Plaintiff suffered little or no damage as a result of pain and suffering. Further, the jury could have reasonably determined the only damages suffered by the Plaintiff as a result of the Defendant's negligence were the Plaintiff's actual medical expenses.

The Court finds no compelling reasons that would justify invading the jury's province in this manner. The Court further finds the amount of damages awarded the Plaintiff in this matter are adequate in light of all of the evidence presented. Accordingly, Plaintiff's Motion for a new trial *nisi additur* pursuant to SCRCP 59, or, in the alternative, for a new trial pursuant to SCRCP 59 is hereby denied.

IT IS SO ORDERED.

Lexington, South Carolina
January 5th, 2015
FAB

By: 

R. Knox McMahon, Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-02-1691

VERDICT FORM

FILED October 15 2014

Luz Godard
C.C.C.P. & G.

Jana Comer
Deputy Clerk

9:30am

VERDICT

We, the Jury, find for the Plaintiff against the Defendant in the amount
of 5,531.20 actual damages.

Jana Comer

FOREPERSON

We, the Jury find for the Defendant.

FOREPERSON

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Luz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
15th day of October 2014
Luz Godard
C.C.C.P. & G. Aiken County S.C.
Jana Comer
Deputy Clerk

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 15th day of October 2014.
Liz Godard
C.C.P. & G.S. Aiken County, S.C.

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

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

ORDER INFORMATION

Jury finds for the Plaintiff against the Defendant in the amount of \$5,531.20.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

FILED October 15, 2014
Liz Godard
C.C.P. & G.S.
Diana Comer
Deputy Clerk 9:30am

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Benjamin K. Henderson	Patricia Greer	5,531.20

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

2145

Judge Code

10/15/2014

Date

For Clerk of Court Office Use Only

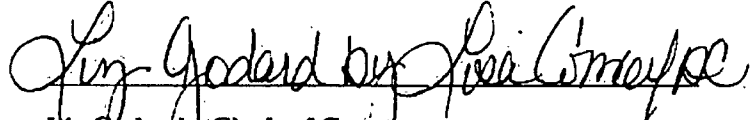
This judgment was entered on 10-14-2014, and a copy mailed first class or placed in the appropriate attorney's box on 10-15-2014, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III
PO Box 457
101 Mulberry Street East
Hampton, SC 29924-0457

Anthony Shane Massey
PO Box 2881
Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 12-CP-02-1691
	)	
BENJAMIN K. HENDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR NEW TRIAL
	)	AND NEW TRIAL NISI ADDITUR
	)	
PATRICIA GREER,	)	
Defendant.	)	

PLEASE TAKE NOTICE that the Plaintiff, Benjamin K. Henderson, moves this Court for a new trial *nisi additur* pursuant to SCRPC 59, or, in the alternative, for a new trial pursuant to SCRPC 59. This action was tried before a jury in Aiken County on October 13-14, 2014. Following the Defendant's case, the Court granted a directed verdict on the issue that Plaintiff was not comparatively negligent. Following the conclusion of the testimony, argument, and charge, the jury found Defendant, Patricia Greer, negligent and that her negligence proximately caused Mr. Henderson's damages. The jury's verdict of \$5,531.20 was for the exact amount of the medical expenses as contained in Plaintiff's Exhibit 12 (Plaintiff's medical expense summary and bills). The jury's finding only awarded Plaintiff his medical expenses. The uncontroverted testimony presented at trial was the Plaintiff sustained either a fractured left wrist or a sprained wrist and endured pain and suffering as a result, among other compensable damages. In light of the jury's findings that the Defendant's negligence proximately caused Plaintiff's damages, the verdict is inadequate because it fails to compensate Plaintiff for pain and suffering. *See Waring v. Johnson*, 341 S.C. 248, 260, 533 S.E.2d 906, 912 (Ct. App. 2000) (affirming a \$40,000.00 additur where the jury awarded the exact amount of medical expenses and there was evidence of pain and suffering). The jury's verdict in this case does not reflect the undisputed evidence of other damages recoverable under South Carolina law sustained by the Plaintiff, including pain and suffering. For these and other compelling reasons, Plaintiff requests that the Court award appropriate damages, subject to the Defendant's right to elect a new trial.

COPY
 ORIGINAL FILED
 OCT 23 2014
 AIKEN COUNTY
 CLERK OF COURT

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: Wil. Barnes
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

October 21, 2014
Hampton, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I, *Megan C. Davis*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via the U.S. Postal Service, a true and correct copy of the within *Motion for New Trial and New Trial Nisi Additur* with first class postage prepaid to:

A. SHANE MASSEY, ESQUIRE
NANCE, MCCANTS & MASSEY
P.O. BOX 2881
AIKEN, SC 29801

ATTORNEYS FOR PATRICIA GREER

RE: *Benjamin Henderson v. Greer*
C/A No.: 12-CP-02-1691

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: *Megan C. Davis*
Megan C. Davis

October 21st, 2014
Hampton, South Carolina

C O P Y
ORIGINAL FILED

OCT 23 2014

AIKEN COUNTY
CLERK OF COURT

ROA 12

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN K. HENDERSON,

Plaintiff,

v.

PATRICIA GREER,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 12-CP-02-01691

SUMMONS

(Jury Trial Demanded)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the attached complaint, a copy of which

is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber,

at Peters, Murdaugh, Parker, Eltzroth & Detrick, PA, at Post Office Box 457, 101 Mulberry Street East, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY:



William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

July 10, 2012
Hampton, South Carolina

C O P Y
ORIGINAL FILED

JUL 12 2012

AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN K. HENDERSON,

Plaintiff,

v.

PATRICIA GREER,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 12-CP-02- 01691

COMPLAINT

(Jury Trial Demanded)

The Plaintiff alleges:

1. The Plaintiff, Benjamin K. Henderson, is a citizen and resident of Hampton County, South Carolina.
2. Defendant, Patricia Greer ("Greer"), upon information and belief is a citizen and resident of Aiken County, South Carolina.
3. On or about July 27, 2010, the Plaintiff was a passenger in a vehicle that was traveling in an easterly direction on US Highway 278 in Aiken County, South Carolina.
4. The vehicle in which Plaintiff was a passenger stopped to move a tree that had fallen over both lanes of US Highway 278.
5. At the same time and place, Defendant Greer was operating her vehicle in a westerly direction on US Highway 278 in Aiken County, South Carolina.
6. As Plaintiff was attempting to remove the tree from roadway, Defendant Greer, suddenly and without warning, drove into the tree that had fallen across the roadway, thereby driving the tree into the Plaintiff.
7. The tree striking the Plaintiff caused serious, severe, and permanent injuries as set forth below.

C O P Y
ORIGINAL FILED

JUL 12 2012

AIKEN COUNTY
CLERK OF COURT

WFB
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8. Plaintiff's injuries were due to and proximately by the negligent, careless and reckless conduct of the defendant in the following particulars:

- (a) In traveling too fast for the conditions existing at that time;
 - (b) In failing to keep a proper lookout;
 - (c) In failing to keep her vehicle under proper control;
 - (d) In failing to apply the brakes;
 - (e) In failing to exercise that degree of care and caution which a reasonable and prudent person would have exercised under the same or similar conditions;
-
- and
- (f) In such other particulars as the evidence may establish.

9. As a direct and proximate result of the above mentioned accident, Plaintiff suffered severe and permanent injuries from which he has suffered and will continue to suffer great physical pain and mental anguish, has expended and will in the future expend monies for medical care and treatment, and caused to lose the enjoyment of life.

10. By reason of and in consequent of the aforesaid negligent, careless, and reckless conduct of the defendant, Plaintiff suffered the injuries and losses complained of for which defendant is liable.

WHEREFORE, plaintiff prays for judgment against the defendant for actual damages, together with 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.

[SIGNATURE PAGE TO FOLLOW]

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____

WFB

William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFF

July 10, 2012
Hampton, South Carolina

WFB
3

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Benjamin K. Henderson,

Plaintiff,

v.

Patricia Greer,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

) Civil Action No.: 2012-CP-02-01691

)

)

)

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ANSWER
(JURY TRIAL DEMANDED)

COPY

Defendant, answering the Plaintiff's complaint, alleges:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not herein specifically admitted, qualified, or explained is denied.
2. Defendant admits the allegations of paragraphs 1, 2, and 3 of the Complaint.
3. Defendant denies the remaining allegations of the Complaint.

FOR A SECOND DEFENSE

4. Each and every allegation of the Defendant's paragraphs 1 through 3 above is incorporated herein as if repeated verbatim.
5. If Plaintiff sustained any injuries or damages as set forth in the Complaint, the injuries or damages were due to the willful, wanton, reckless, careless, grossly negligent, and negligent acts or conduct of Plaintiff which combined and concurred with any willful, wanton, reckless, or negligent acts or conduct on the part of the Defendant, which is specifically and emphatically denied, to bring about those injuries or damages, if any, as the proximate cause thereof and without which these injuries or damages would not have occurred; therefore, the plaintiff's recovery is totally barred or reduced accordingly.

WHEREFORE, Defendant prays that this suit be dismissed with costs to the Plaintiff.

September 20, 2012

NANCE, McCANTS & MASSEY

By:

A. Shane Massey

A. Shane Massey

Attorney for Defendant

218 Newberry Street, S.W.

Post Office Box 2881

Aiken, South Carolina 29802-2881

(803) 649-6200

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached Answer, Interrogatories to the Plaintiff, Request for Production, and Notice of Taking Deposition have been served and addressed as follows:

Case Name: Benjamin K. Henderson v. Patricia Greer
Civil Action No.: 2012-CP-02-01691
Date of Loss: 7/27/2010
Our File No.: M-232L

Ms. Elizabeth Godard
Clerk of Court
P. O. Box 583
Aiken, S.C. 29802

William F. Barnes, III, Esquire
Peters, Murdaugh, Parker,
Eltzroth & Detrick, P.A.
Post Office Box 457
101 Mulberry Street, East
Hampton, S.C. 29924

- ☒ Depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.
- ☐ Handing counsel a copy thereof.
- ☐ By facsimile and depositing in the U.S. Mail a copy of the same in a properly addressed envelope with adequate postage thereon.

This 21 day of September, 2012

BY: Wanda F. Garrett
Wanda F. Garrett, Paralegal to
A. Shane Massey, Esquire
Nance, McCants & Massey

1 State of South Carolina) In the Court
2 County of Aiken) Of Common Pleas
3
4 Docket No. 2012-CP-02-01691
5
6 Benjamin Henderson,)
7 Plaintiff,)
8 vs.) Transcript of Record
9 Patricia Greer,)
10 Defendant.)

11
12 October 13-15, 2014
13 Aiken, South Carolina
14

15 B E F O R E:
16 The Honorable R. Knox McMahon, Judge, and a jury.
17

18 A P P E A R A N C E S:
19 William F. Barnes, Esquire
20 Attorney for the Plaintiff
21 A. Shane Massey, Esquire
22 Attorney for the Defendant
23

24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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Bryant Henderson

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MONDAY, OCTOBER 13, 2014

THE COURT: Good morning. Please be seated, thank you.

Good morning, ladies and gentlemen of the jury panel. My name is Knox McMahon. I'm a Circuit Court Judge from the 11th Judicial Circuit. That includes Lexington, Edgefield, Saluda and McCormick Counties. I'm assigned to a term of Common Pleas or Civil Court for one week in Aiken County.

To my left is my law clerk, Mr. Rogers Harrell. Mr. Harrell is a graduate of the Citadel and a graduate of the Charleston School of Law. My son also graduated from the Citadel so I can say this in front of him. They're not real bright but they're very loyal. Hopefully Mr. Harrell is both bright and loyal. And he has been with me since August and our clerks stay with us for about a year if we can get along with each other.

JURY VOIR DIRE

THE COURT: The first case for trial this morning -- as I said, this is a Civil Case in Common Pleas Court. It is a Civil Action 12-CP-02-01691, Benjamin K. Henderson, Plaintiff, to my front right versus Patricia Greer, the Defendant to my front left.

A Civil Case is started by the filing and serving of a summons and complaint. It is an individual or a

1 business, party, the plaintiff, suing an individual party
2 plaintiff. So the party to my front right is Mr. Benjamin
3 Henderson and he is suing Ms. Patricia Greer to my front
4 left.

5 After the filing of the summons and complaint,
6 the -- the party, the defendant being sued, can then file
7 an answer and defense to the claim. The summons and
8 complaint in this case alleges an incident of negligence as
9 a result of a traffic collision that occurred in Aiken
10 County on or about July 27th, 2010, on U.S. Highway 278.
11 It alleged that the vehicle that Mr. -- and these are all
12 just allegations, ladies and gentlemen. The evidence will
13 come from the witnesses testifying before you under oath
14 from the witness stand.

15 It's alleged that Mr. Henderson was a passenger in
16 a vehicle that stopped to move a tree that was fallen over
17 both lanes of Highway 278 due to some type of a storm, rain
18 storm, or some type of weather-related storm; and while
19 attempting to remove the tree that the Defendant Greer,
20 suddenly and without warning drove into the tree that had
21 fallen across the roadway, thereby striking the plaintiff,
22 causing injuries.

23 So an action in negligence is that the plaintiff
24 alleges that the defendant owes the plaintiff the duty of
25 care and if the plaintiff breaches that duty of care and

1 the breach of that duty of care is the proximate cause of
2 the physical injuries and/or other injuries that the
3 plaintiff suffered. That is really the foundation of our
4 Civil Justice System and the plaintiff is seeking recovery
5 for the damages he received.

6 So our purpose this morning is to select a fair and
7 impartial jury for the trial of this particular case. I
8 know you've already been qualified by Judge Griffith and --
9 to serve as jurors in this court. Now, I must qualify you
10 to serve as jurors in this particular case.

11 Mr. Barnes, would you please stand and introduce
12 yourself to the jury panel and your client and any other
13 member of your staff that may assist you in the
14 presentation of your case.

15 MR. BARNES: Thank you, Your Honor. Good morning,
16 ladies and gentlemen. My name is William Barnes. I'm a
17 lawyer down in Hampton with the law firm, Peters, Murdaugh,
18 Parker, Eltzroth & Detrick and here is Benjamin Henderson.

19 Mr. Henderson, will you please stand.

20 He lives over in Colleton County near Walterboro.

21 And also with me this morning is Meghan Davis.

22 She's our paralegal.

23 THE COURT: Thank you. Thank you, Mr. Barnes.

24 Thank you, Mr. Henderson.

25 And thank you, Ms. Davis.

1 Your time is very important to me and I'll try to manage it
2 a little better.

3 Madam Clerk, would you just swear our jury in?

4 THE CLERK: Please stand and raise your right hand.

5 (The jury was sworn at 9:18 a.m.)

6 THE COURT: Thank you. Thank you very much. Is
7 any member of the jury panel unable to take the oath? If
8 so, please stand.

9 All right. Juror No. 164, Ms. Simmons, you've been
10 promoted. You are now a member of the primary jury and no
11 longer in the status of an alternate. So you can sit or
12 you may move over and join your fellow jurors. One of our
13 jurors has a medical issue for which she has been excused.

14 **OPENING REMARKS BY THE COURT**

15 Ladies and gentlemen of the jury, before the case
16 begins, I would like to just very generally and briefly
17 tell you how we will proceed. The first thing that will
18 occur is that Mr. Barnes, the attorney for the plaintiff,
19 Mr. Henderson -- Mr. Henderson being the party who has
20 brought this action or lawsuit -- will make an opening
21 statement which will be followed by a similar statement by
22 Mr. Massey, the attorney for the defendant, Ms. Greer.
23 These opening statements are not arguments. Those
24 arguments will come at the conclusion of the case. The
25 purpose of the opening statements is for each party to

1 outline his or her claims and the evidence in which he or
2 she intends to present in support of these claims.

3 Following the opening statement, each side will
4 present its evidence with the plaintiff once again going
5 first, the plaintiff being the party bearing the burden of
6 proof. The evidence may take many forms. It may be
7 testimony of the witnesses, documents, models, photographs
8 or the like. You should be pay close attention to all of
9 the evidence which is presented by each party. You, the
10 jury, are the sole finders of the facts in this case and no
11 one else will be permitted to weigh the evidence and render
12 a verdict based upon it.

13 After all of the evidence has been presented, the
14 attorneys will make their closing arguments to you. Unlike
15 the opening statements, the final remarks will be true
16 arguments. That is, each side will emphasize certain
17 portions of the evidence and try to persuade you to agree
18 with their version of the facts. Keep in mind that the
19 opening statements as well as the closing arguments of the
20 attorneys do not represent evidence in the case. The
21 questions by the attorneys do not represent evidence in the
22 case. It is the method we use by which the witnesses
23 respond; that is the evidence in the case; the responses of
24 the witnesses testifying under oath before you. However,
25 please give the attorneys, the witnesses, the Court, your

1 undivided attention, but keep in mind what they say, the
2 attorneys, is not evidence.

3 After -- after the closing arguments, after all the
4 evidence and testimony and the closing arguments are
5 finished, I will explain to you the law, which you will
6 apply to this case. As you recall this is an action, a
7 cause of action for negligence which basically is a duty, a
8 breach of that duty, injuries proximately caused by breach
9 of the duty of care. You will then retire to your jury
10 room and consider the facts as you find them to be and the
11 law as I tell you the law is. And once you have done so,
12 you will return a verdict in favor of one side or the
13 other.

14 During the course of the trial, the plaintiff has
15 the burden of proving his claims. The plaintiff must meet
16 this burden by proving his claims by a greater weight or a
17 preponderance of the evidence. In every courtroom I have
18 been in, and I have been in courtrooms since I was 6 years
19 old, not -- not as a defendant or anything of that, you
20 know, getting in trouble or anything, my granddaddy's
21 courtroom, but the party closest to the jury, generally
22 speaking, is the party that bears the burden of proof and
23 that is so in this case. The plaintiff has the burden of
24 proving his claim by the greater weight or preponderance of
25 the evidence.

1 What do we mean by the greater of the evidence can
2 be illustrated by imagining a traditional set of scales.
3 When the case begins, the scales are equal; after all the
4 evidence has been presented, if the scales should remain
5 evenly balanced or if they should tip even slightly in
6 favor of the defendant, Ms. Greer, then the plaintiff would
7 have failed to meet his burden of proof and your verdict
8 would be for the defendant.

9 If, on the other hand, the scales should tip even
10 slightly in favor of Mr. Henderson, the plaintiff, then he
11 will have met his burden of proof and your verdict would be
12 for the plaintiff.

13 Just a few additional comments before the case
14 begins, first, as I mentioned earlier, although I'm the
15 only person who can tell you what the law is, you are the
16 only ones who can determine the facts. I do not have a
17 right to indicate how I may feel about the facts and the
18 evidence presented; and throughout this trial, my intention
19 will be to act impartial towards each party.

20 Second, from time to time an attorney may object to
21 some bit of testimony or evidence which the other side is
22 seeking to present. As in sports or business or any other
23 structured activities, there are certain rules that both
24 sides must obey in presenting evidence. These rules have a
25 definite purpose. They insure that the information that

1 you, the jury, receives is the most trustworthy and
2 reliable evidence available.

3 An objection is a procedure that is used for an
4 attorney to call a possible violation of the rules to my
5 attention as the judge of this court. And for this reason,
6 you should not hold an attorney's objection against him or
7 his client, nor should you conclude from my ruling on the
8 objection that I favor one side or the other.

9 I would also ask you to please pay close attention
10 to all of the evidence presented to you, for it is you, the
11 jury, in using your good judgment and your common sense
12 that you individually and collectively bring to this jury
13 box, to this jury, to your jury room in determining what
14 the true facts are in this case; and as a result, you will
15 have to evaluate the credibility which means the
16 believability of each witness who testifies in this matter.
17 You are participating in a civil justice system and it is
18 extremely important for each of you to listen carefully to
19 all of the evidence presented, to the attorneys, to the
20 Court; and I am sure each of you will perform your duties
21 accordingly under the oath that you have just taken.

22 And just administratively, ladies and gentlemen,
23 this may not be a lengthy case, but the length of the case
24 does not equate to the importance of the case. This is an
25 important case to both the plaintiff and to the defendant

1 and to the civil justice system. We bring disputes before
2 citizens, before jurors, and -- and they use their good
3 judgment and their common sense. Listen and pay very close
4 attention and I will tell you the standard of the law you
5 will apply to the facts as you find them to be to the
6 standard of the law and return a verdict in favor of one
7 side or the other.

8 I tell you this because I've had other jurors
9 comment to me about it and you will see me on my computer
10 from time to time. These are very good attorneys.
11 Sometimes I might see a legal issue coming around the curve
12 or on a dirt road kind of dusty in the distance so I'll do
13 a little light research. I don't tweet, I don't repeat, I
14 don't e-mail, I don't look at anything. I stay focused on
15 the trial. It annoys some jurors. I can't imagine why,
16 but be that as it may, I stay focused on the case and of
17 course, would ask you to do the same.

18 Also if there are any diagrams or the like that are
19 introduced into evidence, many times it will be passed to
20 our foreperson and passed among the members of the jury
21 while you're in here in the jury box. Please remember if
22 an item, a physical item, is introduced into evidence, you
23 will also have it with you in the jury room at the time of
24 your deliberations. So it will not be the only opportunity
25 you get to view those items, if any, while you're in your

1 jury box.

2 And finally, ladies and gentlemen, what am I really
3 in charge of? I'm in charge of taking breaks. That's what
4 I'm in charge of. And I have a real simple rule about
5 that: If I want to take a break; we take a break; what's
6 that break? As I say, this is not a judicial marathon.
7 It's an important case to Mr. Henderson. It's an important
8 case to Ms. Greer. If -- if your thoughts are wandering
9 and you're not focused, you're probably not the only one in
10 the courtroom in that condition. You want be able to
11 determine what the true facts are and return that true and
12 just verdict. As I said, this probably won't be a lengthy
13 trial, but it's an important trial. Anytime any one of you
14 needs a break, please raise your hand. You will take
15 y'all's break; we will take our break.

16 Thank you. Thank you very much.

17 Any objection to anything I've told the jury, Mr.
18 Barnes?

19 MR. BARNES: Nothing from the plaintiff, Your
20 Honor.

21 THE COURT: Mr. Massey?

22 MR. MASSEY: No, sir.

23 THE COURT: All right. Thank you very much. Mr.
24 Barnes, you may address the jury.

25 ///

OPENING STATEMENTS

MR. BARNES: Yes, Your Honor, may it please the Court?

Good morning, ladies and gentlemen, I introduced myself to you yesterday for the whole jury panel, but my name is William Barnes. I'm a lawyer and practice down in Hampton, which is about an hour and 20 minutes away. And I also introduced yesterday my paralegal, Megan Davis. She's helping me with the trial. And I got the honor in this case of representing Benjamin Henderson.

Ben, will you please stand up?

And Benjamin is 52 years old and he works over in Walterboro at Floralive. He works as a forklift operator. He lives in the small community of Allenton, which is about halfway, roughly, between Hampton and Walterboro. And what we're here about is an incident that took place on July 27th, 2010, outside New Ellenton. And on that day, Benjamin, and his cousin, Bryant --

Bryant would you please stand up?

Hissself and his cousin -- Bryant does some remodeling work and some roofing work. And they were helping a family friend put in a floor up in Aiken. And they were on their way back to Hampton and they went down this road and got to New Ellenton and took a left on 278 heading towards Barnwell. And as they were driving, it

1 started to rain and the wind was blowing and they saw a
2 tree fall in front of them and they did what any good
3 citizens would do, or what we would want citizens to do.
4 They put on their emergency flashers, they got out of their
5 truck and went to assess the situation and they were going
6 to see if they could get the tree out of the road. And in
7 the process of doing so, they get out and they try to get
8 some of the limbs, and in the process of doing so --
9 Benjamin is kind of on the right and Bryant's on the left
10 kind of on the right-hand side of the roadway -- and in the
11 process of doing so is all Benjamin hears is Bryant
12 yelling, run, and that Ms. Greer was driving into and
13 striking the tree.

14 Well, what we're really here about started earlier
15 that day with Ms. Greer. She was down in Ridgeland in
16 Jasper County interviewing for a teaching position with the
17 Jasper County School District and she was on her way home
18 back to Aiken and she was heading to a water aerobics
19 class. She was going to Gold's Gym, which is off Corporate
20 Parkway over beside South Aiken High School and she had
21 been attending aerobics class for a few months and this
22 class started at six o'clock and lasted for one hour. And
23 what Ms. Greer testified -- and will testify -- is that as
24 she was driving, it started raining heavily and she's going
25 about 55 miles an hour and maybe a couple miles more. She

1 had her cruise control on and once it started raining
2 heavily, she takes the cruise control off and slows down to
3 35 to 40 miles an hour because it's raining so hard.

4 Ms. Greer says she wasn't 100 percent sure, but she
5 estimated she drove for approximately 30 minutes looking
6 for a place to pull off on the side of the road due to the
7 severity that it was raining.

8 And so as she approaches the tree, she drives into
9 it, pushes the tree into Bryant's truck and also in the
10 process injures Bryant and throws Benjamin into the ditch.
11 And they get up and Benjamin is able with help to get out
12 of the ditch. EMS responds to the accident scene and he's
13 transported to the Medical College of Georgia.

14 And so that's basically the evidence side. We feel
15 that the evidence will show that Ms. Greer was not driving
16 with due care and was driving with such force when she
17 collided and she caused the defendant injuries. And I'm
18 going to put up Plaintiff's Exhibit 1 and just kind of walk
19 through it for you.

20 If we can kind of, can we dim the lights?

21 And so what we're looking at here is a picture of
22 where the collision occurred. Ms. Greer was coming to this
23 picture. She came across the hill and down here toward the
24 bottom of the square where the tree had fallen across the
25 road. So it's a straightaway and she had plenty of time to

1 see the tree. And we'll next go to Plaintiff's Exhibit No.
2 3. This is a picture of Ms. Greer's car when she hit the
3 tree.

4 We can just keep going through those Megan.

5 That's another picture, and the last picture. She
6 hit the tree hard enough that it caused both of her air
7 bags to deploy. And so that's the evidence that we'll
8 present on whether Ms. Greer was at fault in this
9 collision.

10 And EMS responds to the accident scene and
11 transport Mr. Henderson to the Medical College of Georgia.
12 And this accident happens at approximately 5:55 p.m. in the
13 afternoon in July. We know in July it's still -- it's
14 light out even though it's raining, there's still some
15 light out. And EMS transports Mr. Henderson to the Medical
16 College of Georgia where he is x-rayed by a radiologist,
17 diagnosed with a fractured wrist, both as many of you may
18 know, Medical College of Georgia is a teaching facility;
19 and what that means is they have residents and they also
20 have attending faculty members. And both the radiologists
21 and the attending faculty member diagnosed Mr. Henderson
22 with a fractured left wrist. They put a split on it. He
23 stayed at the hospital until about one or two o'clock in
24 the morning.

25 Mr. Henderson's wife came to Augusta from Hampton

1 to pick him up and they didn't end up getting back to
2 Hampton until about three or four o'clock that morning.
3 And so they got back to Hampton and nine days later, Mr.
4 Henderson is told to come back to MCG and an issue that MCG
5 indicates is whether or not Mr. Henderson actually had a
6 fractured wrist. So he goes back nine days later and sees
7 a resident there at the Medical College of Georgia. He
8 looks at the x-rays and he says that Mr. Henderson didn't
9 have a fractured wrist even though that's what the
10 attending physician in the emergency room said that night.
11 He says he doesn't have a fractured left wrist. He says
12 really what he has is a sprained wrist.

13 And we're going to present testimony of Dr. Craig
14 Carter. And he now practices medicine up in Evansville,
15 Indiana, and you're going to hear his testimony. And he
16 says regardless of whether this is a sprain or a fracture,
17 he still thinks that these injuries were related to this
18 accident and he agreed that regardless of whether it's a
19 sprain or a fracture, it's a significant injury to Mr.
20 Henderson's left wrist. And so he goes back nine days
21 later and Dr. Carter takes off the splint that was on his
22 wrist.

23 And then about a month and a half later, Mr.
24 Henderson goes, it's still bothering him, he continues and
25 sees a local family physician in Hampton and he ends up

1 treating with Dr. Luis Vega in Hampton for about eleven
2 months. And during that time, Dr. Vega sent him back to
3 the Hampton Regional Medical Center for another x-ray and
4 that's about five months later in December 2010. And
5 you're going to hear the testimony of that radiologist.
6 And Dr. Warren testified that basically he took the x-ray,
7 made the x-ray, and he saw no obvious fracture, but he is
8 not of the opinion -- he says, I can't say whether or not
9 on my review five months later, whether or not he had a
10 fractured wrist because you know, fractures can heal within
11 that period of time.

12 So that's the evidence. So what we're here about
13 is whether Ms. Greer was negligent. We feel that the
14 evidence will prove that and Mr. Henderson has incurred
15 \$5,531 in medical expenses. Those have not been paid.
16 They are still owed. And also treated for eleven months
17 and obviously had a significant amount of difficulty
18 recuperating with his hand. That's what we feel the
19 evidence will show and thank you for your time.

20 THE COURT: Thank you. Thank you very much, Mr.
21 Barnes.

22 Mr. Massey?

23 I was informed that it would take a while for the
24 lights to brighten back up; is that correct, Madam Clerk.

25 THE CLERK: Yes, sir.

1 MR. MASSEY: Maybe I'll say something enlightening.

2 THE COURT: Maybe. That was a good one.

3 MR. MASSEY: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. MASSEY: One of the hallmarks of the American
6 Judicial System is the burden of proof. It's so important
7 that Judge McMahon spent just a few minutes already telling
8 you about the burden of proof before we started.

9 Now, most of us are probably familiar with the
10 burden of proof in criminal context. All right. Just
11 because the person is arrested or because the person's
12 charged, that doesn't mean they go to prison. They are, as
13 we're all familiar with the term, you are presumed innocent
14 until you're proven guilty, right? You come into a
15 courtroom and the state's prosecutor has the burden of
16 proving that person guilty. And that burden, which we're
17 also probably familiar with, if nothing else from watching
18 television, is that the state has the burden of proving
19 that person guilty beyond a reasonable doubt, right?

20 Well, in the civil context, the plaintiff, the
21 person bringing the claim, also has the burden of proof.
22 Now, it's a different standard, as Judge McMahon told you.
23 Instead of beyond a reasonable doubt, the standard is the
24 greater weight of the evidence. But the principal still
25 applies, that is it's the plaintiff's claim, and in order

1 to win, he has to prove it. So the burden of proof really
2 is what this trial is going to be about.

3 Now, let's talk a little bit about what you're
4 going to hear as far as the evidence goes. You've heard
5 some of it already, but July 27th, 2010, Ms. Lynn Greer,
6 who, she has a Bachelor's and Master's Degrees in Special
7 Education. She'd been down to Jasper County that day
8 interviewing for a teaching position with the school
9 district. She's down there, she finished her interview and
10 she's coming back to Aiken. She'd gone through Barnwell
11 and she's on 278 headed towards New Ellenton. Now, she's
12 by herself. She's traveling alone and I think what you're
13 going to hear today for those of us who may not be familiar
14 with 278, 278 is between Barnwell and New Ellenton. It's a
15 pretty isolated place. You're going to hear there aren't
16 any restaurants on 278 between Barnwell and New Ellenton.
17 There are no gas stations. There's no real business
18 activity. There's no big large parking area. Basically
19 the only thing you see along 278 are trees the whole way
20 from Barnwell to New Ellenton.

21 Now, what you're going to hear from Ms. Greer is
22 that she's traveling by herself in this area. She's not
23 familiar with the area, with 278. She hadn't been on that
24 road very much and it starts to rain. Now y'all, it didn't
25 only start to rain, right, it comes a downpour. One of

1 these things I like to call a monsoon. It's raining so
2 hard and most of us have probably been in this scenario at
3 some point, you're in the car and it starts raining so hard
4 you can't see very well. It's raining so hard that it
5 affects your visibility. So Ms. Greer's moving along
6 between Barnwell and New Ellenton, she's by herself, it's
7 raining cats and dogs, she slows down. You'll hear about
8 that. She slows down and she's doing what you would expect
9 her to do; she's trying to find a place to pull off the
10 road because she wants to find a safe place to pull off the
11 road.

12 Now, Mr. Henderson and his cousin, Bryant, were
13 coming from Aiken, they were going towards Barnwell also on
14 278. 278 in that area, it's a two lane road, right?
15 They're going along, they're traveling in the same rain
16 storm, the same heavy downpour, they also have reduced
17 their speed. They're going along and they get kind of
18 lucky because they see a tree fall in front of them. They
19 see it fall. And the tree falls from the other side of the
20 road. It falls from the side of the road which Ms. Greer's
21 driving, in the lane that's coming towards New Ellenton.
22 All right. And it falls, and when it falls, it falls not
23 only across Ms. Greer's lane; it falls completely across
24 the lane going towards Barnwell as well. It's a big tree.
25 I think they'll tell you that. It's a tall tree and it's a

1 big tree around. It's a big tree that's fallen across the
2 road. They see it fall.

3 They stop; and we'll talk about this some as we go
4 along, but they made the decision to get out of their
5 vehicle in this heavy rain storm and they go look and
6 they're looking at the tree and not long after they're up
7 there standing by the tree, they hear and then see the
8 headlights from Ms. Greer's car coming towards Aiken. And
9 Ms. Greer hits the tree, she'll tell you about that. She
10 hit the tree and you saw the pictures of the car. What
11 happens when cars hit trees? The tree's pushed into the
12 Henderson's. Mr. Henderson falls down and claiming he's
13 got an injury to his wrist. That's basically -- it's an
14 outline of some of the things that you're going to hear
15 about today.

16 So what in the world is the burden of proof have to
17 do with all this? Well, Judge McMahon told you that this
18 is what's called a negligence action and in a negligence
19 action, there are really three main things that the
20 plaintiff has to prove. They have to prove this in order
21 to prevail. The first thing they have to prove is that Ms.
22 Greer was negligent. And the judge, at the end of it, the
23 Judge will tell you what the law is. He's going to explain
24 all this legal jargon to you. But basically what I think
25 he's going to tell you is that negligence means

1 carelessness. Mr. Henderson has to prove that Ms. Greer
2 was careless. He has to prove that she acted differently
3 than a reasonable person in those same circumstances would
4 have acted. And that's one of the things that you should
5 look for today.

6 You're really going to have three homework
7 assignments during trial today; that's one of them. As you
8 listen to all the testimony today and you look at all the
9 evidence, I want you to think about that. Was or did Ms.
10 Greer act differently than a reasonable 47-year-old woman
11 who's traveling by herself in an isolated stretch in which
12 she is not familiar in a heavy rain pour, did she act
13 differently than that person would have acted.

14 Now the second thing that they have to prove is
15 that Mr. Henderson sustained some injuries. Now I'll tell
16 you, there's not really a question about that he actually
17 was injured. The question really is going to be about the
18 extent of his injuries. He's got a claim that he had a
19 fractured wrist and you're going to hear some -- you're
20 going to hear some different testimony about that. But
21 you're going to hear from three doctors -- well two doctors
22 who actually examined him, one of which is the orthopedist
23 who saw him just a few days later, Dr. Carter. You get to
24 see him on video. You also get to hear from Mr.
25 Henderson's family doctor who treated him really for, it's

1 like six times over a period of about nine months. And
2 you'll hear from a radiologist who interpreted an x-ray of
3 his arm in December after this accident happened in July.

4 So that's your second homework assignment. And
5 focus on the doctors' testimony to see what the extent of
6 his injuries were.

7 Now, even if they prove that Ms. Greer was
8 negligent and that Mr. Henderson sustained injuries, that's
9 not the end of it. The other thing that the plaintiff has
10 to prove in this case is something called causation, that
11 the actions actually caused the injury. Now, the judge is
12 going to tell you about causation and really there are two
13 parts to causation. One of them is the obvious. But
14 there's also called legal cause. And the touchstone of
15 causation in South Carolina is something called
16 foreseeability. Foreseeability. I want you to think about
17 that as we go along because what you're going to have to
18 consider at the end is whether all this stuff ended up
19 happening with a tree falling across the road and people
20 standing out in the middle of the road, whether that was
21 foreseeable for someone who's driving along the road.

22 So did she act differently than a reasonable person
23 would act under those same circumstances? What's the
24 extent of Mr. Henderson's injuries? And even if you get to
25 that point, was any of this really foreseeable?

1 Now, I've got one other -- one other request, and
2 this is probably the hardest. And that is don't, don't
3 make up your mind until you've heard everything. Now I
4 know that sounds easy, right? But really it goes against
5 human nature. We've all worried about first impressions
6 and -- and I think it's a natural thing. But when we start
7 hearing things, our brain starts processing it and we start
8 forming judgments and we start forming opinions by the
9 things we've heard. The problem is you haven't heard the
10 whole story at that point. And so definitely pay attention
11 to what's going on. It's okay to start processing that.
12 I'd just ask you to keep an open mind on your ultimate
13 conclusion until you've heard everything because that's the
14 only way you're going to be able to be fair about it. And
15 that's the only way you're going to be able to make and
16 form an opinion.

17 Now, that also applies even to one witness. You're
18 going to hear some things -- that's especially going to
19 happen with the doctors. You may hear some stuff in the
20 beginning that before you form opinions about what that
21 doctor has said, make sure you listen to the whole
22 testimony. Listen to everything that doctor says before
23 you make up your mind about what happened.

24 I introduced myself yesterday and I'm ashamed to
25 ask, I'm here with Ms. Greer, but all we ask is pay close

1 attention to testimony. Focus on any documents that may
2 come in. You've seen some of the photographs already. You
3 may see a few other documents that come in during the
4 course of the trial. And very importantly, listen to what
5 Judge McMahon tells you about what the law is. What that
6 is as far as negligence; and what it is as far as
7 causation. And when it's all over, you can go back, talk
8 about it among yourselves after you've heard all the
9 testimony and then you can come back and tell us what you
10 think. Thank you very much.

11 THE COURT: Thank you. Thank you, Mr. Massey.

12 Mr. Barnes, you may call your first witness.

13 MR. BARNES: Thank you, Your Honor. The plaintiff
14 calls Bryant Henderson.

15 THE COURT: All right. If you'd come around
16 please, Mr. Henderson, and be sworn.

17 BRYANT HENDERSON,

18 having been duly sworn, testified as follows:

19 THE WITNESS: You ready?

20 THE COURT: State your name for the record.

21 THE WITNESS: My name is Bryant O'Neal Henderson.

22 THE COURT: You might have to speak up just a
23 little bit for us, Mr. Henderson.

24 THE WITNESS: Okay.

25 THE COURT: Thank you.

Bryant Henderson - Direct Examination by Mr. Barnes

1 Mr. Barnes.

2 MR. BARNES: Thank you.

3 **DIRECT EXAMINATION**

4 BY MR. BARNES:

5 Q Where do you live?

6 A I live in Varnville, Hampton County.

7 Q And how long have you lived in Hampton County?

8 A I've lived there since -- 41 years.

9 Q You married?

10 A Yes. Yes, sir.

11 Q And what's your wife's name?

12 A My wife's name is Lawanda Henderson.

13 Q How long have y'all been married?

14 A We been married for 15 years now.

15 Q And do you have any children?

16 A Yes, she has -- she has -- I have six step-kids and
17 two of my own, yes.

18 Q And you do some construction work?

19 A Yes, sir.

20 Q And some remodeling?

21 A Yes, sir.

22 Q Some sheetrock work?

23 A Yes, sir.

24 Q And some painting?

25 A Yes, sir.

Bryant Henderson - Direct Examination by Mr. Barnes

1 Q Just kind of jack of all trades?

2 A Yes, sir.

3 Q And back in 2010, Bryant, Benjamin was helping you
4 some?

5 A Yes, he was helping me.

6 Q And on July 27th, y'all had a job up here in Aiken;
7 is that correct?

8 A Yes, sir.

9 Q And tell me about that job.

10 A Well, it's like a friend or family, we just went
11 down and helped them put down some wood laminate flooring.

12 THE COURT: Again, you're a little soft spoken, Mr.
13 Henderson.

14 THE WITNESS: Okay.

15 THE COURT: Speak up a little bit louder.

16 THE WITNESS: We was, we was helping out --

17 THE COURT: Speak a little louder.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 THE WITNESS: We was putting down some laminate
21 flooring so, you know, it took us -- it took us a while to
22 do it.

23 BY MR. BARNES:

24 Q And how long had y'all been driving to Aiken to
25 this particular job?

Bryant Henderson - Direct Examination by Mr. Barnes

1 A Really about two weeks; a week or two we was down
2 there.

3 Q And July 27th, y'all were making your way home?

4 A Yes, sir.

5 Q And y'all were heading back to Hampton?

6 A Yes, sir.

7 Q And y'all went down Whiskey Road?

8 A Yes, sir.

9 Q And turned left on 278 there in New Ellenton,
10 correct?

11 A Yes, sir.

12 Q And went down a ways and saw a tree fall?

13 A Yes, seen a tree fell.

14 Q And tell me what happened from there.

15 A Then we was like, you know, just talking to
16 ourself, wondered if we could move the limbs out so we
17 could make way so we could, so the traffic can move, you
18 know, for everybody because it was backing up. I think it
19 was trying to back up some, just like a, you know, you
20 couldn't hardly -- you couldn't hardly, you know, get over
21 or nothing too much because it was like small. So time we
22 got out, you know, it started really pouring down. Time we
23 got out really, I looked and seen some lights coming and I
24 just told him to hit -- I know he ain't really see it like
25 that so I just said run, run. And time we like tried to

Bryant Henderson - Direct Examination by Mr. Barnes

1 turn, it was like a lot of crackling noise and then I just
2 know I just fell to the ground; it tripped me up and I
3 ain't -- when I got up, I ain't see him no more and it's a
4 big ditch like way down and then I look and I see him down
5 there. And he was like doing like that trying to get up
6 the hill, sliding back down. So I went over there and
7 pulled him up and then we just look around and just get
8 back in the truck, you know. Basically it. And then I
9 called 911.

10 Q So when you got out the truck, did you try to
11 assess the situation?

12 A Yes, sir.

13 Q And if you were able to, would y'all have tried to
14 get the tree out of the roadway?

15 A Yes, sir.

16 Q And when you stopped the truck, did you have your
17 headlights on?

18 A Yes, sir.

19 Q And did you put your emergency flashers on?

20 A Yes, sir.

21 Q And how long were y'all out of the truck before Ms.
22 Henderson -- Ms. Greer hit the tree?

23 A I want to say no more than a minute really --

24 Q And --

25 A -- because time we got out, you know, we was

Bryant Henderson - Direct Examination by Mr. Barnes

1 thinking about doing it and then it just happened.

2 Q You didn't see -- you don't -- you said you didn't
3 know if Benjamin saw Ms. Greer; is that correct?

4 A Yes, I didn't know if he really seen her or not. I
5 just told him to run. I seen it.

6 Q Describe Ms. -- did you personally observe Ms.
7 Greer's car?

8 A Yes.

9 Q And describe for us what you observed prior to her
10 hitting the tree?

11 A I just seen a blur of headlights coming. I ain't
12 know what it really was, I just know it was a vehicle or
13 something; and it just happened.

14 Q And --

15 A And it was going pretty fast.

16 Q Did the tree get pushed into your truck as well?

17 A Yes, sir, bent it up.

18 Q And after the collision with the tree, did you go
19 over and see about Ms. Greer?

20 A Yeah, I -- yeah, I went over there and asked her if
21 she was all right and she was like I'm all right. She was
22 on the phone.

23 Q And did you get transported to the hospital as
24 well?

25 A Yes, sir.

Bryant Henderson - Direct Examination by Mr. Barnes

1 Q And were you in the same ambulance as Benjamin?

2 A Yeah, me and Benji, they took us to Augusta.

3 Q You rode in the ambulance. Describe for us about
4 the ambulance ride.

5 A Oh, it was just terrible, hurt and on a hard
6 stretcher pad. I kept complaining, you know, it just was
7 like a nightmare, you know, that whole night, whole day and
8 night.

9 Q Was Benjamin on the flat board as well?

10 A Yes, sir.

11 Q And y'all eventually got to Augusta?

12 A Yes, sir.

13 Q And got checked out?

14 A Yes, sir.

15 Q And how did -- how long did y'all stay at the
16 hospital that night?

17 A I think I sat on that board maybe about two or
18 three hours or more, wet up, cold, and I think ain't nobody
19 came to see me to probably -- it was a minute. And he was
20 in there a while too.

21 Q How did y'all get back to Hampton that night?

22 A Well, we had to call our -- me and his wife and
23 they rode down to get us, to get us, from -- we had no
24 other vehicle or way of getting home. So they had to come
25 and get us when they released us.

Bryant Henderson - Direct Examination by Mr. Barnes

1 Q About what time you estimate y'all got back to
2 Hampton that night?

3 A Three or four; three or four o'clock.

4 Q It was a late night?

5 A It was real late, probably later than that. It
6 was -- it was -- it was a while.

7 Q And did Benjamin work with you anymore after this
8 collision.

9 A No, he couldn't. He couldn't do nothing. Plus I
10 couldn't do nothing either as well at that time. I had to
11 go back at a later date and finish but she understood what
12 was going on. So that's how we got through that. I had to
13 get somebody else to do it.

14 Q What part of your body did you injure?

15 A My lower back and my wrist.

16 Q You were thrown down on the ground as well?

17 A Yes, sir.

18 Q I want to hand you what I've marked as Plaintiff's
19 Exhibit No. 1 and ask you if you can identify that photo?

20 A Yes, sir.

21 Q And is that where the collision took place with Ms.
22 Greer striking the tree?

23 A Yeah, it look like it. It just like it right here.

24 MR. BARNES: Your Honor, at this time, we'd move
25 Plaintiff's Exhibit No. 1 into evidence?

Bryant Henderson - Cross-Examination by Mr. Massey

1 MR. MASSEY: No objection.

2 THE COURT: Plaintiff's 1 is in evidence without
3 objection.

4 (Plaintiff's Exhibit No. 1 was entered into
5 evidence.)

6 BY MR. BARNES:

7 Q Thank you, Mr. Henderson, I don't have any further
8 questions.

9 A Yes, sir.

10 THE COURT: Thank you, Mr. Barnes.
11 Mr. Massey.

12 MR. MASSEY: May it please the Court?

13 THE COURT: Yes, sir.

14 **CROSS-EXAMINATION**

15 BY MR. MASSEY:

16 Q Good morning, Mr. Henderson.

17 A Good morning, how you doing?

18 Q Great. Great.

19 So -- so you and -- you and Mr. Benjamin are
20 cousins?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q Okay. And y'all had been up here in Aiken doing
25 some construction type work for your family friends?

Bryant Henderson - Cross-Examination by Mr. Massey

1 A Yes, sir.

2 Q Okay. And after you finished work that day, you
3 got, you were in a truck; is that right?

4 A Yes, sir.

5 Q All right. You got back in your truck and headed
6 back towards Hampton County?

7 A Yes, sir.

8 Q All right. And you were on 278 headed out of New
9 Ellenton towards Barnwell --

10 A Yes, sir.

11 Q Is that right? All right. Now, have you been on
12 278 very much?

13 A Off and on, so, so.

14 Q Okay. Well 278 in that area between New Ellenton
15 and Barnwell, it's a pretty lonely, isolated stretch, isn't
16 it?

17 A Yes, it is.

18 Q All right. I mean it looks a lot like that picture
19 that we were just looking at, the one you got right there
20 in front of you; that's basically the way it looks from New
21 Ellenton to Barnwell; isn't that right?

22 A From this way, from the Aiken side it's like both
23 sides got where you can probably pull over, you know,
24 there's a place where you could pull over coming from her
25 side.

Bryant Henderson - Cross-Examination by Mr. Massey

1 Q Well there aren't any restaurants between New
2 Ellenton and Barnwell?

3 A No. No, sir.

4 Q There aren't any gas stations between Barnwell and
5 New Ellenton, are they?

6 A No, sir.

7 Q No real type of -- of businesses with lighted areas
8 on the side of the road are there.

9 A No, sir.

10 Q All right. In fact most of that area is kind of
11 what we see in that -- in that tree. I mean there are some
12 roads that intersect --

13 A Yeah, in that area, right.

14 Q Right.

15 A Where it happened, yeah.

16 Q All right. And in fact, in that area, there's
17 really -- there's not much of a shoulder either, is there?

18 A It's a shoulder, it's a shoulder down further down.
19 It's not even five miles.

20 Q Just off -- just off the roadway there in the
21 picture that we're looking at, I think you told us this
22 earlier, I mean it's a hill, isn't it?

23 A Not, not right there where -- not right there.

24 Q Well, didn't you tell us that Mr. -- that your
25 cousin fell down, fell down the hill or down in a ditch --

Bryant Henderson - Cross-Examination by Mr. Massey

1 A He fell in --

2 Q -- or something like that?

3 A Well, the tree knock him in the ditch.

4 Q Okay. But there's not much of a shoulder. I mean,
5 you couldn't have driven your truck off the road onto a
6 shoulder to go around that tree, could you?

7 A I, we was going to try. I don't know. We was
8 attempting to do it. We was attempting to do that.

9 Q All right. Mr. Henderson, do you remember at some
10 point, I guess it was -- it might have been about a year
11 ago now, another attorney with my firm came down to the
12 town of Hampton and took your deposition. Do you remember
13 that?

14 A Yes.

15 Q All right. And --

16 MR. BARNES: Your Honor, I would object on this. I
17 think he intends to use depositions. He's got to ask him
18 about -- whether he's testified conflicting that
19 deposition.

20 MR. MASSEY: I'm going to point it out.

21 THE COURT: I thought he was laying the foundation,
22 for that.

23 BY MR. MASSEY:

24 Q Do you remember having a deposition?

25 A Yes, sir.

Bryant Henderson - Cross-Examination by Mr. Massey

1 Q All right. You remember there was a court reporter
2 there?

3 A Yes, sir.

4 Q Kind of like -- kind of like we have here today?

5 A Yes, sir.

6 Q All right. And -- and when we came -- and I wasn't
7 the one who was there that day and of course, but when you
8 came in before you started, it was kind of the same process
9 as here; they made you raise your right hand and you swear
10 to tell the truth?

11 A Yes, sir.

12 Q Is that right? And you did that then, didn't you?

13 A Yes, sir.

14 Q Just like you did here today?

15 A Uh-huh (affirmative response).

16 MR. MASSEY: Judge, can I open the original of that
17 transcript?

18 THE COURT: Yes, sir, you may.

19 BY MR. MASSEY:

20 Q Mr. Henderson, I'm going to hand you --

21 MR. MASSEY: May I approach the witness, Judge.

22 THE COURT: Yes, sir.

23 BY MR. MASSEY:

24 Q Mr. Henderson, this is a transcript of your
25 deposition testimony that day. If you flip through here,

Bryant Henderson - Cross-Examination by Mr. Massey

1 you'll see down at the bottom of each page there's a page
2 number.

3 A Uh-huh (affirmative response).

4 Q You see that?

5 A Yes, sir.

6 Q All right. And over on the side of each page there
7 are line numbers?

8 A Yes, sir.

9 Q Then there are Q's and A's. Q's are for the
10 questions and A's are for the -- for the questions you were
11 asked and the A's are for the answers that you gave. You
12 see that?

13 A Yes, sir.

14 Q All right. I'm going to give you this and I'm
15 going to direct you to a couple of places and I want to, I
16 want to go over some things.

17 Okay. I tell you what, go to page 25; can you do
18 that?

19 Okay. You on page 25?

20 A (Nodded head.)

21 Q All right. And I'm going to start on line 15.

22 Okay, you see line 15?

23 A (Nodded head.)

24 Q All right. Now here's what I'm going to do. I
25 want you to read along with me. I'm going to read the

Bryant Henderson - Cross-Examination by Mr. Massey

1 questions and then I'm going to read your answers. If I
2 read something wrong, I want you to stop me, all right?

3 A Uh-huh (affirmative response).

4 Q Okay. You understand?

5 A Yes, sir.

6 Q All right. So start there on line 15 and the
7 question was tell me, Tell me what happened at that point.
8 And your answer was, I just can remember being on the
9 ground and then when I got up -- I just got up and seen --
10 I was looking for my cousin and he was in the ditch because
11 the road -- you got the road and then you probably got
12 maybe that much grass and then you've got a hill.

13 Question, okay.

14 And your answer was, So he was down there.

15 And then the question, And when you're saying that
16 much grass, you held up an--

17 And let's go over to page 26.

18 We just continue on page 26 there; and your answer
19 was -- off the road.

20 And the question -- amount off --

21 And you said, Yeah, from off the road you can't
22 really park on the side of the road.

23 A No, you can't.

24 Q And so the question was, Okay, so there's not
25 really a shoulder there.

Bryant Henderson - Cross-Examination by Mr. Massey

1 And your answer was, No, it's no -- on both --
2 nothing -- no sides.

3 A Yeah, right there where we was at.

4 Q Well, yes, so in that area, I mean as I asked you
5 before, the picture that we're looking at right there,
6 there's no shoulder. I mean it's not an area where you
7 could have gone or you could have driven on the shoulder to
8 go around the tree; isn't that right? Isn't that right,
9 you couldn't drive on the shoulder to go around that tree?

10 A We were going to attempt to go try to move the tree
11 to go around where the tree was at.

12 Q I understand. But that's not my question.

13 THE COURT: Let, let, let him finish his answer.

14 MR. MASSEY: I apologize, Your Honor.

15 THE WITNESS: Yes, that's what we was trying to do.

16 BY MR. MASSEY:

17 Q I understand. But my question is you can't, in
18 that area, you can't drive on the shoulder because the
19 shoulder is not big enough for the car; isn't that right?

20 A Where the tree was at, we was going to try to still
21 move the tree so we could get, you know, where the tree
22 fell.

23 Q Regardless of whether there was a tree there or
24 not, you can't fit a car on the side of the road; isn't
25 that right?

Bryant Henderson - Cross-Examination by Mr. Massey

- 1 A Well --
- 2 Q Isn't that what you told us?
- 3 A No, that ain't what I really -- that's not what I
- 4 really meant whatever you're saying -- whatever you're
- 5 trying to say.
- 6 Q In that area, it's not big enough, on the shoulder
- 7 is not big enough to park a car on the side of the
- 8 shoulder, off on the side of the road?
- 9 A It's not big enough, not in that area, to do that.
- 10 Q All right. And that's really -- I mean that's
- 11 really the case through most of that stretch of 278, isn't
- 12 it?
- 13 A Uh-huh (affirmative answer).
- 14 Q All right. So you're driving on 278 in your
- 15 truck -- and you're driving; is that right?
- 16 A Yes, sir.
- 17 Q All right. And Mr. Benjamin, he's riding in the
- 18 passenger seat?
- 19 A Yes, sir.
- 20 Q All right. And as you're driving along 278 that
- 21 day, it's raining, isn't it?
- 22 A Yes, it's raining.
- 23 Q In fact it's -- it was raining real, real bad,
- 24 wasn't it?
- 25 A It was raining pretty decent. Yeah, raining pretty

Bryant Henderson - Cross-Examination by Mr. Massey

1 good.

2 Q All right. I tell you what, pull out that
3 deposition transcript again and turn to page 21 for me.

4 All right. Go down to line 21, we're going to do
5 the same process here again, all right.

6 The question is, What were the weather conditions
7 like. And your answer was, Raining.

8 A Raining.

9 Q And then the question was, Okay.

10 And then your answer was, Yeah, raining real, real
11 bad.

12 A Yeah, that's what I said.

13 Q Is that right? All right. Okay.

14 So it wasn't just a light rain, I mean it was
15 raining hard?

16 A Yes, sir. Yes, it start raining pretty good.

17 Q Okay. And it was raining so hard that you actually
18 had -- driving your truck, you slowed down some to be safe,
19 didn't you?

20 A Yes, I did.

21 Q All right. And as you're driving along in this
22 part of 278 in this real bad rain storm, you actually saw a
23 tree, this tree fall across the road in front of you,
24 didn't you?

25 A Yes.

Bryant Henderson - Cross-Examination by Mr. Massey

1 Q All right. I mean you saw a tree fall?

2 A I saw the tree fall.

3 Q And because that tree fell, you had to stop?

4 A Yes, sir.

5 Q Is that right? And as you're travel -- traveling
6 towards Barnwell, the tree fell from the other side of the
7 road, didn't it?

8 A Yes.

9 Q All right. And it was a big tree?

10 A Yes, sir.

11 Q Right. And when it fell, when that tree fell
12 across the road, it covered all that lane that's coming
13 towards Aiken, didn't it?

14 A It was -- I think it was kind of a rotten tree. It
15 was not rotten and then rotten, you know, kinda like broke.

16 Q Okay. Well did the -- did the tree cover all the
17 lane that's coming towards Aiken?

18 A Yeah, and the limbs.

19 Q Right.

20 A The top limbs covered that part of there.

21 Q Yeah, but in the direction Ms. Greer was driving?

22 A That's where the big part at.

23 Q Coming towards, that's right. There coming towards
24 Aiken -- coming towards New Ellenton, I mean the trunk of
25 the tree covered that whole lane, didn't it?

Bryant Henderson - Cross-Examination by Mr. Massey

1 A Yes.

2 Q All right. And then in the direction that you were
3 going, the direction going towards Barnwell, it covered
4 that lane too, didn't it? The tree cover that lane too?

5 A To a point. Limbs.

6 Q Right. There were, there were limbs and branches
7 and --

8 A Branches.

9 Q -- and maybe some leaves and stuff in your area?

10 A Yeah.

11 Q Is that right?

12 A Yeah.

13 Q But it covered enough of your lane that you weren't
14 going to be able to drive your truck past that tree; isn't
15 that right?

16 A Yeah, we were going to attempt to do it.

17 Q All right. But that's why you stopped though,
18 right? When you stopped because of the tree --

19 A We stopped because the tree fell.

20 Q That's right. Okay. All right. Now when y'all
21 stopped, I think you told us earlier, you sat there in the
22 truck for a minute talking, talking to yourselves; is that
23 right? Debating what you were going to do?

24 A Yes, sir.

25 Q Is that right?

Bryant Henderson - Cross-Examination by Mr. Massey

1 All right. Now you had a cell phone with you; is
2 that right?

3 A Yes, sir.

4 Q All right. You didn't call 911 did you?

5 A Not -- not at that time, no, I didn't.

6 Q Right. You didn't call anybody for help, did you?

7 A We was going to.

8 Q Well --

9 A Not at that time. Everything happened so quick to,
10 you know --

11 Q You're sat in your truck. You're sitting in your
12 truck right now, right? Right, when you're sitting --

13 A Right.

14 Q You stopped and you're sitting in your truck, you
15 got your cell phone, but isn't it true, Mr. Henderson, you
16 didn't call anybody to help?

17 A No, no, I didn't.

18 Q All right. And at some point, there's also this,
19 this big truck that pulls up behind you?

20 A Yes, sir.

21 Q Right. Right. Y'all didn't go back there and ask
22 that guy to call somebody on his radio, did you?

23 A I can't hardly remember too much of that.

24 Q You didn't go back -- you'd have remembered if you
25 went back and talked to the guy and asked him to call?

Bryant Henderson - Cross-Examination by Mr. Massey

1 A It was 2010 and so I don't remember too much of it.

2 Q All right. But basically y'all were sitting there
3 debating among yourselves, what you decided to do was to
4 get out of the truck and go look at the tree; is that
5 right.

6 A No, not to look at it, to see if we could move it.

7 Q Yeah, you were going to go see if you could move
8 some of those limbs around?

9 A Yes.

10 Q Is that right?

11 A (Nodded head.)

12 Q Okay. In fact what the plan was that you were --
13 you wanted to see if you could move some of those limbs
14 around enough so that you could drive your truck around the
15 tree and go on home; isn't that right?

16 A Well, I mean I'm all about helping, if I can help
17 out, I help out. That's what I do.

18 Q All right. But at this point, when y'all get out
19 of your truck, I mean it's still -- at this point it's
20 raining real, real bad; isn't that what you told us?

21 A Yes.

22 Q All right. And you get out in this rain storm and
23 you walk up to the tree; is that right? You walk up to the
24 tree?

25 A We attempted to walk up to it. It happened so

Bryant Henderson - Cross-Examination by Mr. Massey

1 quick.

2 Q Well, I mean you walked up to it enough that you
3 were able to realize that you probably were not going to be
4 able to move that tree?

5 A Yeah, we probably -- yeah, that's why I said it
6 happened so quick.

7 Q Right. Yeah, after you got out of your truck?

8 A Yes.

9 Q You walked up there enough to see enough of that
10 tree --

11 A Yes.

12 Q -- in the rain storm that you realized the two of
13 us, we're not going to be able to move this tree; isn't
14 that right?

15 A Well, we were going to try. I just -- it just
16 happened so quick, we might have would have jumped in the
17 truck and got back in the truck, but it happened so quick
18 till, you know --

19 Q All right.

20 A -- we didn't have a chance to do nothing really.

21 Q All right. Because right about the time that you
22 got up to the tree, Ms. Greer came along, didn't she?

23 A Yes, sir.

24 Q All right. And -- and as -- as Ms. Greer
25 approached that tree from the opposite side, you and Mr.

Bryant Henderson - Cross-Examination by Mr. Massey

1 Benjamin were standing, you were standing between your
2 truck and that tree on your side of the road; isn't that
3 right?

4 A Yeah, at that time, yeah.

5 Q All right. I want to show you a -- a document.

6 MR. MASSEY: Judge may I approach the witness
7 again?

8 THE COURT: Yes, sir.

9 BY MR. MASSEY:

10 Q All right. Mr. Henderson, I'm going to show you
11 what we've marked as Defendant's Exhibit 1. This is a
12 diagram that you drew in your deposition testimony; is that
13 right?

14 A Yes, sir.

15 Q All right. And we're going to let the jury see
16 this in just a minute. Let's see if we can do this, what
17 we've got here is we've got 278; is that right?

18 A Yeah, we got 278.

19 Q So we've got 278, and this is your truck -- is
20 going up the road; is that right?

21 A Yes, sir.

22 Q And Ms. Greer's vehicle is going down the road?

23 A Yes.

24 Q Is that right? And we've got the tree that you've
25 drawn here across the road; is that right?

Bryant Henderson - Cross-Examination by Mr. Massey

1 A I did the best I could.

2 Q I understand, man, I'm not much of an artist
3 myself. All right. And then what you've drawn for us here
4 to0 is the blue dot right here, that blue dot, that's where
5 you were standing; is that right?

6 A Yes, sir.

7 Q And that red dot right there beside of you, that's
8 where your cousin, Mr. Benjamin, here was standing; is that
9 right.

10 A Yes.

11 Q So y'all were standing between your truck and the
12 tree; is that right?

13 A Yes.

14 Q Right there where all those limbs and branches and
15 leaves were?

16 A Uh-huh (affirmative response).

17 Q Is that right? All right.

18 MR. MASSEY: Judge, I guess I should have done this
19 already, but I'd like to move Exhibit 1 into evidence. I
20 apologize.

21 THE COURT: Mr. Barnes?

22 MR. BARNES: I don't have any objection, Your
23 Honor.

24 THE COURT: Defense 1 is in evidence without
25 objection.

Bryant Henderson - Cross-Examination by Mr. Massey

1 (Defendant's Exhibit No. 1 was entered into
2 evidence.)

3 BY MR. MASSEY:

4 Q Thank you, sir.

5 Now as you were standing there on that side of the
6 tree, you saw, you saw Ms. Greer's headlights coming
7 towards you, right?

8 A Yes.

9 Q Right. And you heard her coming towards you as
10 well, didn't you?

11 A No. No, I can't remember -- I can't really
12 remember. I just know my instincts that I told my cousin
13 to run.

14 Q All right. I tell you what, pick up that
15 transcript again, if you don't mind. Let's turn to page
16 24.

17 You -- you on page 24?

18 A Yes.

19 Q Start on -- start on line, line 15. All right.

20 The question is, When did you first notice there
21 was another vehicle coming down the road towards your
22 direction.

23 And your answer, I can't really say, I just seen it
24 coming.

25 Okay.

Bryant Henderson - Cross-Examination by Mr. Massey

1 And your answer, I can't say how far it was, but I
2 just remember seeing it.

3 Question, do you know --

4 You said, a blur seeing it.

5 A question, okay.

6 And then you said, I could hear it.

7 Isn't that right; isn't that what you said?

8 A I might of -- I'm pretty sure at that time, like I
9 said, it's so long ago.

10 Q Okay. But, I mean, you know, you're standing on --
11 you're standing on this side of the tree and you see a blur
12 of headlights and you hear something coming towards you?

13 A Rain, wind.

14 Q And still -- it is still at this point, it's
15 raining, it's raining real hard, isn't it?

16 A Yes.

17 Q Right, yes. All right.

18 Now you told us earlier I think in response to
19 one -- one of Mr. Barnes' questions that the car was coming
20 real fast. I mean the reality is that really you just saw
21 a blur; isn't that right?

22 A Sir, I knew it was coming.

23 Q Right and -- and -- and in all honesty, you can't
24 estimate how fast that car was going?

25 A No, I can't -- I can't do that.

Bryant Henderson - Redirect Examination by Mr. Barnes

1 Q All right. But when you saw -- heard that car
2 coming, you told Mr. Benjamin to run. And y'all tried to
3 get out the way?

4 A That's right.

5 Q Okay. But you didn't make it but just a couple of
6 steps and the car hit the tree and the tree hit you?

7 A Yes.

8 Q Is that correct?

9 All right. All right. Mr. Henderson, I think
10 that's all I got. Thank you very much.

11 THE COURT: Thank you, Mr. Massey.

12 Redirect, Mr. Barnes?

13 MR. BARNES: Thank you, Your Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. BARNES:

16 Q Bryant, when y'all were in the truck, did you
17 intend to get out and see if y'all could move it yourself?

18 A Yes.

19 Q And if you couldn't move it yourself, were y'all
20 going to call --

21 A We was going to do that.

22 Q Okay.

23 A We was gone do that.

24 Q And then the collision with the tree occurred in
25 the meantime?

Bryant Henderson - Recross-Examination by Mr. Massey

1 A Yes, sir.

2 Q And you were asked about whether the road was wide
3 enough to pull off?

4 A Yes.

5 Q You've driven past this accident scene for the last
6 two days, haven't you?

7 A Yes, sir.

8 Q And between Barnwell and New Ellenton, there's
9 plenty of places to pull off on the side of the road --

10 A Yes, sir.

11 Q -- in that direction?

12 A Yes, sir.

13 Q I don't have anything else, Your Honor?

14 THE COURT: Recross, Mr. Massey?

15 MR. MASSEY: Just a couple of quick questions:

16 **RECROSS-EXAMINATION**

17 BY MR. MASSEY:

18 Q Mr. Henderson, when you've driven back and forth on
19 that road in the past two days; it's been pretty nice
20 weather, hasn't it?

21 A Yeah, it's nice.

22 MR. MASSEY: Nothing further.

23 THE COURT: Thank you. Thank you very much, Mr.
24 Henderson. You may step down.

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Mr. Barnes, you may call
2 your next witness.

3 MR. BARNES: Your Honor, we're going to play some
4 deposition testimony. I think Dr. Baker.

5 THE COURT: All right. And about how long is that?

6 MR. BARNES: It's probably going to be --

7 MR. MASSEY: It's right at half an hour, Judge.

8 THE COURT: All right. Everybody good with that;
9 deposition a half hour before our break.

10 And let me, let me just advise the jury.

11 The testimony is now going to be presented to you
12 by the deposition, video deposition --

13 Correct, Mr. Vega?

14 MR. BARNES: That's correct.

15 THE COURT: A deposition is a document or in this
16 case, a video, containing sworn testimony given by a
17 witness out, a witness outside of Court in the presence of
18 the attorneys for each party who may ask questions of the
19 witnesses. If any objections were made at the deposition,
20 I will rule on them when the deposition is shown to you.
21 This testimony is entitled the same consideration and is to
22 be judged as to credibility and weighed by you in the same
23 manner as if the witness was present and gave the testimony
24 about to be shown to you from the witness stand.

25 It is then for you, the jury, to determine the

1 effect, the value, the weight, and the proof of the
2 testimony given in the deposition.

3 This is under our Rules of Discovery, our Civil
4 Rules of Discovery.

5 All right. You want me to run it for you, Mr.
6 Barnes, or do you have someone who has the technical
7 ability to do so.

8 MR. BARNES: Ms. Davis has this under control.

9 THE COURT: Thank you. Thank you very much.

10 MR. BARNES: Your Honor, at this time, we would
11 call Dr. Luis Vega.

12 THE COURT: All right. This will be the video
13 deposition of Dr. Luis Vega.

14 (The video deposition of Dr. Luis Vega was played
15 for the jury.)

16 THE COURT: Is that the completion of the video
17 deposition of Dr. Vega?

18 MR. BARNES: That's correct, Your Honor.

19 THE COURT: All right. Thank you.

20 Ladies and gentlemen of the jury panel, momentarily
21 we're going to take our morning recess of about fifteen --
22 of fifteen minutes. I do have one comment to make and then
23 one assignment for you during this recess.

24 Many people do not have a chance to attend actual
25 court sessions as you're doing now. You may think from

1 watching television or movies or reading books that trials
2 are always full of drama, intense action, and riveting
3 circumstances. While all of these things may be true at
4 times, this trial is not for entertainment. It is a
5 fundamental part of our democracy, a search for the truth
6 in an effort to make sure -- to make absolutely sure that
7 justice is done between the parties before the Court.
8 Searching for the truth and making sure that justice is
9 done is often slow, deliberate, and repetitive. The
10 opposite of what you may have seen on television or in
11 movies or read in books.

12 This courtroom is a place of honor dedicated to the
13 protection and the preservation of citizen's rights through
14 what many have called, and I agree, the greatest justice
15 system ever created. Thank you for accepting a very
16 important responsibility of jury service and for your
17 contribution today to our judicial system. Please keep in
18 mind to give the attorneys and parties and witnesses, the
19 video deposition witnesses, your complete, and undivided
20 attention. Even during the deposition testimony if anyone
21 needs a break, just get my attention and certainly I will
22 authorize that.

23 Now, do not discuss the case during this brief
24 recess. You will not be allowed to discuss the case until
25 you've heard all the evidence, all the testimony, closing

1 arguments by the attorneys and instruction on the law by
2 the Court and then directed by the Court to begin your
3 deliberations with your fellow jurors.

4 It is time for an assignment to elect among
5 yourselves please a foreperson for the jury. It can be any
6 number of you. Any if you would, make a -- find a jury
7 foreperson. Whatever characteristics or standards you
8 choose the person. Someone with prior juror service,
9 whatever have -- whatever you have, but select that person
10 among yourselves using whatever factors you deem
11 appropriate.

12 Upon your return, I would like -- once you make
13 that selection, write down the name and number and knock on
14 the jury room door and give that name to the bailiff and I
15 would ask that person to please sit in this empty chair
16 closest to the Court.

17 With that being said, we'll take a fifteen minute
18 recess. Thank you. Thank you very much.

19 (The jury left the courtroom at 10:50 a.m.)

20 THE COURT: Juror No. 164, who was promoted from
21 alternate to primary juror this morning appears at times to
22 be asleep. I tried to give her the evil eye. It doesn't
23 work. It probably doesn't work in life. Our bailiff, Mr.
24 Whittle gave her some water. Y'all may have noticed
25 yourself. I did want to bring that to your attention.

1 Thank you. Thank you very much.

2 Let's take a fifteen minutes recess.

3 How many more witnesses you got?

4 MR. BARNES: I believe three or four, Your Honor.

5 THE COURT: Three or four, that includes
6 depositions?

7 MR. BARNES: Correct.

8 THE COURT: We'll take a fifteen minutes recess.

9 (A brief recess was observed.)

10 THE COURT: All right. Anything from the plaintiff
11 before we bring in the jury, Mr. Barnes?

12 MR. BARNES: Nothing from the plaintiff, Your
13 Honor.

14 THE COURT: Defense, Mr. Massey?

15 MR. MASSEY: No, Your Honor.

16 THE COURT: All right. No. 8 is the foreperson,
17 Mr. Bennington.

18 (The jury entered the courtroom at 11:11 a.m.)

19 THE COURT: All right. I see we have a foreperson,
20 Mr. Bennington; is that correct?

21 THE FOREPERSON: That's correct, sir.

22 THE COURT: I hope that wasn't too hard a fought
23 battle?

24 THE FOREPERSON: No, not at all.

25 THE COURT: Thank you very much for volunteering to

1 perform that very important service.

2 All right. We'll continue the trial of the case by
3 the presentation of evidence and testimony by the Plaintiff
4 in its case in chief.

5 Mr. Barnes, you may call your next witness.

6 MR. BARNES: Your Honor, at this time the plaintiff
7 will call Dr. Craig Carter; and that will be by video
8 testimony.

9 THE COURT: All right.

10 MR. BARNES: We worked it out and what we're going
11 to do is play it -- play the deposition straight through.

12 THE COURT: And about how long is this deposition?

13 MR. BARNES: About a half an hour.

14 THE COURT: All right. Again, ladies and
15 gentlemen, if you would please give your complete and
16 undivided attention to the presentation of the deposition
17 of Dr. -- who again?

18 MR. BARNES: Dr. Craig Carter.

19 THE COURT: Dr. Craig Carter.

20 MR. BARNES: Your Honor, may I hand this up; this
21 is the original and Exhibit 1 (sic).

22 THE COURT: Yes, sir.

23 MR. BARNES: We would move into evidence.

24 THE COURT: No objection from, Mr. Massey?

25 MR. MASSEY: No, sir.

1 (Court's Exhibit No. 3 was entered.)

2 (The video deposition of Dr. Craig Carter was
3 played for the jury.)

4 THE COURT: All right. Mr. Barnes, you may call
5 your next witness.

6 MR. BARNES: Your Honor, at this time we would move
7 into evidence records that were discussed in Dr. Carter's
8 deposition.

9 THE COURT: Mr. Massey?

10 MR. MASSEY: Yes, Your Honor. Yes, sir, I'm good
11 with that.

12 He's moving in the medical records? That's
13 hearsay. There was no foundation laid for him being the
14 custodian of those records. Even if he were, those records
15 are full of objections.

16 THE COURT: You would have to lay a foundation
17 through the custodian of the records, Mr. Barnes?

18 MR. BARNES: Your Honor, we designated this under
19 Rule 32. Included with that was Exhibit No. 1. I think
20 the rule requires that any objections to those designations
21 be submitted. The only counter-designation we got was to
22 play the deposition of Dr. Carter in its entirety and
23 therefore we feel it doesn't comply with Rule 32 in
24 objecting at the time they're moving to introduce it.

25 MR. MASSEY: Rule 32(b) the objections to the

1 admissibility.

2 THE COURT: Step out just a moment please, ladies
3 and gentlemen. Do not discuss the case during this brief
4 recess.

5 (The jury left the courtroom at 11:50 p.m.)

6 THE COURT: All right. 32(b), as Mr. Massey points
7 out, objections to admissibility subject to the provisions
8 of Rule 28(b) and subdivision (b)(3) of this rule.
9 Objection may be made at the trial or a hearing to
10 receiving any evidence, any deposition or part thereof for
11 any reason, which would require the exclusion of the
12 evidence if the witness were then present and testifying.
13 And of course, as I recall -- even before I say that, Rule
14 803(4) and/or perhaps (6) would cover the exceptions to the
15 hearsay rule.

16 As I listened to the testimony of the doctor, I
17 thought and I know Mr. Massey didn't offer it, but I
18 thought he, the doctor, reviewed during the course what I
19 call direct examination, parts of those records anyway as
20 part of his deposition and then reviewed parts of those
21 records during the course of what I will characterize as
22 the cross-examination by Mr. Barnes.

23 Am I not tracking that correctly? Don't you start
24 off, Mr. Massey asking him about the records and the -- the
25 differing -- records are different than the 27 July when he

1 saw him on I believe it was 5 August, I'm not sure.

2 MR. MASSEY: Yes, sir, I did ask those questions
3 and I think, and I think he can testify to as to the
4 discussion we had I think about Dr. Warren's stuff. We did
5 it earlier. I think Dr. Carter can testify to the times in
6 these records he relied on for the purpose not to the
7 history or forming his opinions. I don't think that means
8 the documents themselves can be presented to the jury. But
9 I think he can rely on that hearsay testimony and he can
10 discuss as far as his testimony, but the actual
11 introduction of the documents is a whole other issue.

12 THE COURT: Well, I think it's a matter of equity,
13 quite frankly, and I realize that this doctor is not the
14 custodian of the records but I will allow you time to get
15 the custodian of the records to testify. I just -- I
16 don't -- I don't -- the first thing the jury's going to
17 want to know perhaps is can we see records. They've been
18 over them and I don't think you can unduly testi -- unduly
19 emphasize some versus the others.

20 Probably not going to be able to read them any
21 better than this doctor. I mean you had got Dr. Vega
22 testifying to them and reviewing them. I mean I do realize
23 I accept the proposition that this doctor is not qualified
24 as a foundation or custodian of records. I mean as far as
25 the basis of the opinion, that -- that kind of sends us out

1 to the 700 rules. I think that's evidence. That doesn't
2 necessarily make them admissible either.

3 So you know, at this point, perhaps just mark them
4 for Plaintiff's next number for identification. I always
5 had a reciprocal no custodian rule; you wouldn't have to
6 bring one and I wouldn't have to bring one. I'll give the
7 plaintiff the opportunity to lay the foundation.

8 Okay, Mr. Barnes, Mr. Massey, anything else?

9 MR. BARNES: No, sir.

10 THE COURT: Who's our next witness?

11 MR. BARNES: Mr. Henderson.

12 THE COURT: Mr. Henderson. All right.

13 Bring us our jury.

14 (The jury entered the courtroom at 12 o'clock p.m.)

15 (Plaintiff's Exhibit No. 4 was marked for

16 identification.)

17 THE COURT: I have found that a lot of jurors are
18 very territorial; they like to sit in the same place, not
19 all of them, but a lot of them.

20 Be that as it -- and I don't find anything wrong
21 with that.

22 All right. We're continuing the trial of the case
23 by the presentation of evidence and testimony by the
24 plaintiff in its case in chief. Mr. Barnes, you may call
25 your next witness.

Benjamin Henderson - Direct Examination by Mr. Barnes

1 MR. BARNES: Your Honor, at this time the plaintiff
2 will call Benjamin Henderson.

3 THE COURT: All right. If you'll come forward and
4 be sworn in by the clerk, Mr. Henderson.

5 BENJAMIN HENDERSON,
6 having been duly sworn, testified as follows:

7 THE CLERK: Have a seat and state your name for the
8 record.

9 THE WITNESS: Benjamin Henderson.

10 **DIRECT EXAMINATION**

11 BY MR. BARNES:

12 Q Good Morning, Mr. Henderson.

13 A Good morning.

14 Q What's your date of birth?

15 A 3/30/62.

16 Q So that makes you how old?

17 A 52.

18 Q And what is your address?

19 A 4291 Fox Road, Allenton.

20 THE COURT: Speak up just a little bit for me to
21 make sure everybody on the jury can hear it from here.

22 THE WITNESS: 4291 Fox Road, Allenton, South
23 Carolina, 29929.

24 BY MR. BARNES:

25 Q And tell us where Allenton is.

Benjamin Henderson - Direct Examination by Mr. Barnes

1 A It's in between Walterboro and Hampton.

2 Q How long have you lived in Allenton?

3 A My mom moved home in '76.

4 Q Are you currently employed?

5 A Yes.

6 Q And where do you work?

7 A I work at Floralife in Walterboro.

8 Q And explain to us what Floralife does?

9 A We -- we make flower food, liquid and powder.

10 Q Mainly used by florists and nurseries?

11 A (Nodded head.)

12 THE COURT: Is that a yes.

13 THE WITNESS: Yes, sir.

14 BY MR. BARNES:

15 Q And what do you do for Floralife?

16 A I drive a forklift, maintenance.

17 Q And are you married?

18 A Divorced.

19 Q And what's your former wife's name?

20 A Suzette.

21 Q Do y'all have any children?

22 A Yes, I have a 10 year old.

23 Q And Suzette lives in Hampton?

24 A In Hampton.

25 Q And we're here about a series of events that took

Benjamin Henderson - Direct Examination by Mr. Barnes

1 place on July 27th, 2010. And were you working with your
2 cousin, Bryant, on that day?

3 A Yes, sir.

4 Q And explain to us what y'all were doing?

5 A We was putting down some flooring in the living
6 room, kitchen, dining room, and kitchen in New Ellenton.

7 Q This was for a family friend?

8 A Right.

9 Q And how long had y'all been making the trips to
10 Aiken on this flooring job?

11 A Probably a week or two; it's going to be about two
12 weeks.

13 Q Did y'all come to New Ellenton and back the same
14 way every day?

15 A Every day, yes, sir.

16 Q And on July 27th, 2010, y'all were heading home,
17 correct?

18 A Right. Correct.

19 Q And it started raining?

20 A Right.

21 Q And did y'all see a tree fall in the roadway?

22 A Yes, sir.

23 Q And what did y'all do after you saw the tree fall?

24 A Well, looked at it and we saw the tree fall and I
25 said, and yelled; I said hey, that was a tree and he said

Benjamin Henderson - Direct Examination by Mr. Barnes

1 yeah, man and I can't hardly see. I said well we need to
2 slow down. So we slowed down and we got --

3 THE COURT REPORTER: A little bit louder.

4 THE WITNESS: -- we slowed down and we got up to
5 the tree. So when we got up to the tree I was like hey,
6 there's a big truck behind us. He say, he's stopping. I
7 say that's good.

8 So I looked over at Neal and I say, yo man, you
9 think we can move the big limbs off the tree so we could go
10 around and he say, you know maybe we could do that. I say
11 well let's get out and try. So we got out, walked around
12 to the front and met like in the front of the truck and we
13 proceeded to go up and by that time I start bearing to the
14 right so he told me he said, hey cuz, run. I said run? He
15 said yeah. So I started running and then a limb hit me in
16 the back and knocked me in the ditch and basically I don't
17 know nothing else.

18 BY MR. BARNES:

19 Q You were knocked down into the ditch?

20 A Right.

21 Q And --

22 A Until I crawled back up.

23 Q And when you stopped, were the lights on Bryant's
24 truck?

25 A Yeah, he put the flashers on.

Benjamin Henderson - Direct Examination by Mr. Barnes

1 Q And you call Bryant Neal, correct?

2 A Yes, sir.

3 Q And I want to make sure we know who we're talking
4 about?

5 A Yes, sir.

6 Q Were the emergency flashers on the truck?

7 A Yes, sir.

8 Q And y'all were going to get out and see what
9 portions of the tree you could move?

10 A Right.

11 Q And you were thrown into the ditch?

12 A Right.

13 Q And after being thrown, how did you get out of the
14 ditch?

15 A I kind of crawled up and then when I got close to
16 the top I guess he pulled me the rest of the way.

17 Q And when did you notice a problem with your wrist?

18 A Well, he looked at my hand and he said what's wrong
19 with your hands --

20 MR. MASSEY: Objection, Judge, I object to hearsay.

21 THE COURT: He just said he looked at my hands --

22 But you can't testify to what somebody else said.

23 THE WITNESS: Okay. Well --

24 THE COURT: And I sustain the objection.

25 THE WITNESS: Well, I looked down at my hand and

Benjamin Henderson - Direct Examination by Mr. Barnes

1 saw it wasn't turned the right way and I said yo, man,
2 something wrong. So he said --

3 THE COURT: Don't say what he might have said.

4 THE WITNESS: All right. I said there's something
5 wrong with it, bo, and he said, well -- sorry.

6 THE COURT: You're going to learn the rules as good
7 as any of us would.

8 THE WITNESS: All right. Okay. Let me get my
9 words right. So I, so I said --

10 BY MR. BARNES:

11 Q Just testify about what you said.

12 A I said to him, hey, I believe I need a doctor. So
13 we proceeded to look over at her when he said to her, is
14 you all right? She said back to him, yeah. And it really
15 started raining then, so he said let's get in the truck.
16 And we got in the truck and we called 911.

17 Q Was it y'all's intent that you weren't able to get
18 the tree out of the roadway, y'all were going to call 911?

19 A Yes, sir.

20 Q And did you go up to, you said her earlier, are you
21 talking about Ms. Greer?

22 A Yes, sir. Yes, sir.

23 Q Did the -- when she struck the tree, did it drive
24 the tree into Bryant's truck?

25 A Yes, sir.

Benjamin Henderson - Direct Examination by Mr. Barnes

1 Q And did some damage to Bryant's truck?

2 A Yes, sir.

3 Q And did you go up to Ms. Greer's vehicle --

4 A No.

5 Q Just Bryant went to Ms. Greer's vehicle?

6 A Right.

7 Q And eventually EMS came?

8 A Right.

9 Q And tell us what took place from that point.

10 A Well, when they pulled up, we got out and we walked
11 over. I told them I was having problems with my hand, my
12 left hand, my left knee, and right shoulder.

13 Q And were you transported to MCG in Augusta?

14 A Yes, sir.

15 Q And this accident occurred at 5:55 in the
16 afternoon?

17 A Yes, sir.

18 Q Still light outside?

19 A Yeah, daylight.

20 Q It was raining?

21 A Yeah, but it was daylight.

22 Q You got transported to MCG. Tell me about the
23 ambulance ride to MCG.

24 A Well, they put me on a board, gave me an IV, and
25 took me to the hospital.

Benjamin Henderson - Direct Examination by Mr. Barnes

1 Q You would have gotten to MCG sometime after --

2 A It was dark.

3 Q And what did they do for you at MCG?

4 A They took me in there and gave me an x-ray on my
5 hand and then they said it was fractured --

6 MR. MASSEY: Judge --

7 THE COURT: You can't say what they said. You can
8 say what they said.

9 THE WITNESS: Okay. They took me in there, looked
10 at my hand and they put a cast on it.

11 BY MR. BARNES:

12 Q They put a cast on your hand?

13 A Yeah.

14 Q And how long were you at the hospital that night?

15 A I think we got home maybe about 4 o'clock.

16 Q A long night?

17 A A long night.

18 Q Did they have to cut your clothes off?

19 A All of them.

20 Q EMS cut your clothes off?

21 A The people at the hospital.

22 Q So when you got to the hospital, the people at the
23 hospital cut your clothes off?

24 A Yeah.

25 Q And you went back to MCG nine days later?

Benjamin Henderson - Direct Examination by Mr. Barnes

- 1 A Right.
- 2 Q And how long does it take to get from Hampton or
- 3 Allenton to MCG in Augusta?
- 4 A Maybe about three or four hours.
- 5 Q Okay. And you went back and did you see Dr.
- 6 Carter?
- 7 A Yes, sir.
- 8 Q And Dr. Carter took your splint off?
- 9 A Right.
- 10 Q And you came home that day?
- 11 A Right.
- 12 Q And then about two months later on October 4th, you
- 13 decided to see Dr. Vega?
- 14 A Right.
- 15 Q And why did you decide to see Dr. Vega?
- 16 A It wouldn't -- it wouldn't do right. It still was
- 17 hurting.
- 18 Q What did Dr. Vega do for you?
- 19 A Gave me medication.
- 20 Q Told you to follow back up in two weeks?
- 21 A Two weeks.
- 22 Q And did you do that?
- 23 A Every two weeks.
- 24 Q And he eventually sent you to Hampton Regional
- 25 Medical Center for an x-ray?

Benjamin Henderson - Direct Examination by Mr. Barnes

- 1 A Right.
- 2 Q With Dr. Warren, correct?
- 3 A Yeah.
- 4 Q And you went and had that x-ray performed?
- 5 A Yeah.
- 6 Q And you continued to treat with Dr. Vega. Your
- 7 last visit with Dr. Vega was June 29th of 2011, right?
- 8 A Yes, sir.
- 9 Q So roughly eleven months?
- 10 A Yes, sir.
- 11 Q And he prescribed medication for you?
- 12 A Yes, sir.
- 13 Q I'm going to hand you what I marked as Exhibit 12
- 14 and want to ask you if you can identify that document?
- 15 A It is my visits to the doctor.
- 16 Q And in addition to your visits, are those also your
- 17 medical expenses that you've incurred as a result of this
- 18 collision?
- 19 A Yes, sir.
- 20 Q And the bills are attached?
- 21 A Yes, sir.
- 22 Q And have those bills been paid?
- 23 A No. No, sir.
- 24 Q And what is the amount on Plaintiff's Exhibit 12?
- 25 A \$5,521.20.

Benjamin Henderson - Direct Examination by Mr. Barnes

1 Q And those are the expenses you've incurred in this
2 accident?

3 A Yes, sir.

4 Q And I want you to tell us by June 29th, 2011, your
5 wrist was starting to get better?

6 A Right.

7 Q And do you still have problems today from time to
8 time?

9 A From time to time, yes, sir.

10 Q And explain that to us and what you've experienced?

11 A Well, right here in my thumb part, it's kind of
12 like pain, hurts when I grab something up it'll hurt and up
13 under here it hurts.

14 Q Were you able to go back to work with Bryant after
15 this collision?

16 A No. No, sir.

17 MR. BARNES: Your Honor, at this time, we'd move
18 Plaintiff's Exhibit 12 into evidence.

19 MR. MASSEY: No objection, Your Honor.

20 THE COURT: Plaintiff's 12 is in evidence without
21 objection.

22 (Plaintiff's Exhibit 12 was entered into evidence.)

23 BY MR. BARNES:

24 Q Benjamin, how -- how big around was this tree?

25 A It was a big tree. It's a real big tree.

Benjamin Henderson - Cross-Examination by Mr. Massey

1 Q Big enough y'all were able to see it fall?

2 A Yes, sir.

3 Q Big enough somebody else on the road should have
4 seen it as well?

5 A Yes, sir.

6 MR. MASSEY: Objection, Your Honor, speculation.

7 THE COURT: I will sustain it.

8 MR. BARNES: Thank you, Mr. Henderson, I don't have
9 anything else.

10 THE COURT: Thank you. Thank you, Mr. Barnes.

11 Mr. Massey.

12 MR. MASSEY: Thank you, Your Honor, may it please
13 the Court?

14 THE COURT: Yes, sir.

15 **CROSS-EXAMINATION**

16 BY MR. MASSEY:

17 Q Good afternoon -- I almost said good morning. Good
18 afternoon, Mr. Henderson.

19 All right. So you, you'd been up here in Aiken
20 with your cousin working; is that right?

21 A Yes, sir.

22 Q And you headed -- head back home back to Hampton
23 County?

24 A Uh-huh.

25 Q Is that right?

Benjamin Henderson - Cross-Examination by Mr. Massey

1 A Yes, sir.

2 Q All right. And you're traveling on Highway 278
3 between New Ellenton and Barnwell; is that right?

4 A Yes, sir.

5 Q All right. Now Highway 278 is a two lane road,
6 right? One lane going in each direction?

7 A Yes, sir.

8 Q All right. And it is from New Ellenton to
9 Barnwell, it's a mostly wooded area; is that right?

10 A Yes, sir.

11 Q A lot of trees, aren't there?

12 A Yes, sir.

13 Q A lot of trees. All right. And there's, there's
14 not a really whole lot other than trees on that stretch is
15 there?

16 A No.

17 Q I mean there's no, there's no McDonalds between New
18 Ellenton and Barnwell, is there?

19 A No.

20 Q I mean there's no other types of restaurants on
21 that stretch of road?

22 A I think it's owned by the Savannah River site.

23 Q Part of it may be, but -- but there aren't any --
24 any restaurants along that stretch?

25 A No.

Benjamin Henderson - Cross-Examination by Mr. Massey

1 Q They're no gas stations on that stretch?

2 A No.

3 Q Is that right?

4 A No.

5 Q Really no types of any businesses with big parking
6 lots on that stretch?

7 A (Nodded Head.)

8 Q Isn't that right?

9 A Yes, sir.

10 Q And, I'm sorry, I just need you to say it verbally.

11 A Yes, sir.

12 Q Okay. Thank you. All right.

13 So y'all are driving on Highway 278 going toward
14 Barnwell there and it -- it was raining, wasn't it?

15 A Yeah.

16 Q All right. And -- and in fact -- I mean it was --
17 it was really raining, wasn't it? It was really coming
18 down, wasn't it?

19 A Well, it started a drizzle. When the tree fell
20 after maybe five minutes after the tree fell, I was trying
21 to get my cousin to get out and remove the debris before
22 the rain come.

23 Q All right. Well, it was -- it was raining, it was
24 raining hard before y'all saw that tree falling, right?

25 A I mean, I was trying to get home.

Benjamin Henderson - Cross-Examination by Mr. Massey

1 Q I understand that. I'm sure it was late in the day
2 and you wanted to go home, but I mean you told us earlier,
3 I think in, in answering Mr. Barnes questions that Bryant,
4 Neal, your cousin --

5 A Right.

6 Q -- had said that he was having some trouble seeing.

7 A Right.

8 Q -- as he was driving. And he was having trouble
9 seeing because it was raining hard; isn't that right?

10 A Uh-huh.

11 Q And, in fact, I mean it was raining so hard, I mean
12 you could see to a point, but you couldn't see real well;
13 you couldn't see real well; isn't that right?

14 A Yes, sir.

15 Q Okay. And -- and your cousin was driving, right?

16 A Yes, sir.

17 Q And in order to be safe, I mean because of the
18 rain, he slowed down, didn't he?

19 A Yes, sir.

20 Q All right. He slowed down to where he was doing
21 about 40 miles an hour; isn't that right?

22 A I have no idea. I wasn't driving.

23 Q Okay. Mr. Henderson, do -- do you remember
24 sometime last year when I think you maybe even come with
25 your cousin over to Mr. Barnes' office and -- and an

Benjamin Henderson - Cross-Examination by Mr. Massey

1 attorney from my office, a lady, came down and she asked
2 you a bunch of questions.

3 A Yes, sir.

4 Q Do you remember that?

5 A Yes, sir.

6 Q And you remember there was a, there was a court
7 reporter there kind of like what we have here today?

8 A Yes, sir.

9 Q Right. And much more -- much more informal than
10 where we are today.

11 A Right.

12 Q But that court reporter, before everybody got
13 started, the court reporter made you raise your right and
14 swear to tell the truth, didn't she?

15 A Yes, sir.

16 Q All right.

17 MR. MASSEY: Judge, can I open Mr. Henderson's
18 transcript.

19 THE COURT: Yes, sir.

20 MR. MASSEY: Mr. Henderson --

21 Judge, can I approach?

22 THE COURT: You may.

23 BY MR. MASSEY:

24 Q Mr. Henderson, I'm going to show you, this is a
25 transcript that the court reporter typed up after your

Benjamin Henderson - Cross-Examination by Mr. Massey

1 deposition that day.

2 A Okay.

3 Q All right. And if you look through here, you'll
4 see down at the bottom of every page there's a number?

5 A Yeah.

6 Q That's the page number, okay? And over here on the
7 left-hand side there are numbers; those are the line
8 numbers and you see right here where there are Q's and A's.
9 The Q's are for the questions that you were asked and the A
10 is your answer. Okay? Take that for me just for a minute.

11 All right. Turn with me if you would, turn to page
12 21.

13 You there, page 21?

14 A Yeah.

15 Q I'm going to start on line 17. What I'm going to
16 do is I'm going to read the questions and I'm going to read
17 what your answers were to it and I just want you to tell me
18 if I read something incorrect. Okay?

19 A (Nodded head.)

20 Q And I'm going to start on line 17. And the
21 question was, Do you know how fast she was driving down the
22 road when she hit the tree.

23 And your answer was, No, but I know we was maybe
24 going 40, you know for the visibility, the rain, you know.

25 Did I read that right?

Benjamin Henderson - Cross-Examination by Mr. Massey

1 A You read that right.

2 Q All right. So the, the rain was coming down real
3 hard and Bryant was driving and -- and it was causing
4 problems with visibility and he had to slow down; isn't
5 that right?

6 A That's what it sound like.

7 Q Well that's what you said, right?

8 A Okay. Yes, sir.

9 Q All right. And he slowed down and he was going
10 about 40 miles an hour; is that right?

11 A Yes, sir.

12 Q All right. And that was a -- that was a pretty
13 safe speed, wasn't it?

14 A I would think so.

15 Q Okay. All right. So y'all going down this fairly
16 isolated stretch here on 278, it's raining real hard and a
17 tree falls across the road; is that right?

18 A Yes, sir.

19 Q All right. Now the tree -- and your cousin and I
20 talked about this some earlier, but the tree fell from the
21 other side of the road; isn't that right?

22 A Right.

23 Q And when it fell, the trunk part of the tree
24 covered all the lane coming towards Aiken, didn't it?

25 A Yes, sir.

Benjamin Henderson - Cross-Examination by Mr. Massey

1 Q All right. And then the part that was in front
2 of -- and y'all -- in front of y'all, the part that was in
3 your lane, the lane going towards Barnwell, that was the
4 part that had the branches and the limbs and the leaves and
5 stuff like that?

6 A Right.

7 Q Isn't that right?

8 A Yeah.

9 Q So y'all had the branches and leaves there in front
10 of you when it fell, right?

11 A Right.

12 Q Okay. And you actually saw the tree as it was
13 falling and as these branches and limbs right down in front
14 of you and landed in the road right in front of you; is
15 that right?

16 A Yes, sir.

17 Q All right. And this wasn't a small tree, but it
18 was a big tree; isn't that right?

19 A It was a pine.

20 Q Okay. All right. Good. It was a -- it was a tall
21 pine, real tall, obviously, it's covering both lanes,
22 right, and it was big around?

23 A Yes, sir.

24 Q And it was so big that it covered so much of the
25 lane that y'all couldn't get past it; is that right?

Benjamin Henderson - Cross-Examination by Mr. Massey

- 1 A No, we couldn't get by.
- 2 Q So y'all stopped there in the road; is that right?
- 3 A Yes, sir.
- 4 Q And you sat there inside the truck for a couple of
- 5 minutes debating on what you should do; is that right?
- 6 A Yes, sir.
- 7 Q All right. And finally what y'all decided was that
- 8 you were going to get out and you were going to see if you
- 9 could move a little bit of the branches, the top of that
- 10 tree, so -- so that you could drive the truck around it?
- 11 A Right.
- 12 Q Is that right? All right. All right. Now y'all
- 13 had a cell phone in the car, didn't you?
- 14 A Yes, sir.
- 15 Q All right. Did you have one?
- 16 A No, sir.
- 17 Q But your cousin had one, didn't he?
- 18 A Yes, sir.
- 19 Q All right. And y'all didn't call 911 before you
- 20 got out of the truck, did you?
- 21 A No, we didn't.
- 22 Q You didn't call anybody else to come help, did you?
- 23 A No, we didn't.
- 24 Q You didn't call the DOT or anybody like that?
- 25 A No, we didn't.

Benjamin Henderson - Cross-Examination by Mr. Massey

- 1 Q Did you call Aiken County?
- 2 A No, we didn't.
- 3 Q All right. And -- and then there was a big truck,
- 4 a eighteen wheeler maybe that had come and stopped right
- 5 behind you; is that right?
- 6 A It was behind us; it wasn't right behind us.
- 7 Q But he did stop back there behind you?
- 8 A Uh-huh (affirmative response).
- 9 Q Is that right?
- 10 A Yes, sir.
- 11 Q Y'all didn't go back there to him and ask him if
- 12 he'd call somebody on his, on his radio to see if somebody
- 13 would come out there and help with that tree, did you?
- 14 A We had a phone.
- 15 Q You had a phone. That's right, you had a phone,
- 16 you didn't even use it; is that right?
- 17 A Yes, sir.
- 18 Q Okay. All right. So y'all go up to the tree --
- 19 you walk up to that tree and it's -- it's raining real
- 20 hard?
- 21 A No, we never got up to the tree.
- 22 Q Okay. Well, and but it's raining real hard?
- 23 A Right.
- 24 Q Right. You're walking up to the tree, right?
- 25 A Right.

Benjamin Henderson - Cross-Examination by Mr. Massey

1 Q There was nobody -- I mean nobody went on the other
2 side of the tree in order to warn people over there, did
3 they?

4 A No.

5 Q Okay. All right. So your plan was to move some of
6 these branches to try to move over as best you could in
7 order to go on by and get on back to Hampton?

8 A Right.

9 Q Yeah. All right. And you're -- you're standing
10 there in the middle of this rainstorm, you walk up close to
11 the tree and when you get up there, you get an even better
12 idea at that point just how big this thing is, don't you?

13 A We never got up there.

14 Q Well, you got out of the truck, right?

15 A Yes, sir.

16 Q You started walking up towards the tree?

17 A Yes, sir.

18 Q Right? Let me show you -- this is Defendant's
19 Exhibit 1, and this is an exhibit -- actually it's some
20 diagram that your cousin drew and we talked about it some
21 earlier, but what he's got here --

22 A I see it.

23 Q You see it; all right. It's got here where there's
24 a blue dot, there's a blue dot right beside the limbs here
25 and he said that was him and there's a red dot right there

Benjamin Henderson - Cross-Examination by Mr. Massey

1 from you; does that look right to you?

2 A Yeah.

3 Q Okay. So y'all got up pretty close to the tree?

4 A I never saw it because I started running.

5 Q You never saw the tree?

6 A No, until it hit me then I felt it. I didn't
7 really see it. When she hit the tree, I didn't see.

8 Q Pause there. You say you never saw the tree?

9 A I saw the tree when it fell, but I never --

10 Q When you got out of the truck did you see the tree?

11 A Yeah, we was walking toward it.

12 Q And you couldn't -- okay. All right. All right.

13 But you got -- you got out of the truck and you started
14 walking up in that direction and the plan was to try to
15 move some of these things around, but you figured out
16 pretty quick you weren't going to be able to do that; isn't
17 that right?

18 A No, we hadn't made no decision. The decision was
19 made when she came down and hit the tree. Then we decided
20 to run.

21 Q All right. Well, I mean you were able to make
22 enough of a decision to know that you weren't going to be
23 able to go around the tree on the shoulder?

24 A No, we couldn't go around.

25 Q Isn't that right? Because there's really --

Benjamin Henderson - Cross-Examination by Mr. Massey

1 there's really not much of a shoulder there at all?

2 A Right.

3 Q Isn't that right?

4 A (Nodded head.)

5 Q Okay. And you're out there just a minute, a couple
6 of minutes and then your cousin yells at you to run; is
7 that right.

8 A Yeah. Yes, sir.

9 Q And -- then you don't have to call me sir, but --
10 but Ms. Greer hits the tree; is that right?

11 A Yes, sir.

12 Q All right. And then as I understand it, part of
13 that tree hit you and you fell down on the ground?

14 A I fell in the ditch.

15 Q You fell into the ditch. All right. Let's talk
16 for just a few minutes about -- about your injuries, about
17 the medical treatment, if we can. I think you told us that
18 an ambulance took you over to MCG; is that right?

19 A Yes, sir.

20 Q All right. Over in Augusta. And then about seven
21 to ten days later, you went back to MCG to visit Dr.
22 Carter, the orthopedist that we just saw on screen?

23 A They gave me a paper and told me to come back and
24 have the cast removed.

25 Q Right. They came back -- did they -- they put that

Benjamin Henderson - Cross-Examination by Mr. Massey

1 splint on you and told you to come back and see the
2 orthopedist about seven to ten days later, right?

3 A Right. Right. Yes, sir.

4 Q I think if we look at Exhibit 12 here, which is a
5 list of all your bills, it looks like the accident happened
6 on July 27, and it looks like you went back to see Dr.
7 Carter on August the 5th; does that sound right?

8 A If that's what it say, yes.

9 Q All right. All right. Then about two months after
10 that -- you saw Dr. Carter on August the 5th. About two
11 months later, I think it was October the 4th, you went to
12 see Dr. Vega?

13 A Yes, sir.

14 Q Down here; is that right?

15 A Yes, sir.

16 Q All right. And then at some point, Dr. Vega sent
17 you to -- to the hospital there in Hampton to have another
18 x-ray done on your left wrist?

19 A I was having pain in my wrist.

20 Q I understand. And he sent you over to the
21 hospital?

22 A Yes.

23 Q Is that right?

24 A (Nodded head.)

25 Q All right. Now you told us earlier I think that

Benjamin Henderson - Cross-Examination by Mr. Massey

1 you saw Dr. Vega about every two weeks; is that right?

2 A Something like that, yeah.

3 Q All right. Well let's -- I want to look at this
4 here if we can. Looks like your first visit was on October
5 4th, right?

6 A Uh-huh (affirmative response).

7 Q Your second visit was October 18th, that's about
8 two weeks later, right? That next visit's October 18th?

9 A Yes, sir.

10 Q Okay. All right. Then you went back towards the
11 end of December, right?

12 A Yes, sir.

13 Q Then you had a visit in February; a visit in April,
14 and then your last visit was on June 29th?

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q And so you had a total of six visits with Dr. Vega;
19 is that right?

20 A (Nodded head.)

21 Q And your visit -- I mean there's -- I think I heard
22 earlier that you treated with him over a period of eleven
23 months, but your first visit was in October, October 4th.
24 So October, November, December, January, February, March,
25 April, May, June, we'll just say July because it was the

Benjamin Henderson - Cross-Examination by Mr. Massey

1 end of June?

2 A Right.

3 Q That's about nine months, right, so you saw him six
4 times over a period of nine months?

5 A Okay.

6 Q Is that right?

7 A (Nodded head.)

8 Q And you haven't had any other treatment after you
9 finished up with him, have you?

10 A No, I haven't. I can't afford it.

11 Q Okay. Well, the visit to the emergency room, a
12 followup visit to the orthopedist over here, and six visits
13 to Dr. Vega, right?

14 A Yes, sir.

15 Q All right. Now when -- when you and Mr. Barnes
16 were talking just a few minutes ago, you told us that you
17 were still having some trouble with your left wrist.

18 A Yes, sir.

19 Q Is that right?

20 A (Nodded head.)

21 Q All right. Now the last couple -- the last couple
22 of times that -- that you saw Dr. Vega, you had very
23 minimal tenderness in your wrist, didn't you?

24 A No, it was still hurting from time to time.

25 Q Okay. All right. Well the last couple of times

Benjamin Henderson - Cross-Examination by Mr. Massey

1 that you went to see Dr. -- to Dr. Vega, he -- you were
2 able to move your wrist around fine, weren't you?

3 A It hurts from time to time. It don't hurt every
4 day.

5 Q Okay. Well -- and -- but again the last time you
6 saw Dr. Vega, the last time you saw anybody for injuries
7 related to this thing was a little over three years ago on
8 June 29th, 2011; is that right?

9 A Yes.

10 Q Thank you, sir. That's all the questions I have.

11 THE COURT: Redirect, Mr. Barnes?

12 MR. BARNES: I don't have anything, Your Honor.

13 THE COURT: Thank you. Thank you very much, Mr.
14 Henderson. You may step down.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Mr. Barnes, your next
17 witness?

18 MR. BARNES: Your Honor, we would call Patricia
19 Greer.

20 THE COURT: All right. Ms. Greer, if you would
21 come around and be sworn for us please?

22 PATRICIA GREER,

23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat and state your name for the
25 record.

Patricia Greer - Direct Examination by Mr. Barnes

1 THE WITNESS: My name is Patricia Louanne Greer.

2 **DIRECT EXAMINATION**

3 **BY MR. BARNES:**

4 Q Good afternoon, Ms. Greer, how are you doing?

5 A Pretty well, thank you.

6 Q You live here in Aiken?

7 A I do.

8 Q You still live over on Hillsborough Drive?

9 A I do.

10 Q And where is Hillsborough Drive?

11 A It's, of course, in Aiken. It's right off of
12 Highway 19 in the Shiloh Heights Subdivision.

13 Q Out towards Edgefield?

14 A Yes, sir.

15 Q And when we met at your deposition back in 2012,
16 you were working as an after-school tutor?

17 A At that time, yes, sir, I was.

18 Q You still doing that job?

19 A No, sir, the company's since gone out of business.

20 Q And we're here about the collision that occurred on
21 July 27th of 2010, and you were involved in that collision,
22 correct?

23 A Correct.

24 Q And on that day, you had kind of been down in my
25 neck of the woods, down to Jasper County for a job

Patricia Greer - Direct Examination by Mr. Barnes

1 interview with the school district in Ridgeland, correct?

2 A Correct..

3 Q And you were coming back to your home in Aiken?

4 A That's correct.

5 Q And you came up through Barnwell?

6 A Uh-huh (affirmative response).

7 Q Correct?

8 A Yes, sir.

9 Q And you were on your way to Gold's Gym?

10 A That's true.

11 Q Correct? And the Gold's Gym is located over near
12 South Aiken High School?

13 A It is.

14 Q Over on Corporate Parkway, correct?

15 A Yes, sir.

16 Q And you were going to a water aerobics class?

17 A I was.

18 Q And you had been going to these water aerobics
19 classes for a few months?

20 A Yes, sir.

21 Q And the class you were going to started at six
22 o'clock?

23 A That's correct.

24 Q Correct, six o'clock p.m., correct?

25 A Yes, sir.

Patricia Greer - Direct Examination by Mr. Barnes

- 1 Q And the class lasted for about an hour, correct?
- 2 A Yes, sir.
- 3 Q And you were driving a Chevy Cobalt?
- 4 A I was.
- 5 Q And you had no problems with the vehicle?
- 6 A No.
- 7 Q Your lights worked fine?
- 8 A They did.
- 9 Q Your brakes worked fine?
- 10 A Yes, sir.
- 11 Q Your windshield wipers worked fine?
- 12 A Yes, sir.
- 13 Q And you have your glasses on, much like me -- and
- 14 you had those on on the date this accident occurred?
- 15 A That's correct.
- 16 Q You weren't on your phone?
- 17 A No, sir.
- 18 Q You said it was in your purse?
- 19 A It was.
- 20 Q And you didn't have the radio on at the time of the
- 21 accident?
- 22 A No, I was listening to a book on tape.
- 23 Q And once it started raining heavily, you turned off
- 24 the book on tape, correct?
- 25 A That is correct.

Patricia Greer - Direct Examination by Mr. Barnes

- 1 Q You didn't have any passengers in your vehicle?
- 2 A No.
- 3 Q So you were driving along paying attention to the
- 4 roadway without any distractions when it started raining,
- 5 correct?
- 6 A That is correct.
- 7 Q Before it started raining, you had your cruise on?
- 8 A That's correct.
- 9 Q And you were going 55 maybe a few miles above?
- 10 A Right.
- 11 Q And you testified that once it started raining, you
- 12 took the cruise off and you were going between 35 and 40,
- 13 when you started looking for a location to pull off,
- 14 correct?
- 15 A That's correct.
- 16 Q You did not see the tree fall?
- 17 A No, sir.
- 18 Q It was already in the roadway?
- 19 A That's correct.
- 20 Q You didn't see Mr. Henderson's vehicle on the other
- 21 side of the tree?
- 22 A No, sir.
- 23 Q You didn't see his headlights?
- 24 A No, sir.
- 25 Q You didn't see his emergency flashers?

Patricia Greer - Direct Examination by Mr. Barnes

1 A No, sir.

2 Q You estimated this tree was so big that you felt
3 like you couldn't put your arms around it, correct?

4 A That's correct.

5 Q And you actually didn't know someone else had been
6 involved until after this collision, correct?

7 A That's correct.

8 Q And you were going -- you testified you were going
9 approximately 35 or 40 when you struck the tree, correct?

10 A Yes, sir.

11 Q And your airbag deployed?

12 A Yes, sir.

13 Q And your vehicle was totaled as a result?

14 A Unfortunately, yes, sir.

15 Q And I want to --

16 MR. BARNES: Your Honor, may I approach?

17 THE COURT: Yes, sir.

18 BY MR. BARNES:

19 Q I want to hand you what I've marked as Plaintiff's
20 Exhibit No. 3 and ask you do those photographs reflect the
21 damage to your vehicle?

22 A Yes.

23 Q And that's your vehicle?

24 A Yes, sir.

25 Q Following this collision?

Patricia Greer - Direct Examination by Mr. Barnes

1 A Yes, sir.

2 MR. BARNES: At this time, Your Honor, we would
3 move Plaintiff's Exhibit No. 3 into evidence.

4 THE COURT: Any objections, Mr. Massey?

5 MR. MASSEY: No, sir.

6 THE COURT: Plaintiff's 3 is in evidence without
7 objection.

8 (Plaintiff's Exhibit No. 3 was entered into
9 evidence.)

10 BY MR. BARNES:

11 Q Following this collision with the tree, you
12 yourself were transported to the hospital, correct?

13 A That's correct.

14 Q And you were transported to Aiken Regional?

15 A Yes, sir.

16 Q And you had a pulled muscle over on your right-hand
17 side over by your wrist?

18 A That's correct.

19 Q And you were treated and you were released that
20 day?

21 A That's correct.

22 Q When you collided with the tree, it was
23 approximately 5:55 in the afternoon, correct?

24 A Yes, sir.

25 Q And in July, when this accident occurred, it gets

Patricia Greer - Direct Examination by Mr. Barnes

1 dark around 8:30, 8:45 at night, correct?

2 A Correct.

3 Q So even though it was raining, it was still light
4 outside?

5 A Yes.

6 Q And although you aren't 100 percent sure, you
7 believe you were driving for approximately 30 minutes
8 looking for a place to pull off?

9 A That's correct.

10 Q And in that amount of time that you were driving,
11 you didn't pass any house or driveway or pull off of
12 another road to pull off to stop and get out of the
13 roadway?

14 A No, sir.

15 Q You just didn't find a place to pull off before
16 striking the tree?

17 A That's correct. There was not place where I could
18 safely pull off.

19 Q And what would constitute a place you could safely
20 pull off?

21 A Where I could get my car off the road enough where
22 I wouldn't be running into a ditch, there wouldn't be
23 another car running into me or if a car came up behind me
24 and tried to pass me, that car would not be in danger of
25 clipping me.

Patricia Greer - Direct Examination by Mr. Barnes

1 Q And you -- even though you were on your way to the
2 aerobics class, you were still looking for a place to pull
3 off?

4 A Yes, by the time it started raining heavy enough
5 where I knew I needed to get off the road, I pretty much
6 decided to forget the aerobics class. It's just not worth
7 it.

8 Q It's 13.61 miles approximately from where the
9 accident occurred to the Gold's Gym?

10 A Well, I wouldn't know, sir. Like I said, by the
11 time it started raining heavily, I -- no, it's not worth
12 the risk. I need to take my time, get to Aiken and be
13 safe.

14 Q When I asked you at your deposition, you didn't say
15 I decided to scratch the aerobics class, did you?

16 A No.

17 Q You said the only reason you remembered this
18 accident happening is because you were on your way to the
19 aerobics class?

20 A And I was.

21 Q And we can go through some pull offs, there are a
22 few, if you'll acknowledge, there are plenty of places to
23 pull off in the several miles before this collision
24 occurred, weren't there?

25 A I would not know.

Patricia Greer - Direct Examination by Mr. Barnes

1 MR. BARNES: Your Honor, what -- I just want to use
2 this for demonstrative purposes; this is Google Earth and
3 what I've done is put on here where the collision occurred.
4 Mr. Massey and I talked and he agreed to the GPS
5 coordinates of where the accident occurred. So I just want
6 to walk through --

7 THE COURT: Any objections, Mr. Massey?

8 MR. MASSEY: No, sir.

9 BY MR. BARNES:

10 Q I've got the collision location on here, Ms. Greer,
11 okay. And I want to go up just to zoom in on that one pull
12 off.

13 MR. BARNES: Can we dim the lights please?

14 Thank you.

15 BY MR. BARNES:

16 Q And we can -- we can zoom in here and go into the
17 street here if you like, but that's a place to pull off
18 there, isn't it?

19 A It appears to be, yes.

20 Q And that location is approximately .6 of a mile
21 before this accident occurred. Do you have any reason to
22 dispute that?

23 A No.

24 Q All right. And as we go on back, we go back here
25 to the second pull off. This is another place you could

Patricia Greer - Direct Examination by Mr. Barnes

1 pull off going through here. That's another place you
2 could pull off if you needed to safely get off the roadway,
3 correct?

4 A Correct.

5 Q You didn't pull at either one of these two, did
6 you?

7 A I was so nervous when I was driving. I just wanted
8 to get off the road and I'm not familiar with the road. So
9 it's raining hard enough. It's very possible that I did
10 not see those pull off places.

11 Q But you were looking for a place to pull off?

12 A Yes, it was just really difficult to see.

13 Q If you were looking for a place to pull off, how do
14 you not see these?

15 A Nerves.

16 Q And this second location is less than a mile from
17 the collision site; do you have any reason to dispute that?

18 A I wouldn't know about the distance.

19 Q Okay. We can measure it if you like on here. I've
20 already done this in hopes of saving us some time, but if
21 you'd like to -- for us to measure it -- we can use Google
22 Earth to do that. Let's -- let's go on to -- there's other
23 places I've marked them on here 3, 4 and 5. These were
24 other places you could pull off right there. This is on
25 the other side of the road, another location to pull off,

Patricia Greer - Direct Examination by Mr. Barnes

1 correct?

2 A It looks like it.

3 Q And you didn't pull off at that one, did you?

4 A No.

5 Q That's less than 2 miles where the accident site
6 occurred, correct?

7 A Well --

8 Q And we could go on back, but if we go on back we
9 can get to where you turn off to go to Williston, which is
10 right there where 781 juts out and there's some houses
11 right there in that area; you passed by those houses,
12 didn't you?

13 A I don't know. I'm not familiar with the roads. So
14 I'm just -- I was trying to keep my car in the middle,
15 safely on the road trying to find myself a safe spot to
16 pull over. So I don't know.

17 Q And you passed by these houses and also these pull
18 offs and once you get to where the Savannah River site is,
19 correct?

20 A I don't know. I wouldn't know. Like I said, I'm
21 not familiar with the road.

22 Q But you didn't pull off at any point in time, did
23 you?

24 A No.

25 Q Thank you, Ms. Greer. I don't have any further

Patricia Greer - Cross-Examination by Mr. Massey

1 questions.

2 THE COURT: Thank you. Thank you very much, Mr.
3 Barnes.

4 MR. MASSEY: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. MASSEY:

8 Q You okay?

9 A Yes.

10 Q Ms. Greer, I may ask you a few questions somewhat
11 repetitive of what Mr. Barnes asked, but bear with me,
12 okay?

13 A Okay.

14 Q All right. Do you mind -- do you mind telling us
15 your age?

16 A I will be 52 in November.

17 Q Okay. All right. So back four years ago in July
18 2010 when this car accident happened, you would have been
19 what, 47?

20 A Correct.

21 Q Does that sound right? All right. Are you
22 married?

23 A No.

24 Q All right. Well, let's talk about July 27th, 2010,
25 a little bit more. Do you remember that day?

Patricia Greer - Cross-Examination by Mr. Massey

1 A Yes.

2 Q All right. And you'd been down to Jasper County
3 for an interview for a teaching position; is that correct?

4 A That's correct.

5 Q All right. And you were on your way back to Aiken
6 as Mr. Barnes stated, hopefully going towards the gym; is
7 that right?

8 A Correct.

9 Q All right. But you were driving along Highway 278?

10 A Correct.

11 Q Did you have, did you have anybody with you or were
12 you by yourself?

13 A I was by myself.

14 Q All right. And in looking back a little over four
15 years ago when -- when this happened, how familiar were you
16 with Highway 278 between Barnwell and New Ellenton?

17 A None at all familiar. I don't go on that stretch
18 of 278 very often.

19 Q Well some of us -- some of us may have been on it a
20 little bit more or may be more familiar, but let's talk
21 about 278 a little bit. Two lanes or four lanes?

22 A Two lanes.

23 Q One lane going in each direction?

24 A That's correct.

25 Q In that area, 1 lane going to Barnwell and 1 lane

Patricia Greer - Cross-Examination by Mr. Massey

1 going to New Ellenton; is that right?

2 A Yes.

3 Q All right. And how about, how about along the
4 highway, we saw -- we saw Google Earth there a minute ago,
5 but how about along the highway, any types of restaurants
6 on there?

7 A No, sir.

8 Q Any types of gas stations?

9 A No.

10 Q Walmart?

11 A No.

12 Q Any -- any type of business activity that you know
13 of between Barnwell and New Ellenton?

14 A Not that I know of, no, sir.

15 Q All right. Well, if there's not a whole lot of
16 business through there, what is there; what's along the
17 highway between Barnwell and New Ellenton?

18 A Trees, grass and that's about it.

19 Q All right. It's a pretty lonely, isolated stretch
20 of road, isn't it?

21 A Yes.

22 Q All right. And you're driving back to Aiken from
23 Jasper that day and we've talked about this some with other
24 witnesses, but you tell us, what was the weather like?

25 A Well, of course it started off, it was overcast and

Patricia Greer - Cross-Examination by Mr. Massey

1 as I'm driving down the road, it starts to rain. So as
2 soon as it starts to rain -- as has been mentioned, I had
3 my cruise control on and when it started to rain, I knew
4 for safety reasons I need to take off the cruise and just
5 control the car manually, which I did.

6 Of course, flipped on my windshield wipers and as
7 soon as the rain started to increase, my anxiety level
8 started to increase, and so I, you know, I slowed down and
9 I just started looking around for a place to pull over so I
10 could either wait until the rain slacked off enough to
11 where I could see.

12 Q Okay.

13 A Or better yet, stopped entirely.

14 Q Okay. All right. You said the rain level
15 increased. I described it earlier as kind of like a
16 monsoon. Tell us -- I mean I think this is important,
17 Tell the jury how hard was it raining or what was the
18 intensity level of the rain when you were out there in the
19 car that day?

20 A Well, I want use the terminology my grandfather
21 would have used because it's less than polite language, but
22 let's just say it's like pouring water out of a bucket or a
23 boot.

24 Q All right. Was it -- was it raining hard enough
25 that you had to have your headlights on?

Patricia Greer - Cross-Examination by Mr. Massey

1 A Yes.

2 Q All right. Was it raining hard enough that you had
3 your windshield wipers on as fast as they could go?

4 A Yes.

5 Q All right. And was it -- was it raining hard
6 enough that it affected your visibility from what you could
7 see in front of you and beside you?

8 A Yes.

9 Q All right. All right. Now you told us earlier,
10 and you and Mr. Barnes talked about this some, that your
11 plan was to go to the gym; is that right?

12 A Correct.

13 Q All right. And Mr. Barnes pointed out that your
14 gym appointment would have been at six and this happened
15 just before six?

16 A Correct.

17 Q As you're driving along -- along in this downpour,
18 are you thinking, I'm late; I've got to hurry up and get to
19 the gym?

20 A No, I'm thinking there's no way I'm going to get to
21 water aerobics so I'm just going to take my time. And you
22 know, the gyms, the gyms open late enough that I could go
23 work out on the machines if I wanted to.

24 Q All right. So you're driving along. You told us
25 you turned off cruise control, but it's raining real hard

Patricia Greer - Cross-Examination by Mr. Massey

1 and about how fast were you going at that point?

2 A I would say between 35 and 40.

3 Q Okay. All right. So you're driving, you're
4 driving by yourself. You're driving on this -- this
5 stretch of road on 278 about 35 or 40 miles an hour in a
6 driving rain storm. What are you thinking?

7 A I'm thinking please, Lord, just keep me safe and
8 just let me get to my home in one piece. I don't want to
9 end up in a ditch or running into anybody.

10 Q All right. And you -- I think you told Mr. Barnes
11 earlier that you were trying to find a safe place to pull
12 over?

13 A Correct.

14 Q All right. You were looking for a safe place to
15 pull over?

16 A Correct.

17 Q We -- we just saw Google Earth. It would have been
18 a neat thing to have had with you that day, wouldn't it?

19 A Oh, yes.

20 Q And -- and -- and in looking at that, some of
21 those -- some of those places we see the trees on both
22 sides of the little turnouts, you see that?

23 A Yes.

24 Q All right. And was it raining hard enough, Ms.
25 Greer, that it would have been difficult to see those type

Patricia Greer - Cross-Examination by Mr. Massey

1 places?

2 A Yes.

3 Q Well -- and you've touched on this some already.

4 Mr. Barnes has asked you some questions about it, you said
5 you'd been driving for a little while looking for a place
6 to turn off or some place to stop. Why didn't you stop?

7 A I didn't want to stop in the middle of the road
8 because I didn't know if anybody would be coming behind me
9 and if it was raining hard enough where I couldn't see, it
10 could very easily be raining hard enough where someone
11 coming behind me couldn't see and they could have slid into
12 the back of my car.

13 Q And, Ms. Greer, we saw some of those pictures up on
14 the screen a minute ago from Google Earth about some of
15 these little side road pull offs over there. You told us
16 you were traveling and you were by yourself on this stretch
17 of road and you're not familiar with the area. Were you
18 comfortable pulling off on those areas anyway?

19 A No, not really.

20 Q You were looking for a safe place, right?

21 A Correct.

22 Q All right. How about -- how about the shoulder of
23 the road on that stretch of 278, Ms. Greer, could you even
24 tell how much of a shoulder there was along the road with
25 the rain that you were encountering?

Patricia Greer - Cross-Examination by Mr. Massey

1 A No, I could not and I didn't want to try to pull
2 off the road and end up in a ditch.

3 Q All right. So you're driving along. Were you
4 tense because it's raining hard? Were you tense?

5 A Oh, yes.

6 Q All right. All right. So you're driving along by
7 yourself on this road; you're not familiar with the road.
8 You're looking for a place to pull off and you don't find
9 one. What happened?

10 A Well, next thing I know, I hit -- I feel this jar
11 and I'm -- I go forward, I look up and, of course, I'm
12 having to move my airbag because by then it had deployed.
13 My driver's -- well both the airbags. But I had to move
14 the driver's airbag; and the hood of my car is crumpled up
15 into my windshield; and what little bit I could see around
16 that through my driver's window, which I rolled down, there
17 was a tree.

18 Q Okay.

19 A I'm like, Okay, I just hit a tree.

20 Q And I think this is probably a self-evident,
21 obvious question, but did you see the tree before you hit
22 it?

23 A No.

24 Q All right. And when you were stopped there after
25 you hit it and you were looking around, what part of the

Patricia Greer - Cross-Examination by Mr. Massey

1 tree is directly in front of you; what part of the tree did
2 you hit?

3 A The trunk.

4 Q All right. Were there branches and limbs or
5 anything right there in front of you?

6 A Not in front of me, no.

7 Q Now, I think Mr. Barnes asked you about this
8 earlier, you're wearing glasses today; were you wearing
9 your glasses that day as you were driving?

10 A Yes, and I was very fortunate that my, when my
11 airbag deployed, it hit me in the nose to where I had a
12 scuffed up nose. I was very fortunate that my glasses
13 didn't break and the glass fell into my eye.

14 Q I understand. All right. Well, Ms. Greer, I mean,
15 did you not see the tree because you were distracted; were
16 you talking on your cell phone?

17 A No, my cell phone was in my purse.

18 Q All right. And I think there might have been some
19 discussion about this earlier, I mean were you listening to
20 the radio?

21 A Not the radio. Earlier I was listening to a book
22 on tape, but as soon as it started raining, or I should say
23 raining hard, I turned it off completely.

24 Q All right. And why would you do that, Ms. Greer,
25 why turn -- why turn the radio off completely when it's

Patricia Greer - Cross-Examination by Mr. Massey

1 raining hard?

2 A Well, I really enjoy my books on tape and when
3 it -- it started raining hard, I knew I better turn it off
4 because I did not want to get so caught up in the story
5 that I would be careless and get into an accident.

6 Q All right. Were you paying attention to what was
7 around you?

8 A Yes, I was looking around -- looking you know, to
9 my right, looking to my left, trying to find a place to
10 pull over; looking ahead of me to make sure there wasn't
11 anything in front of me, what little bit I could see.

12 Q All right. Now you told us you didn't see the tree
13 before you hit it. Did you see any other cars that had
14 stopped along the roadway?

15 A No.

16 Q All right. Did you see any headlights from other
17 vehicles?

18 A No.

19 Q All right. Did you ever see the truck that the
20 Hendersons were driving in?

21 A Not until after the accident and I was in the back
22 of my own ambulance. I was -- being in the ambulance on
23 the stretcher I was up high enough to where I could see
24 over the tree and I could see the top of the truck and the
25 top of the ambulance that came to get the Hendersons.

Patricia Greer - Cross-Examination by Mr. Massey

1 Q Okay. From your perspective would the Hendersons'
2 truck have been behind where all the limbs and the branches
3 were?

4 A Yes.

5 Q Okay. So even if you're -- after you hit the tree,
6 you're sitting in -- you're sitting there in your car in
7 your driver's seat, could you see the Hendersons' truck
8 from that point on the other side of the tree?

9 A No.

10 Q As you're approaching the tree in your driver's
11 seat, could you see the Hendersons' truck from that point
12 on the other side of the tree?

13 A No.

14 Q Now as you're approaching the tree, was there
15 anybody standing out there trying to flag you down and say,
16 hey, there's a tree in the road?

17 A No.

18 Q Nothing like that?

19 A No, that would have been nice, but no such luck.

20 Q All right. Ms. Greer, did you see the Hendersons
21 standing in the roadway before you hit the tree?

22 A No.

23 Q All right. Two more questions.

24 As you're driving down this isolated road that
25 you're not familiar with by yourself, it's raining like

Patricia Greer - Redirect Examination by Mr. Barnes

1 crazy, did you have any idea that there was going to be a
2 tree laying across the road in front of you?

3 A No, I thought -- I have a good many talents and
4 gifts. Unfortunately, being psychic is not one of them.

5 Q As you're driving down this two-lane road by
6 yourself, you're not familiar with it, it's raining like
7 crazy, you're looking for a safe place to pull over, did
8 you have any idea that there were two people standing out
9 in the roadway in front of you?

10 A No, sir.

11 Q Thank you, Ms. Greer.

12 THE COURT: Mr. Barnes?

13 MR. BARNES: Thank you.

14 **REDIRECT EXAMINATION**

15 BY MR. BARNES:

16 Q Ms. Greer, you hit this tree so hard that you had
17 to be cut out of your own car with the jaws of life, didn't
18 you?

19 A That's correct. I could not move over to the
20 passenger side to get out so they had to cut me out, yes.

21 Q And I want to ask you about, a question by Mr.
22 Massey about how hard it was raining. He used the
23 description of a monsoon, correct, do you remember that?

24 A Correct.

25 Q And you testified that you slowed down. It was

Patricia Greer - Redirect Examination by Mr. Barnes

1 raining so hard, you slowed down?

2 A Correct.

3 Q And you testified you didn't want to run into
4 anyone?

5 A Correct.

6 Q You -- but yet, despite that, you were still
7 driving at a speed that you couldn't accurately gauge what
8 was in front of you, correct?

9 A It was difficult to see, correct.

10 Q And you were asked about the tree in the road; did
11 you know there was going to be a tree in the road, correct?

12 A Correct.

13 Q But you didn't want to run into anyone else, so you
14 were obviously anticipating others in the roadway, correct?

15 A I'm sorry, would you -- would you repeat that?

16 Q You testified you slowed down because you didn't
17 want to run into anyone?

18 A Correct.

19 Q And so what I'm asking is, you were expecting and
20 that's why you slowed down is because you didn't want to
21 hit anyone; so you were anticipating something, correct?

22 A I slowed down and -- I slow down anytime it rains
23 hard because I know the roads are potentially slick,
24 potentially dangerous, and I'm the type of person that it
25 really scares me to drive when it's raining hard. So I

Patricia Greer - Redirect Examination by Mr. Barnes

1 automatically ease my foot off the gas. So -- but I'm not
2 anticipating that there would be anybody in the center,
3 anywhere other than in their vehicles.

4 Q Thank you. I don't have any further questions.

5 THE COURT: Mr. Massey?

6 MR. MASSEY: No, sir.

7 THE COURT: Thank you. Thank you very much, Ms.
8 Greer, you may step down.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Mr. Barnes, your next
11 witness?

12 MR. BARNES: Your Honor, I think Plaintiff's
13 Exhibit 1, 3 and 12 are in evidence and with that, we will
14 rest.

15 THE COURT: Thank you. Thank you very much.
16 Perhaps now would be a good time to take our luncheon
17 recess.

18 You don't have to tell me this, you don't have to
19 tell me this if you don't want to, Mr. Massey. How many
20 witnesses are you going to have?

21 MR. MASSEY: Judge, I'm just going to have one. It
22 will be a video deposition.

23 THE COURT: And about how long will it -- is?

24 MR. MASSEY: I think it would be -- with the
25 redactions that we made based on the ruling that you made,

1 I think it's probably -- it might be 15 minutes.

2 THE COURT: So my rulings cut down the length of
3 the video deposition; is that what you're telling me, Mr.
4 Massey?

5 MR. MASSEY: Your rulings should help us get home
6 earlier tonight.

7 THE COURT: Thank you. Thank you very much.

8 Well, I think now would be a good time to take our
9 lunch recess. I don't know what the weather's like outside
10 but be that as it may, we'll take about, let's take about
11 an hour and 15 minutes. Be back about 2:15. Be back
12 promptly at 2:15. Will that give everybody enough time?

13 (The jury responded affirmatively.)

14 THE COURT: Okay. All right. And when we get back
15 we will then turn our attention to Mr. Massey and he has
16 one video deposition.

17 I will tell you that plaintiff has a right to offer
18 any evidence or testimony in reply if they choose to do so.
19 But -- and from that point on we'll see where we're at
20 administratively. As I said this may not be a lengthy
21 case, but it's an important case.

22 Remember do not discuss the case during this brief
23 recess. Please be back promptly at 2:15. Hope y'all have
24 a pleasant lunch. Thank you very much.

25 (The jury left the courtroom at 12:59 p.m.)

1 THE COURT: All right. Motions, Mr. Barnes?

2 MR. BARNES: None from the plaintiff, Your Honor,
3 at this time.

4 THE COURT: Motions, Mr. Massey?

5 MR. MASSEY: No, sir.

6 THE COURT: Requests to charge, specifically, Mr.
7 Barnes?

8 MR. BARNES: Your Honor, I went through the ones on
9 the Judicial Department Website and we're fine with most of
10 those related to specific obligations.

11 THE COURT: I generally charge those.

12 MR. BARNES: The only one I ask specifically to be
13 charged is a statute which is 57-5-1528, and it basically
14 states that a person shall not drive a vehicle on a highway
15 at a speed greater than is reasonable and prudent under the
16 conditions and so forth and I just feel that is applicable
17 to this case.

18 MR. MASSEY: Judge, the only charges that I was
19 going to request are charges on negligence and proximate
20 cause. I can hand up to you what we have.

21 THE COURT: Sure, I'll be glad to. I don't have my
22 copy of the Rule Book handy. You have copies for Mr.
23 Barnes?

24 MR. MASSEY: I do.

25 THE COURT: All right. I'll look at them.

1 MR. MASSEY: I think the statute should be in your
2 notebook, Judge.

3 THE COURT: All right. Thank you. We'll be in
4 recess until 2:15, and if things go as planned, we ought to
5 be able to close around 3ish.

6 MR. MASSEY: I think we ought to be able to do it
7 all today, Judge.

8 THE COURT: How long do you expect -- how long do
9 you need to close?

10 MR. BARNES: I would anticipate 30 minutes or less,
11 that's my guess.

12 THE COURT: All right. Thank you. Thank you very
13 much. 2:15.

14 (Court was in recess for lunch.)

15 MR. MASSEY: Judge, before we left and I mean
16 before we get started. I would, I request that you charge
17 comparative as well.

18 THE COURT: You know, I thought about that, but --
19 and I -- I read -- I read the answer. But I don't -- I
20 don't see how this plaintiff as a pedestrian on his side of
21 the roadway -- I don't see how he could be negligent. He
22 was a passenger in a vehicle.

23 MR. MASSEY: He got stopped as a result of
24 seeing -- as a result of seeing a tree fall.

25 THE COURT: And I didn't look at that diagram where

1 he had him -- where he was placed, but he -- I wouldn't
2 need to say he was in his lane of traffic, because he's not
3 in a vehicle, but I don't see any -- I don't see any
4 negligence on his part.

5 MR. MASSEY: Okay. Well I won't argue. I
6 understand.

7 THE COURT: Well, I mean, you know, if -- just
8 because I have a theory, it does not mean it's right. I
9 assure you of that.

10 MR. MASSEY: I've learned that is definitely the
11 case with me.

12 THE COURT: Yes, sir. And I tell you that -- I'll
13 get a message out of Columbia about that all the time. It
14 usually says "reversed" on it. But I was just trying to
15 think through, you know, him as a passenger and he was
16 trying to decide to drive or not. I just -- I just -- I
17 couldn't come up with a theory.

18 MR. MASSEY: But I don't -- I don't -- I don't
19 think the fact that he's a passenger would apply. My
20 argument would be that he is standing in his travel lane;
21 he's out there in the middle of the road in the pouring
22 rain with this tree, but I think there are other
23 possible -- other things he could have done. So I think
24 that's a question as to whether -- I think it's a question
25 of negligence.

1 THE COURT: I just don't see where he did anything
2 to cause this. And I saw -- I read your original answer
3 and that's what your answer is, so...

4 MR. MASSEY: That's all I have.

5 THE COURT: Thank you.

6 Anything, Mr. Barnes?

7 MR. BARNES: I don't --

8 THE COURT: I guess our jury is not in yet -- not
9 all of them.

10 (The jury enters the courtroom at 2:13 p.m.)

11 THE COURT: Welcome back, ladies and gentlemen. I
12 hope y'all had a pleasant lunch. As you recall, the
13 plaintiff has rested his case in chief and the defense may
14 now present evidence and testimony if they choose to do so.
15 We turn our attention to Mr. Massey.

16 Mr. Massey.

17 MR. MASSEY: Thank you, Your Honor. We call Dr.
18 Edward Warren in a video deposition.

19 THE COURT: All right.

20 (The video deposition of Dr. Warren was played for
21 the jury.)

22 THE COURT: Any other evidence or testimony on
23 behalf of the defendant?

24 MR. MASSEY: No, sir, defense rests.

25 THE COURT: All right. Any evidence or testimony

1 in reply on behalf of the plaintiff, Mr. Barnes?

2 MR. BARNES: Your Honor, we would make some motions
3 for directed verdict. We will take that up.

4 THE COURT: I'm going to take that up, but you
5 don't have any evidence or testimony in reply?

6 MR. BARNES: No, no reply testimony.

7 THE COURT: All right. Thank you. Thank you very
8 much.

9 Mr. Foreman, ladies and gentlemen of the jury, you
10 have now heard and/or seen all the evidence and all the
11 testimony you're going to hear from the parties during the
12 trial of this case. I do have certain motions to take up.

13 Upon your return, procedurally depending on the
14 outcome of the motions, we will then be at the stage of
15 closing arguments by the attorneys. The method we will
16 use, again depending on the rulings on the motions would be
17 plaintiff would go first in his closing argument to you
18 being the party bearing the burden of proof, followed by
19 the defense and then the plaintiff has the opportunity to
20 present a closing in reply if a new matter is brought up by
21 the defense attorney during his closing argument.

22 So with that being said, maybe you've been out here
23 a brief period of time, but still if you would step to your
24 jury room and take about a 15 minutes recess. Do not
25 discuss the case. Remember to keep an open mind until you

1 have hear all the evidence, testimony, closings and the
2 law.

3 (The jury left the courtroom at 2:24 p.m.)

4 THE COURT: All right. Your motions, Mr. Barnes?

5 MR. BARNES: Yes, Your Honor. As we discussed
6 before the presentation of the evidence in the defendant's
7 case, one I've kind of got three aspects to a directed
8 verdict motion and we can take them individually or
9 altogether, half or whatever works for the Court.

10 First would be on the issue of comparative
11 negligence as you stated earlier in the answer filed by Ms.
12 Greer, she asserts comparative negligence. Based on the
13 evidence, even viewing the evidence in the light most
14 favorable to Ms. Greer. Mr. Henderson was on his side of
15 the roadway and -- when this incident occurred and we feel
16 that there's no comparative negligence just because an
17 incident occurred, doesn't necessarily mean that Mr.
18 Henderson was negligent or they haven't presented evidence
19 of that. We feel there's been no evidence presented and we
20 move for a directed verdict on that basis.

21 THE COURT: Mr. Massey?

22 MR. MASSEY: Judge, I don't want to -- I understand
23 what your ruling is and I don't want argue with you, but I
24 guess just for the purpose of the record --

25 THE COURT: Certainly.

1 MR. MASSEY: -- I'll just say, I think there's
2 evidence of comparative negligence just in the sense that
3 Mr. Henderson was out in the roadway with the tree, but
4 there were clearly other, other avenues that he could have
5 taken as opposed to trying -- trying to mess with the tree
6 himself. So I think that's evidence that's sufficient to
7 justify the charge and it's sufficient in this case to
8 avoid a directed verdict. But I -- I understand based on
9 our previous conversation and your ruling.

10 THE COURT: Thank you. I don't -- I don't see
11 where his actions caused in any way -- I don't see where
12 his actions based on negligence is a caused in any way
13 whatever injuries he sustained. So I direct a verdict as
14 to the comparative negligence.

15 All right. Number two, Mr. Barnes.

16 MR. BARNES: Your Honor, at this time, we would
17 also move for a directed verdict on the issue of
18 negligence. And the basis of that motion -- and I just
19 want to walk through some of the charges from the
20 sccourts.org and Judicial Department Website regarding the
21 obligation of a driver to exercise due care and keep the
22 proper lookout. The charges say that a driver of an
23 automobile has a duty to keep a proper lookout of other
24 vehicles on the road. This duty requires the driver to
25 watch definitively so that the driver is able to see a

1 person or object on the highway. It also talks about the
2 duty to keep the vehicle under proper control so that the
3 driver can slow down, stop, or turn the automobile to avoid
4 colliding with other vehicles, pedestrians, and objects
5 that are lawfully on the road. In addition to that, it
6 talks about general duty to use due care.

7 In addition to those common law requirements,
8 there's also 56-5-1528 we talked about earlier that says a
9 person shall not drive a vehicle on a highway at
10 speed greater than reasonable and prudent under the
11 conditions, and having regard to the actual and potential
12 hazards then existing. I'm not going to read the rest of
13 the statute.

14 Basically what the evidence in this case is, is
15 that Ms. Greer failed to comply with the common law and
16 statutory requirements. Even viewing the evidence in the
17 light most favorable to Ms. Greer, we should be entitled to
18 a directed verdict on the issue of negligence.

19 THE COURT: Thank you.

20 Mr. Massey?

21 MR. MASSEY: Thank you, Your Honor. Judge, the law
22 on negligence essentially is how would a reasonable person
23 have acted under the same circumstances. And I think there
24 is certainly a question for the jury on this issue as to
25 whether Ms. Greer did act reasonably under this situation

1 in which she found herself and all the surrounding
2 circumstances. And I would even add that she testified --
3 the testimony is that she was traveling about 35 or 40
4 miles per hour, which is a significantly reduced speed of
5 the speed limit. But Mr. Henderson, Plaintiff Mr.
6 Henderson, testified that had been traveling about 40 miles
7 per hour and he said that was a pretty safe speed.

8 So I -- I think there's more than a question as to
9 whether -- whether she -- she was acting reasonably under
10 the situation in which she found herself. I think there's
11 certainly enough ground there to deny the motion for
12 directed verdict.

13 THE COURT: Anything in response, Mr. Barnes?

14 MR. BARNES: Your Honor, I would just add about it
15 says that duty to keep the vehicle under proper control, it
16 says that they must slow down, stop, and obviously even
17 though Ms. Greer may feel her driving 40 was a safe speed,
18 the evidence in this case shows that it wasn't a safe speed
19 because she collided with a tree and we feel --

20 THE COURT: Well I think -- I think whether she
21 acted as a reasonable, prudent person would do under the
22 same or similar circumstances is a question of fact for the
23 jury. It's obvious that both drivers in each vehicle came
24 under this rain storm that caused both of them to perk up,
25 so to speak, had a greater lookout. She also testified

1 that her cell phone was in her purse, that she cut her off
2 her book on tape, the windshield wipers was on, headlights
3 were on and, and she didn't -- she never hit another
4 vehicle or a pedestrian. She didn't hit an object that was
5 lawfully in the road.

6 So I think -- I think that it's a question of fact
7 for the jury. In a rain storm we all know to slow down and
8 do those things. That's what a reasonable, prudent person
9 would do. It's a question of fact, she also said she was
10 looking for a place to pull off on unfamiliar -- a
11 relatively isolated stretch of highway between Barnwell and
12 New Ellenton. So I, I would deny the motion for directed
13 verdict as to negligence. I believe it's a question of
14 fact for the jury.

15 And there's a third cause, Mr. Barnes?

16 MR. BARNES: Yes, Your Honor. I think we can
17 probably take this up right quickly. I also intended to
18 move for a directed verdict on the issue of medical
19 expenses, \$5,31.20, I think, on the issue that there has
20 been no testimony to the contrary but for these medical
21 expenses were a result of this collision. In addition to
22 that, in addition to Dr. Vega's testimony, Dr. Carter also
23 testified to the treatment from MCG was a result of this
24 and that's basically the only testimony on that basis and
25 so we would also move for a directed verdict on the medical

1 expenses.

2 THE COURT: Mr. Massey?

3 MR. MASSEY: I think I understand. Judge, I don't
4 have a question on but for cause, that portion of
5 causation. My beef is going to be on a legal cause side of
6 it, but to the extent he's looking for a directed verdict
7 on the but for cause, I guess I would concede to that. I
8 think I conceded to that at the very beginning. Did I
9 misunderstand what --

10 THE COURT: I don't know. Maybe I misunderstood.

11 MR. BARNES: My argument is basically that as a
12 result of this collision, Mr. Henderson incurred \$5,531 in
13 medical expenses and there's no testimony to the contrary
14 that this is the amount of medical expenses that were
15 incurred. Dr. Vega said they were incurred as a result of
16 this. Dr. Carter said the treatment at MCG was a result;
17 and therefore, there's nothing -- no testimony presented in
18 trial that his treatment was excessive, shouldn't have been
19 incurred, wasn't related to this collision; and therefore,
20 from a directed verdict standpoint, we would be entitled to
21 a directed verdict on the issue of \$5,531 in medical
22 expenses plus any amount above and beyond that the jury
23 sought to award.

24 THE COURT: What -- I think I understand.

25 Mr. Massey?

1 MR. MASSEY: I don't -- I don't know whether that's
2 a directed verdict issue. Now, I'll tell you that the -- I
3 think it's always a question for the jury to determine
4 themselves as to whether things were reasonable or not. I
5 mean that's always a question of fact. But in all candor,
6 I don't intend to really question that. That's not a --

7 THE COURT: Well, I'll guess my thoughts on --

8 Thank you, Mr. Massey.

9 My thoughts are a little bit -- I think the bill is
10 not necessary and proper. I don't have any questions about
11 the credibility of this bill or the credibility of Mr.
12 Henderson. We do have conflicting testimony on the medical
13 as to whether or not -- not the amount -- but whether or
14 not it was a sprain or a fracture or the -- this last
15 doctor -- it's been introduced before, but the calcium
16 deposits, arthritic should be -- wouldn't necessarily meet
17 a but for standard, I think, in the analysis of proximate
18 cause. I'm going to deny it. I think it's a jury issue,
19 but for and the injuries.

20 Thank you. Thank you very much, Mr. Barnes.

21 Do you have any motions, Mr. Massey?

22 MR. MASSEY: I don't.

23 THE COURT: Well, my rulings would have been the
24 same.

25 MR. MASSEY: That's right.

1 Judge, I'm just ask before you bring the jury back
2 in, could make a quick trip to the bathroom.

3 THE COURT: Sure. Y'all take -- let's take about
4 ten minutes and go to the bathroom real quick.

5 Okay. Thank you. Thank you very much.

6 (A brief recess was observed.)

7 (The jury entered the courtroom at 2:59 p.m.)

8 THE COURT: Welcome back ladies and gentlemen of
9 the jury panel. As you know we're now at the stage of the
10 proceeding of closing arguments by the attorneys. They're
11 different from opening statements. These are true
12 arguments. They may address the facts, the inferences
13 drawn from the facts and how those facts and inferences
14 apply to the standard of the law.

15 I told you previously the format we will follow,
16 Mr. Barnes will close first on behalf of his client, Mr.
17 Henderson. Mr. Barnes has the burden of proving his case
18 by the greater weight or preponderance of the evidence.
19 That will then be followed by Mr. Massey on behalf of his
20 client, Ms. Greer. And then Mr. Barnes will have the
21 opportunity to close in reply to the new matters brought up
22 by Mr. Massey through the course of Mr. Massey's closing
23 arguments.

24 This is the last opportunity the attorneys will
25 have to address you as a jury. So if you would please give

1 them, as you've done throughout the trial of this case,
2 your complete and undivided attention. Thank you very
3 much.

4 Mr. Barnes?

5 **CLOSING ARGUMENTS**

6 MR. BARNES: Thank you, Your Honor, may it please
7 the Court.

8 Good afternoon, ladies and gentlemen, it's been a
9 long day and we're going to get through soon hopefully and
10 the judge is going to tell you the law and you can retire
11 to your jury room to deliberate.

12 And what we're here about is a dispute. And the
13 judge is going to tell you that with the evidence with have
14 the burden of proof. You heard Mr. Massey talk about that
15 this morning. And basically what the burden of proof is,
16 is that we have the requirement to prove by a preponderance
17 of the evidence. And Judge McMahon told you this morning
18 to imagine a pair of scales and if they should tip ever so
19 slightly in our favor, then we will be entitled to a
20 verdict.

21 Another analogy or example that I think that is
22 fitting for the burden of proof is football. You're all
23 familiar with football and basically when the trial starts,
24 we're at the 50 yard line and our obligation is to just
25 move the ball forward; it doesn't matter how far it goes,

1 if it goes forward, we'll be entitled to a verdict.

2 And the evidence that you've heard in this case is that
3 Benjamin Henderson and his cousin, Bryant, they did what
4 any person would do when they came upon that tree. Or any
5 other person that may be out on the highway. We would hope
6 that people would come to situations like this and you
7 know, get out, and attempt to remedy the situation.

8 They got out of their vehicle and went to try to
9 get the tree out of the road or a portion of the tree,
10 whatever they could, and if they couldn't, they were going
11 to get back in their truck and call 911 and let the
12 authorities know that there was a tree lying in the
13 roadway. And -- but in the process of doing that, Ms.
14 Greer comes along and slams into the tree so hard that she
15 had to be cut out of her vehicle with the jaws of life.

16 And so that's the evidence and we think that the
17 evidence is such that Ms. Greer was failing to follow the
18 laws that govern the operation of traffic of South
19 Carolina. The judge is going to give you a charge on the
20 law once we're done. And we have both common law and
21 statutory provisions. And the statute basically provides
22 that you are to operate your vehicle at such a safe speed
23 to avoid colliding with other vehicles, pedestrians, or
24 other objects that may be in the highway. And what we have
25 in this case is Ms. Greer failed to do that. And you heard

1 her testimony from her. She said it was raining so hard
2 that I slowed down. I didn't want to collide with anyone
3 else. So she knew that was a possibility. Mr. Massey is
4 going to talk about foreseeability. She knew that was a
5 possibility.

6 You also heard her testimony that she was driving
7 for approximately thirty minutes looking for a place to
8 pull off the side of the road. And I went through places
9 she could have pulled off. She was driving for
10 approximately thirty minutes or a little before that she's
11 probably going to be back in Barnwell. So that whole time
12 she was driving, she has ample opportunity to pull off.
13 But you ask yourself, why didn't she pull off; how did she
14 hit this tree hard enough to drive it into Bryant
15 Henderson's truck to move it and also had her -- had to be
16 cut out of her vehicle and pried out -- had the door pried
17 out with the jaws of life.

18 It's because she was on her way to an aerobics
19 class. She was about fifteen minutes away from there,
20 twelve minutes maybe, and she was on her way there. She
21 didn't want to be late. You heard her the first time that
22 she said this morning, the first time anytime, I wasn't
23 worried about my aerobics class. That's the first time I
24 heard that. In her deposition it was I was on my way to my
25 aerobics class and, you know, the accident happened at 5:55

1 p.m. and her aerobics class starts at six. So it doesn't
2 make sense that she's driving slowly along at 35, 40 miles
3 an hour, basically looking for a place to pull off and then
4 she plows into this tree.

5 And so that's what -- I'm going to show you the
6 evidence. This is the front of her car. We can go on to
7 the next one. This is door where it was jammed open. She
8 hit the tree that hard it had to be pried open. And we go
9 to the next one. This is just an angle from the side; you
10 see the hood bent up or it's basically all the way back to
11 the front tires.

12 So she's collided into this tree hard enough to do
13 some serious damage to her vehicle. And so, I think the
14 evidence supports an inference that she wasn't driving
15 along at 35 or 40 miles an hour. Had she been driving like
16 she said, this accident wouldn't have happened.
17 That's the evidence on negligence. Why she failed to do
18 what South Carolina Law requires her to do. And so we feel
19 that that evidence is sufficient that we move the ball
20 forward for a finding that Ms. Greer was negligent.

21 And then if she's negligence -- if she's negligent,
22 the question then becomes what was the damage that was
23 caused by Ms. Greer's negligence? And I thought it was
24 important this morning because Mr. Massey stood up here and
25 told you, he said focus on the doctor's testimony. Y'all

1 heard that throughout the day and I want to focus on the
2 doctor's testimony. You heard from several doctors.

3 Let me pull up Dr. Vega's testimony. And we asked
4 him, And was the medical treatment from Aiken County EMS,
5 MCG, and the treatment at Hampton Regional Medical Center,
6 and the treatment by Dr. Vega, was it a result of this
7 collision on July 27th and he said yes.

8 You also heard from Dr. Craig Carter. Let's go to that
9 testimony. Y'all heard the testimony of Dr. Carter. Dr.
10 Carter was a resident at MCG when this collision occurred.
11 I'll stand back here. He was a resident working under the
12 supervision of another doctor at MCG when this collision
13 occurred and now he's currently practicing medicine up in
14 Indiana. Mr. Massey tracked Dr. Carter down to take his
15 testimony and so he played it for y'all.

16 This is what Dr. Carter says, he says he didn't
17 have a left wrist fracture. That's not what the doctors at
18 MCG said and you heard the questions that I asked Dr.
19 Carter about that, but he also said regardless of whether
20 it's a sprain or a fracture, he still is of the opinion
21 that this treatment was a result of this collision and he
22 also said, and I think this is important. Let's move to
23 the next one, when I asked him regardless of whether it is
24 a fracture or a sprain, this is still a significant injury
25 to Mr. Henderson? Yes, sir, he agreed with that.

1 You heard from -- Dr. Warren's a radiologist down
2 in Hampton. And basically what Mr. Massey is trying to
3 present is that he didn't sustain a left wrist fracture,
4 but instead it was a sprain. And so Mr. Massey took Dr.
5 Warren's testimony and five months later, he sent -- and
6 you heard him tell you this morning, Dr. Warren can't say
7 whether that fracture healed in that period of time. And
8 so when you focus on the doctor's testimony, you have heard
9 no testimony that the medical expenses that's contained in
10 Exhibit 12 was not related to this accident, \$5,531. You
11 haven't heard any testimony that these injuries weren't
12 caused from any other source but for these doctors.

13 The judge said yesterday about focusing and basing
14 it solely on the evidence you hear in this courtroom. And
15 what we've done is we've brought evidence. And Mr. Massey
16 has presented no evidence to the contrary that these
17 injuries and the medical treatment as a result caused in
18 this accident.

19 And so if that's the testimony, what we're left
20 with, well, what are the damages? What are the injuries to
21 Mr. Henderson's left wrist and at this time we have no
22 idea. What's that worth? And I'll be candid with you,
23 it's difficult to stand up before a jury and talk about
24 damages and money because that's how our civil justice
25 system is and so, you know, that's as Judge McMahon said,

1 this is important to Mr. Henderson and it's also important
2 to Ms. Greer.

3 And so what are the damages in this case? And you
4 heard the testimony. And I'll tell you that I can't tell
5 you my personal opinion about what a verdict should be.
6 Your verdict must be unanimous and everybody must agree to
7 it. And so what we have, we have medical expenses that's
8 contained in Exhibit 12 of \$5,531.20, but you also, in
9 addition to that have Mr. Henderson having to detour
10 basically. He had to go to Augusta when he would have been
11 coming back to Hampton by 7 o'clock that night. He got
12 back in at about 4 a.m. He had to go back to Augusta
13 another hour and a half back to Augusta from Hampton nine
14 days later having to go back and see Dr. Carter. That's an
15 inconvenience. And so -- but he ended up having to treat
16 with Dr. Vega for a period of eleven months. And even
17 though the wrist had gotten better, he still has some
18 problems from day to day.

19 And so basically what I want to do is lay forth an
20 evaluation of an analysis that y'all can go through in
21 determining how to arrive at your verdict. So I'm going to
22 turn to a summary here. Basically what we have, we have
23 eleven months -- and you can put any value you want. This
24 is totally up to y'all. If you want to put a value of
25 \$3,000 a month, that's up to y'all. If you feel obviously

1 closer in time to the accident he's going to have more
2 mental anguish and more pain and suffering and then the
3 farther out you go it diminishes.

4 So y'all may arrive at that verdict of \$3,000 a
5 month and if so, that would be \$33,000 and 5,531. Some of
6 you may think that's too low. You may say, you know what,
7 it's \$4,000. That's totally up to y'all. You may think
8 it's less; you may think it's more. That's totally within
9 your discretion to do that, but we feel that based on the
10 evidence that you've heard in this courtroom today, that a
11 verdict should be found in favor of Mr. Henderson. The
12 jury verdict you're going to have -- and I just want to
13 take a minute to explain that, it basically has -- you find
14 actual damages for Mr. Henderson or you find against Mr.
15 Henderson for Ms. Greer.

16 So we feel that the evidence that you've heard,
17 that should be heard for Mr. Henderson. On behalf of Mr.
18 Henderson, I sincerely appreciate your time today. Thank
19 you.

20 THE COURT: Thank you. Thank you very much, Mr.
21 Barnes.

22 Mr. Massey?

23 MR. MASSEY: Yes, sir. May it please the Court?

24 THE COURT: Yes, sir.

25 MR. MASSEY: I started off this morning by talking

1 some about the burden of proof. And I told you what was
2 the case was going to be about in the end, was the
3 plaintiff's burden to proving their case. And I gave you
4 three homework assignments along that front. I still think
5 that's what the case is about. He has not proven those
6 three things. And I want to talk about those, but first I
7 want to go back and let's review. I know you've heard a
8 lot of testimony today about what happened out there. I
9 want to take a few minute to just go back and review that.
10 So we're talking about July 2010, correct? Ms. Greer is
11 coming back to Aiken from Jasper. Just to make it easier,
12 we'll talk about between Barnwell and New Ellenton. So
13 she's traveling from Barnwell towards New Ellenton on
14 Highway 278.

15 Okay. What we've got is we have a 47-year-old
16 woman who's traveling by herself on a stretch of road that
17 she is not at all familiar with and as she's driving it
18 starts to rain and starts to rain hard. Then it starts to
19 rain even harder to the point that it is raining really,
20 really hard. It's raining so hard -- most of us have
21 probably been in a situation like this if we've been in a
22 car. It's raining so hard that you really have difficulty
23 seeing. And so the natural reaction at that point -- I
24 mean, y'all know what we're talking about, you scoot up in
25 your seat a little bit; you've got both hands on the wheel

1 and your muscles are getting a little tight because it's
2 raining so hard. You're trying to be extra careful.

3 And that's basically what Ms. Greer told you was
4 her condition at that point. It's raining hard, she
5 realizes that she needs to take some extra care so she
6 slows down. She slows down to between 35 and 40 miles an
7 hour and the speed limit on the road is 55. Now 35 to 40,
8 Mr. Barnes would tell you that even that's too fast for
9 conditions. Just interesting because Mr. Benjamin
10 Henderson told you that they were going about 40 miles an
11 hour before it happened and that was a pretty safe speed.
12 But what we've got is we've got this lady, she's traveling
13 by herself on a two-lane road from Barnwell to New Ellenton
14 and y'all know there's nothing there. It's just trees. It
15 starts to rain like crazy. So she slows down, she's
16 nervous and she's looking for a place to pull over. She's
17 trying her best to be responsible. She can't stop in the
18 middle of the road. She's driving along, it's raining as
19 hard as it is.

20 Now we saw some things up on Google Earth. Now I
21 wish we all had Google Earth when we're out in a situation
22 like that, but I'm going to tell you, folks, if you're
23 driving from Barnwell to New Ellenton on a good day when
24 it's not raining, you might see one of those roads, one of
25 those little dirt roads that go off into the woods. You

1 might on a good day, but if it's on a day like this when
2 you're not familiar with the road and you're having a hard
3 time seeing anyway, you're not going to see those little
4 dirt roads hidden by the trees at least until you're
5 already past them. Best case scenario, Lord knows you're
6 not going to back up in the middle of 278 and try to go
7 back, are you; that might even be a worse situation.

8 So she's going along, she's by herself, she is not
9 familiar with it, but she's looking for someplace to pull
10 over and the places that she's looking to pull over on
11 are -- it's going to be some large parking lot. Perhaps
12 she's looking for a gas station or a restaurant or any type
13 of business like that; there is none. So in that scenario,
14 what does she do? I want y'all to think about this and I
15 want you to talk about it when you go back there. What
16 does she do? What would you have her to do in this
17 situation? She did it. The main question here and there
18 are three main questions in the three main areas where they
19 have the burden of proof.

20 The first one is, it's on negligence. And we
21 talked about that some earlier and the judge is going to
22 talk about it a little bit more in just a few minutes.
23 Negligence means careless. It means you're careless and it
24 means more specifically, negligence in South Carolina means
25 that you act different in the same situation than a

1 reasonable person would act in that same situation. And so
2 here's the question, how a reasonable 47-year-old female
3 traveling by herself on that roadway in that rain storm,
4 how would she have acted differently? What could she do.
5 You heard that not only is there no business to pull off on,
6 the shoulder was rough in that area too. Right? It's a
7 drop off on most of that area.

8 And even if that were not the case, you still have
9 to consider the situation with the rain. How's she going
10 to know? Just because she hit a tree doesn't mean she was
11 negligent. The fact that she hit a tree doesn't mean that
12 she was negligent. I mean she hit a tree. But did she act
13 carelessly in some way that caused her to hit that tree? I
14 submit to you no. She did everything that she should have
15 done, everything that she could have done. Should she have
16 been driving 30 instead of 35, 27 maybe; does that make a
17 difference especially when Mr. Henderson himself tells you
18 that that's a safe speed.

19 Now the second -- the second issue that I want you
20 to think about is something called causation. The judge is
21 going to tell you about that in a little bit. Really,
22 there are two parts to causation in South Carolina. He's
23 going to tell you about proximate cause. He says there are
24 two things. One of them is caused but for cause and what
25 that means is, would the injury had occurred but for the

1 person's actions.

2 All right. Now I'll tell you if -- if you think
3 that Ms. Greer was negligent and she was driving
4 carelessly, that -- I think you got to also agree that her
5 actions were but for cause of Mr. Henderson's injuries.
6 And I'm not trying to tell you that. I don't know that you
7 ever get to that point because I think there is a real
8 question as to whether this lady was negligent under the
9 circumstances.

10 But the other type of causation he's going to tell
11 you about, this all works together, it's something called
12 legal cause. And he'll tell you that legal cause in South
13 Carolina is based really on something called
14 foreseeability. You can't be held responsible for
15 something in negligence unless it's foreseeable. He'll
16 explain this to you in more details in a little bit, but
17 I've got to ask you, is it foreseeable that you're going to
18 be driving down this road and a big tree is going to be
19 laying across the middle of the road? Well, let's say
20 maybe. But if that's the case, is it also foreseeable that
21 you're going to have two people standing out in the middle
22 of the road by a tree? Really? You're driving down the
23 road, it's a terrible rain storm and it is foreseeable that
24 not only is a tree going to be laying across the road and
25 that some -- two people are going to be standing in the

1 road by that tree and if you hit that tree, those people
2 are going to be hurt. Because that's the issue you've got
3 to consider when you think about legal cause in South
4 Carolina.

5 The judge is going to tell you a little bit more
6 about what that means and I encourage you to listen to him.
7 Listen to what he says about that.

8 And the third issue is, if you ever get to this
9 point -- the third issue is damages, what kind of injury do
10 you have? Now I don't question at all that the man had
11 some type of injury to his wrist. I don't question that he
12 went to the doctor and I don't -- I don't think you would
13 interpret anything that I said to question that. I do have
14 a question about whether it was a sprain or a fracture and
15 I think if you listen to all the testimony from the
16 doctors, you're going to have that question as well.
17 Because the first doctor you heard from was Dr. Vega, a
18 family doctor. And Dr. Vega told you that Mr. Henderson
19 had a fracture because that's what the emergency room
20 records said is that he had a fracture. The interesting
21 thing about that was when Dr. Carter was testifying, Dr.
22 Carter said yeah, I see that in the records. I see that it
23 says there was a fracture. I'm looking at the x-rays right
24 now; they don't show a fracture.

25 But not only that, Mr. Barnes pointed out that in

1 his records from the ER, Dr. Vega said as well, it talks
2 about having that fracture reduced. Well, how in the world
3 do you reduce something that's not a fracture. It's a
4 legitimate question for me. I agree. The problem is as
5 Dr. Carter pointed out, they didn't reduce it. What you
6 got is in a preliminary radiology report that said
7 mentioned the reduction of the fracture. Dr. Carter said
8 radiologists don't reduce fractures; orthopedists reduce
9 fractures. And when you look at the records, Dr. Carter
10 said he was seen by an orthopedist in the emergency room
11 and you look at the orthopedist record from the emergency
12 room and Dr. Carter says it doesn't even say anywhere in
13 here that the orthopedist reduced that fracture.

14 And then if you look at what Dr. Carter said, he
15 said look, I didn't see a fracture on there, but there is
16 some calcification buildup in his wrist. Now why is that
17 important? Because when you look at Dr. Warren's
18 testimony, granted he took his x-ray five months later, but
19 what Dr. Warren said was I didn't see a fracture, but there
20 was calcium buildup. Dr. Warren saw five months later what
21 Dr. Carter saw right after the accident. It's consistent,
22 what they saw. It's the exact same thing. So I think
23 there is a real question as to whether the gentleman, Mr.
24 Henderson, had a fracture or whether he had a sprain.

25 Now, with -- what we've got here, is we have an

1 ambulance trip to the hospital. You'll get to see the --
2 you'll get to see these in just a little bit. You'll get
3 to take -- all these exhibits, you get to take them back
4 with you. You get to take this exhibit with the diagram
5 that Bryant Henderson drew and you'll get to see where, as
6 he indicated where he was standing in blue; he was the blue
7 dot right there, right in front of the branches and limbs
8 on the tree. Mr. Benjamin Henderson was the red dot
9 standing right here. You'll get to look at that. And
10 you'll get to see the photographs of what that scene looked
11 like. And I think most of us who have spent any time on
12 278 understand that's a pretty accurate picture of what 278
13 looks like. And you'll get to see the photographs of Ms.
14 Greer's car. When cars hit trees, bad things happen to
15 cars. There's no question about that. Even your car at 35
16 or 40 miles an hour, if you hit a big tree, there's going
17 to be significant damage to your car.

18 But you're also going to get to take a look at Mr.
19 Henderson's medical bills. He's got a good summary right
20 here on the front of all the treatment and all the bills
21 and then behind it are each individual bill to the
22 different places. So basically what we've got here, you
23 can see this on this front sheet, is that he was
24 transported by an ambulance to MCG, he went back seven or
25 eight or nine days later when he saw Dr. Carter on August

1 the 5th, and then about two months after that, he goes to
2 see Dr. Vega. He saw Dr. Vega six times over a period of
3 nine months. And for the last few months, the last few
4 visits, Dr. Vega said he's got minimal tenderness in the
5 wrist and he's able to move it around fine. He hasn't been
6 to a doctor for any of these injuries since June 2011 and
7 that also is an important factor to consider because he
8 wants you to believe he's still having problems.

9 Now look, I don't know whether you'll ever get to
10 this point because again, I think negligence is a big
11 issue. I don't know whether you ever get to this point
12 because I think even if somehow you get past negligence, if
13 anything, you've still got to consider the foreseeability
14 before even causation. But if for some reason you do get
15 to this point and you start thinking about money, my only
16 question is that you be reasonable with it. All right?

17 And I suggest to you that maybe the idea he put big
18 numbers up on the screen, maybe the idea is that you'll
19 think somewhere midway might be reasonable. I ask you to
20 think about that. Just because there are big numbers on
21 the screen doesn't mean those numbers are reasonable. All
22 right? Because what we've got is one visit to a hospital,
23 one followup visit to the ER with the orthopedist, six
24 visits to family doctor and no treatment in over three
25 years.

1 So I ask you to go back there and think about these
2 things. Talk about them among yourselves. Those three
3 issues: Was she careless? Did she act differently than a
4 reasonable person in her same position would act? What was
5 the extent of Mr. Henderson's injuries? He had a fracture
6 or he had a sprain. And even if you get to that point, was
7 it foreseeable that this crazy set of circumstances, of
8 events, would have happened as Ms. Greer was driving down
9 278?

10 Thank you very much for your attention and I
11 appreciate you being here and I appreciate you listening.

12 THE COURT: Thank you. Thank you, Mr. Massey. Mr.
13 Barnes?

14 MR. BARNES: Thank you, Your Honor. Just a few
15 things. What Mr. Massey wants you to believe is that what
16 Ms. Greer was doing that day was reasonable. I would
17 submit to you, driving thirty minutes looking for a place
18 to pull off because she feels that it's raining so hard and
19 so heavily -- and I think it's also interesting to note
20 that how it's been characterized. The rain has been
21 referred to as a monsoon, the winds blowing, a tree falls
22 down, but yet with all that it's not foreseeable that a
23 tree might fall in the road in this heavily wooded area?
24 And so I think from a foreseeability standpoint, this was
25 perfectly foreseeable.

1 I also want to talk to you as I told you this
2 morning, the dispute in this case is whether this is a
3 fractured wrist or a sprained wrist. Now Mr. Henderson was
4 transported to MCG. The radiologist that did the x-ray had
5 a formal report. It says a fracture of his left wrist.
6 You heard me ask Dr. Carter, Dr. Fly signed off on the
7 document saying that I agree with this diagnosis. He was
8 the attending faculty member that was on duty at the time
9 Mr. Henderson was at the hospital at MCG. And so I feel
10 that that evidence indicates he did have a sprain.

11 So with that, I thank you for your time and
12 attention.

13 THE COURT: Thank you. Thank you very much, Mr.
14 Barnes.

15 JURY CHARGE

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury panel, will you please give me your complete and
18 undivided attention. I'm going to now instruct you or
19 charge you on the law which you must apply to the facts of
20 this case as you find the facts to be.

21 The way I instruct the jury is I charge the general
22 law that applies in civil cases of this type. I then
23 charge the specific cause of action that's been brought in
24 the complaint, that being one of negligence. I'll define
25 some terms in there for you in both negligence, proximate

1 cause. I then charge damages and finally I charge the form
2 for the verdict. It may be -- it's not hard words or
3 anything of that nature -- but it may not be the most
4 pleasant experience you've ever had having to listen to me.
5 While reading this I do try to change the tone and volume
6 of my voice as best I can. And when I go from one subject
7 to another subject I'll give you the caption of the area
8 that I'm fixing to charge.

9 The duties of jury and judge. I remind you that
10 during this trial, you and I have different duties to
11 perform. As the trial judge, it's my responsibility to
12 preside over the trial of this case and I also have the
13 duty to rule on the admissibility of the evidence offered
14 during the trial. You are to consider only the testimony
15 and evidence before you. You are only to consider the
16 testimony which has been presented from the witness stand
17 and any witness which has been made part of the record. I
18 have an additional duty to instruct you the law applicable
19 to this case.

20 It is your duty as jurors to accept and apply the
21 law as I now state it to you. If you think you have any
22 idea as to what the law is or what the law ought to be and
23 it does not agree with what I now tell you the law is, you
24 must set aside and forget your idea because you are sworn
25 to accept and apply the law exactly as I state it to you.

1 In every case tried in this court before a jury,
2 the jury becomes the sole and exclusive judges of the
3 facts. The trial judge cannot comment on or make any
4 statement about the facts in a case. You are the sole
5 judges of the facts. Do not think by anything I have said
6 during the trial that I have any opinion about the facts in
7 this case. The law does not allow me to have an opinion
8 about the facts.

9 Preponderance of the evidence. The burden of proof
10 in this case, as I have told you, is by a preponderance or
11 greater weight of the evidence. A preponderance of the
12 evidence simply means the greater weight of the evidence.
13 It is evidence which as a whole shows that the facts sought
14 to be true are more likely true than not true. Again this
15 can be illustrated by imagining that traditional set of
16 scales. In this case, again, the scales are even. After
17 all the evidence has been presented if the scales remain
18 even or if they tip even slightly in favor of the
19 defendant, Ms. Greer, the plaintiff has failed to meet the
20 burden of proof and would not be entitled to recover in
21 this case. If, on the other hand, the scales tip even
22 slightly in favor of Mr. Henderson, the plaintiff, the
23 plaintiff will have met his burden of proof and you should
24 return a verdict for the plaintiff. Preponderance of the
25 evidence is not determined by the number of witnesses,

1 instead it must be determined by the greater weight of all
2 the evidence.

3 Direct and circumstantial evidence. There are two
4 types of evidence generally presented during the trial:
5 Direct evidence and circumstantial evidence. Direct
6 evidence is the testimony of a person who claims to have
7 actual knowledge of the facts such as an eyewitness. It is
8 evidence which immediately establishes the main fact to be
9 proven. Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of a fact.
11 It is evidence which immediately establishes collateral
12 facts from which the main fact may be inferred.
13 Circumstantial evidence is based on inference and not on
14 personal knowledge or observation. It is proof that does
15 not actually establish the fact in question, but that
16 asserts or describes something, something else from which
17 you may either reasonably infer the truth of the fact or at
18 least reasonably infer and increase the probability that
19 the fact is true.

20 For circumstantial evidence to be sufficient to
21 warrant the finding of the facts, the circumstance must
22 lead to that fact with reasonable certainty. The facts and
23 circumstances should be considered in light of ordinary
24 experience and common sense and good judgment. Existence
25 of a fact cannot be based on speculation, surmise, or

1 conjecture. The law, our law, makes absolutely no
2 distinction between the weight or the value to be given to
3 either direct or circumstantial evidence nor is there a
4 greater degree of certainty required of circumstantial
5 evidence than of direct evidence.

6 Credibility of the witnesses. Necessarily you must
7 determine credibility of witnesses who have testified in
8 this case. Credibility as you all know simply means
9 believability. It becomes your duty as jurors to evaluate
10 the evidence and determine which evidence convinces you of
11 its truth. In determining the believability of the
12 witnesses that have testified in this case, you may believe
13 one witness over several or several over one. You may
14 believe a part of a witness's testimony and reject the
15 remaining part of the testimony of that same witness. You
16 may believe the testimony of the witness in its entirety or
17 reject the testimony of the witness in its entirety. You
18 may consider whether the witness has any interest in the
19 result of the trial, whether the witness is prejudice
20 towards either the plaintiff or the defendant, the
21 opportunity to have seen the matters and things about which
22 the witness may testify, and the manner, the way, the
23 demeanor, of the witness while on the witness stand.

24 Expert witnesses. The Rules of Evidence ordinarily
25 do not permit witnesses to testify to opinions or

1 conclusions. An exception to this rule is for witnesses we
2 call expert witnesses. A witness who by education and
3 experience has become expert in some art, science or
4 profession may give opinions as to the subject the witness
5 claims to be an expert in and may also give a reason for
6 holding the opinions. You should consider any expert
7 opinion given by a witness and like any other evidence,
8 give it the weight you think it deserves. If you decide an
9 expert witness's opinion is not based on sufficient
10 education or experience or if you decide that the reasons
11 given in support of the opinions are not sound or that the
12 opinion is outweighed by other evidence, you may disregard
13 the opinion entirely. An expert witness's testimony is to
14 be given no greater weight than that of other witnesses
15 simply because the witness is an expert and you do not have
16 to accept an expert's opinion even though it may be
17 uncontradicted.

18 That is the general law that applies to all civil
19 cases. Duties of the trial jury and judge; greater weight
20 or preponderance of the evidence; direct and circumstantial
21 evidence; credibility of witnesses; and expert witnesses.

22 Next I'm going to cover the cause of action of
23 negligence. This is an action in which the plaintiff
24 claims that he has suffered injuries to his person for
25 which defendant is responsible for damages. There are

1 three essential elements of the plaintiff's cause of
2 action. They are denied by the defendant's answer. Since
3 the plaintiff has initiated and brought this lawsuit
4 against the defendant, the burden of proof is upon him, the
5 plaintiff, to establish all three by the greater weight or
6 preponderance of the evidence.

7 Number one: The plaintiff must prove that the
8 defendant was negligent or careless in one or more
9 particulars of the wrongful conduct alleged in the
10 complaint.

11 Number two, that the plaintiff was injured or
12 damaged in his person by the negligence of the defendant.

13 And number three, that the defendant's negligence
14 or carelessness is one or more of the particulars as
15 alleged in the complaint was the proximate cause of the
16 plaintiff's injuries.

17 So let's break that down. First question, what is
18 negligence? Negligence is defined in the law as the
19 absence of due care, the wont or lack of due care or
20 ordinary care. The word carelessness conveys the same idea
21 as negligence. Those two terms are synonymous. Negligence
22 is the breach of a duty of care owed to the plaintiff by
23 the defendant. Negligence is the failure by omission or
24 commission to exercise due care as a person of ordinary
25 reason and prudence would exercise in the same or similar

1 circumstances. It is the doing of some act which a person
2 of ordinary prudence would not have done under similar
3 circumstances or the failure to do what a person of
4 ordinary prudence would have done under similar
5 circumstances.

6 In determining whether a particular act is
7 negligent, the test you apply is what would a person of
8 ordinary reason and prudence do under those same
9 circumstances at that time and at that place. It is
10 incumbent upon the plaintiff to prove the defendant was
11 negligent in one or more of the particulars that was
12 alleged in the complaint. It's not required that the
13 plaintiff prove them all, but is absolutely essential that
14 the plaintiff prove at least one. Otherwise, you would be
15 required to be find a verdict for the defendant.

16 Negligence is a fact which like any other fact in
17 the case must be proven. The mere happening of an act or
18 the filing of a complaint or the fact that damages have
19 been sustained, raises no presumption of negligence. A
20 surmise or conjecture that the defendant was negligent is
21 not evidence. The bare fact that an innocent party
22 sustained injury or damage does not place any
23 responsibility on another party unless you find there was
24 some act of negligence on the part of that party which
25 caused an injury or damages.

1 If you find the plaintiff has proved the defendant
2 was negligent, then your next inquiry would be whether the
3 plaintiff has proved that such negligence was the proximate
4 cause of the injury or damage. Negligence is not actual
5 unless it's the proximate cause of the plaintiff's
6 injuries. The plaintiff can only recover for injuries
7 proximately caused by the defendant's negligence. Even if
8 you should find that the plaintiff has prove that the
9 defendant was negligent, but has failed to prove such
10 negligence was the proximate cause of the injury, the
11 plaintiff would have failed to make out his case and you
12 would be required to find for the defendant. However, if
13 the plaintiff has proved these two propositions, negligence
14 and proximate cause, then it would be necessary for him to
15 also prove his damages.

16 Now, ladies and gentlemen, as far as duties that
17 one may owe to another, a driver's duty of care, the
18 operator of a motor vehicle is required to use the same
19 care that would be used by the person with ordinary reason
20 and prudence if that person was driving the same vehicle at
21 the same time and place and under the same circumstances.

22 Duty to keep proper lookout: The driver of an
23 automobile has a duty to keep a proper lookout for other
24 vehicles on the roadway. This duty requires the driver to
25 watch attentively so that the driver is able to see a

1 person or object on the highway.

2 Duty to keep a vehicle under control: The driver
3 of an automobile also has a duty to keep an automobile
4 under proper control so that the driver is able to slow
5 down, stop, and turn the automobile to avoid colliding with
6 other vehicles, pedestrians, and objects lawfully on the
7 road.

8 A violation of the -- of a statute: In this case
9 the plaintiff claims the defendant failed to follow the
10 following rules of the statute which states under South
11 Carolina Code 56-5-1528, A person shall not drive a vehicle
12 on a highway in a speed greater than is reasonable and
13 prudent under the condition and having regard to the actual
14 and potential hazards then existing. The speed must be so
15 controlled to avoid colliding with a person, a vehicle or
16 other conveyance on or entering the highway in compliance
17 with legal requirements and the duty of the person to use
18 due care.

19 Ladies and gentlemen, I'm going to talk in some
20 more detail about proximate cause. Perhaps not a term of
21 me or any of us would be discussing around the breakfast
22 table in the morning, but it has a definite meaning in the
23 law. Negligence as I have stated is not actual unless it
24 proximately causes the plaintiff's injuries.

25 Proximate cause is the issue or direct cause of an

1 injury. Proximate cause requires proof of both causation
2 and fact and legal cause. Causation and fact is proved by
3 establishing the plaintiff's injuries would not have
4 occurred but for the defendant's negligence. Legal cause
5 is proved by establishing foreseeability. The touchstone
6 of proximate cause in South Carolina is foreseeability.
7 That is foreseeability of some injury from a negligent act
8 or omission is a prerequisite to its being the proximate
9 cause of the injury for which recovery is sought. The test
10 of foreseeability is whether some injury to another is the
11 natural and probable consequence of the complained of act.
12 The defendant may be held liable for anything which appears
13 to have been a natural and probable consequence of her
14 negligence.

15 For an act to be a proximate cause of the injury,
16 the injury must be a foreseeable consequence of the act.
17 Foreseeability is not determined behind something, but
18 rather from the defendant's perspective at the time of the
19 complained of act. The law requires only reasonable
20 foresight. When the injury complained of is not reasonably
21 foreseeable in the exercise of due care, there is no
22 liability. It is not necessary for a plaintiff to
23 demonstrate the defendant should have foreseen the
24 particular event which occurred, but merely that the
25 defendant should have foreseen her negligence to probably

1 cause injury to someone. Negligent conduct is the
2 proximate cause of injury if that injury is within the
3 scope of the foreseeable risk of the negligence.

4 While it is necessary that the defendant must have
5 contemplated or could have anticipated the particular event
6 which occurred, liability cannot rest on mere possibility.
7 The defendant cannot be charged with that which is
8 unpredictable or that which could not be expected to
9 happen. The plaintiff, therefore, proves legal cause by
10 establishing the injury in question occurred as a natural
11 and probable consequence of the defendant's negligence.
12 Determining whether a consequence is one that is natural
13 and probable, the defendant's conduct must be viewed in
14 light of all -- all intended circumstance.

15 Proximate cause does not mean the sole cause. The
16 defendant's conduct can be a proximate cause if it was at
17 least one of the direct concurring causes of the injury.
18 The law defines proximate cause of injury to be something
19 that produces a natural chain of events which in the end
20 brings about the injuries. In other words, proximate cause
21 is the direct cause without which the injury would not have
22 occurred. If the accident would have happened as a natural
23 and probable consequence, even in the absence of the
24 alleged breach, the plaintiff has failed to demonstrate
25 proximate cause.

1 Further, where the cause of the plaintiff's injury
2 may be as reasonably contributed to an act for which the
3 defendant is not liable as to one or which she is liable,
4 the plaintiff has failed to carry the burden of
5 establishing that his injury was the proximate result of
6 the defendant's negligence.

7 That is the charge on the cause of action of
8 negligence including breach of proximate cause.

9 And finally, ladies and gentlemen, I assure you the
10 end is in sight.

11 Damages: We go through the first element is
12 negligence; the second element is proximate cause; both but
13 for probable cause and legal cause and finally actual
14 damages. If you decide that the plaintiff is entitled to a
15 verdict, your next step would be to decide how much money
16 the defendant should be required to pay. Actual damages
17 are to compensate the plaintiff for the plaintiff's
18 injuries or loss and to put the plaintiff as near as
19 possible in the same position the plaintiff was in before
20 the incident occurred. In other words, actual damages
21 would be actual losses and expenses which the plaintiff has
22 suffered because of the defendant's negligence.

23 Pain and suffering: Pain and suffering compensates
24 the plaintiff for physical discomfort and emotional
25 response to the sensation of pain cause by the injury

1 itself. There's no definite standard by which to
2 compensate a plaintiff for pain and suffering. You have
3 the authority to determine the amount, if any, to be
4 allowed for pain and suffering using calm and reasonable
5 judgment to insure the damages are just and reasonable in
6 light of the testimony and the evidence presented in this
7 case. The loss of enjoyment of life compensates the
8 plaintiff for limitations on the plaintiff's ability to
9 participate in and derive pleasure from normal activities
10 of daily life.

11 Personal injury: The plaintiff must prove that
12 expenses caused by the injuries were necessary and
13 reasonable. Actual damages for a plaintiff who has been
14 physically injured include pain and suffering, both past
15 and future, as well as mental anguish, impairment of
16 health, physical condition, and disfigurement. In
17 determining the amount of compensation for personal
18 injuries, it is proper to consider the past and present
19 aspects of the injury. This would include physical and
20 mental pain and suffering, expenses incurred for necessary
21 medical treatment, loss of enjoyment of life, and any other
22 losses which are reflected by the character of the injury.
23 The injured party may recover for those future damages that
24 are reasonably sure to result from the injuries. This
25 principal underlying compensation of future damages is on

1 only one act can be brought and therefore only one recovery
2 can be had.

3 It is proper to include in the estimate of future
4 damages, compensation for loss of capacity to work, future
5 medical expenses, and pain and suffering, which will with
6 reasonably certainty occur.

7 Ladies and gentlemen, that is my charge to you.
8 Finally as far as the jury verdict: There are two possible
9 verdicts which you may find in this case: For the
10 plaintiff or for the defendant. There's no significance
11 whatsoever to the order in which I just stated those
12 possible verdicts; it is simply that one must be stated
13 first. All twelve of you must agree on the verdict. Your
14 verdict can not be based on sympathy, passion, prejudice,
15 emotion, or any other consideration not in evidence in this
16 case.

17 Now, Mr. Foreman, you will have in the jury room
18 with you, along with all the exhibits, the form of verdict.
19 You'll have this form of verdict which has the caption of
20 the case and the case number. Review the evidence and you
21 determine what the facts are and the inferences to be drawn
22 from the facts individually and as a jury. You then take
23 those facts and those inferences, compare them to the law
24 as I have told you the law is and you will reach a verdict
25 as I said for either one or the other, the plaintiff or the

1 defendant.

2 This form is very simple. It says: We, the jury,
3 find for the plaintiff against the defendant in the amount
4 of; and it's just got a line for you to place a figure in
5 there for actual damages and a place for your signature.

6 The next one is: We, the jury, find for the
7 defendant, for the defendant against the plaintiff; and a
8 line for your signature. Let me rephrase that and pose it
9 to be against the defendant. That would be: We, the jury,
10 find for the defendant.

11 Once you have reached that unanimous verdict, you
12 will knock on the jury room door and inform the bailiff you
13 have the verdict and we will receive you back into the
14 courtroom.

15 If at any time during the course of your
16 deliberations you have any questions, if you'll please
17 write me out a note and knock on the jury room door and the
18 bailiff will bring that to me.

19 Do not begin your deliberations until you are
20 instructed to do so. We must review and make sure the
21 exhibits are all there and I'm going to amend my verdict
22 form slightly.

23 All right. Thank you. Thank you very much. Thank
24 you for your patience and attention. You may now go to
25 your jury room.

1 (The jury left the courtroom at four o'clock p.m.)

2 THE COURT: Any exceptions, Mr. Barnes?

3 MR. BARNES: Your Honor, just I think you were
4 reading from the charge from the Judicial Department and in
5 the violation of the statute after the applicable statute
6 says failure to follow this statutory rule is negligence
7 and a matter of law. If you find the defendant failed to
8 follow the statutory rule, you must then decide whether the
9 failure proximately cause the plaintiff's injury. I think
10 the violation statute may be evidence of recklessness as
11 well.

12 THE COURT: All right. So you're asking me to
13 charge them what now? I see where you're talking about and
14 I don't have that language in here.

15 MR. BARNES: Okay.

16 THE COURT: I think -- I think my -- I don't have
17 that language in here. Are you asking me to bring them
18 back out and read the violation of the statute and the
19 statute and that part?

20 MR. BARNES: I don't think so.

21 THE COURT: No exceptions?

22 MR. BARNES: No exceptions.

23 THE COURT: Thank you very much, Mr. Barnes.

24 Mr. Massey?

25 MR. MASSEY: No, sir, none.

1 THE COURT: All right. If y'all would make sure
2 you have the exhibits correct. I'm going to change this --
3 I'm going to take against the plaintiff out. And I read
4 through that. I don't want them to think it's damages from
5 both ways. They would just be finding for the defendant.

6 MR. MASSEY: Right. That's right.

7 MR. BARNES: Yes, sir, I think you're right.

8 THE COURT: So I'm just going to change that. I
9 didn't notice that.

10 THE COURT REPORTER: I've got 1, 3 and 12.

11 MR. BARNES: 1, 3 and 12.

12 THE COURT REPORTER: And then 1.

13 MR. MASSEY: And then my 1.

14 (The jury started deliberations at 4:08 p.m.)

15 **JURY QUESTION**

16 THE COURT: The jury sent a note out that says and
17 the reason I walked back in is I was standing there talking
18 to the bailiffs. We need the law on negligence. Now this
19 recent case of Judge Seals, where the jury had asked for
20 certain part, he sent it all in and I tend to think that's
21 what should be done because all the law capsulated within
22 it. I haven't made any notes or anything. I have the
23 captions.

24 What's y'all's position on that?

25 MR. MASSEY: Is it -- are you thinking about

1 sending them the charge back there or you thinking about
2 just bringing them back out and telling them the law on
3 negligence again?

4 THE COURT: No, I think we need -- the way I
5 interpret this note is we need the law on negligence. I
6 would just as soon as send it back there, quite frankly.

7 Y'all have a position?

8 MR. BARNES: I think if you send it back, Judge,
9 like you said, it would be best to send the whole charge
10 back.

11 MR. MASSEY: I'm okay with that.

12 THE COURT: And what I'm going to do is I'm going
13 to bring them out and tell them I'm going to send you the
14 whole charge. You'll see where it's captioned in there.
15 And, you know, you still have to take the charge as a
16 whole. That's why I don't want to send just negligence
17 back there.

18 MR. BARNES: Okay.

19 THE COURT: Okay. All right. Just bring them out
20 for me.

21 (The jury entered the courtroom at 4:24 p.m.)

22 THE COURT: All right. Mr. Foreman, ladies and
23 gentlemen of the jury, I received your note: We need the
24 law on negligence.

25 I have talked the with the attorneys. I'm going to

1 send my entire written instructions into the jury room for
2 you rather than read it back to you again. Now -- and our
3 law is -- well the law is always in flux. You know, it
4 always changes, it's amended, it's repealed, and new laws
5 come about; but I would instruct you it's the charge as a
6 whole. And you'll find down on about page 9, it's got the
7 highlight negligence, cause of action. And it goes on
8 through and it's got the highlight, proximate cause. But
9 at the same time, in considering your verdict -- I realize
10 you have a particular question to answer, but realize that
11 the entire charge should be encapsulated in your verdict.

12 Okay? And the parties agree to that.

13 Mr. Barnes? Mr. Massey?

14 MR. BARNES: Correct, Your Honor.

15 MR. MASSEY: Yes.

16 THE COURT: All right. Thank you, thank you very
17 much. And if you need anything else, I know you know how
18 to write a note.

19 (The jury left the courtroom at 4:27 p.m.)

20 THE COURT: Thank y'all. Thank y'all very much.
21 We'll be at ease.

22 (It was reported to the court that the jury had
23 reached at verdict at 5:10 p.m.)

24 THE COURT: All right, bring us our jury, please.

25 (The jury entered the courtroom at 5:18 p.m.)

VERDICT

1
2 THE CLERK: Mr. Foreman, ladies of the jury, do you
3 have verdict.

4 THE FOREPERSON: Yes, we do. We, the jury --

5 THE CLERK: Please pass it over to the bailiff to
6 up to the judge.

7 THE COURT: I like your enthusiasm though.

8 All right. The verdict appears to be in the proper
9 form, signed by our foreperson.

10 Madam Clerk?

11 THE CLERK: Your Honor, in the case of
12 2012-CP-02-1691, we, the jury, find for the plaintiff
13 against the defendant in the amount of \$5,531.20 in actual
14 damages.

15 THE COURT: Thank you.

16 THE CLERK: And it's signed by the Foreman.

17 THE COURT: Thank you. Anything further from the
18 jury from the plaintiff, Mr. Barnes?

19 MR. BARNES: Nothing from the jury, Your Honor.

20 THE COURT: From the defendant, Mr. Massey?

21 MR. MASSEY: No, sir.

22 THE COURT: All right. Momentarily, ladies and
23 gentlemen, I'm going to release you from your jury service
24 and actually for the remainder of the week. You don't have
25 to call back and you don't have to come back. I know

1 you're very disappointed, but there aren't any other cases
2 to be tried this week.

3 But I do want to -- I never criticize nor commend
4 the jury for its verdict, but I do want to thank you for
5 your service, for the attention that you've shown the
6 parties throughout the trial of the case. The patience you
7 have shown the Court and the work ethic that you've shown
8 in reaching this verdict.

9 Our, I have the belief that our civil and criminal
10 justice jury trial system has been somewhat under assault
11 over the years and there have been movements to uptick
12 cases to where they're decided by judges, or a panel of
13 judges. I totally disagree with that. I happen to trust
14 the American people. I won't keep you but a second in
15 saying this, but when you see the tragedies such as the
16 Boston Marathon and tragedies such as 911, see the
17 tragedies of bullets being fired in our schools, each and
18 every one of those occasions you see Americans running
19 towards the fray, helping their fellow citizens, teachers
20 protecting children, first responders going up the stairs
21 towards the fire rather than running away.

22 So I think that each and every one of you is more
23 than qualified for jury service, more than qualified to be
24 a foreperson in jury service and I hope you get the
25 opportunity to serve in the future.

1 Thank you very much for the service that you
2 rendered to your community. Without each of you and
3 citizens like yourselves throughout the state in every
4 county, week in and week out, we could not be about the
5 very important business of administering your civil and
6 criminal justice system. It's been my honor and pleasure
7 to be with y'all this week. You're now excused. I hope
8 you have a pleasant rest of the week.

9 (The jury left the courtroom at 5:25 p.m.)

10 THE COURT: All right. Anything further, Mr.
11 Barnes?

12 MR. BARNES: Your Honor, I'd just reserve the ten
13 days for the post-trial motions.

14 THE COURT: Mr. Massey, anything further, I should
15 say?

16 MR. MASSEY: No, sir.

17 THE COURT: Ten days. Thank y'all very much and I
18 enjoyed being with you.

19 MR. BARNES: Thank you, Judge.

20 THE COURT: Good luck to you, Mr. Henderson. Good
21 luck to you, Ms. Greer.

22

23

24

* * * * * END OF TRANSCRIPT * * * * *

25

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Eleventh Judicial Circuit
8 of the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 13th and 14th days of October 2014.

12 I FURTHER CERTIFY that the foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 20th day of May 2015.

19
20
21
22
23
24
25


Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

BENJAMIN K. HENDERSON,

Plaintiff,

vs.

CASE NO. 12-CP-02-1691

PATRICIA GREER,

Defendant.

VIDEOTAPED

DEPOSITION OF: LUIS VEGA, MD

DATE: October 18, 2013

TIME: 2:28 PM

LOCATION: Law Offices of Peters, Murdaugh,
Parker, Eltzroth & Detrick, PA.
101 Mulberry Street East
Hampton, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KELLY A. BALL, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 reporter please swear in the deponent.

2 LUIS VEGA, MD

3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. BARNES:

6 Q. Please tell us your full name.

7 A. It's Luis Vega.

8 Q. Dr. Vega, what's your address?

9 A. It's 32 Indigo Plantation in Okatie,
10 South Carolina.

11 Q. And where do you practice medicine?

12 A. Currently practice in Hampton and
13 Walterboro.

14 Q. And how long have you been practicing
15 in Hampton and Walterboro?

16 A. I'm entering my 11th year.

17 Q. And what's the name of your practice?

18 A. It's Palmetto Primary Care.

19 Q. And what type of patients do you treat?

20 A. Treat a wide variety, but primarily
21 Medicaid and Medicare. And see mostly adults, I do
22 at least, and we also see pediatrics.

23 Q. And do you have other folks in the
24 office there with you?

25 A. Yes.

1 Q. In your practice?

2 A. Yes.

3 Q. And --

4 A. I have some --

5 Q. -- who is that?

6 A. I have a nurse -- nurse practitioner
7 and two -- two PAs.

8 Q. And starting with college, walk us
9 through your educational background.

10 A. Yeah. I went to college at Texas A&M
11 and I graduated from A&M and went to medical
12 school, I did one year of post baccalaureate
13 studies and did -- went to medical school at -- at
14 Boston University. Graduated from there in about
15 '99 and -- and in 2000 did my internship at Brown
16 in Rhode Island. And that was for a year. And did
17 my residency at the University of Florida,
18 Jacksonville -- Shands Jacksonville and completed
19 that around 2000, 2002. And ended -- came to
20 Hampton shortly thereafter for my first job and
21 stayed here throughout that time.

22 Q. And how did you end up in Hampton?

23 A. I -- I'd actually, during medical
24 school, I signed up for The National Health Service
25 Corps and kind of committed myself to working in --

1 in a rural or underserved area and I chose rural.
2 I came by to visit. I could have worked in
3 Beaufort and so -- but I came by to visit here and
4 I liked the area and -- and I stayed -- decided to
5 stay there after as well.

6 Q. And what is The National Service Corps?

7 A. It's a -- a program where just --
8 trying to increase the number of primary care
9 doctors in -- in rural areas and they help cover --
10 partially cover costs of medical school in return
11 for service in -- in set locations.

12 Q. And are you board certified?

13 A. Yes.

14 Q. In what areas?

15 A. Board certified in family medicine.

16 Q. And explain to us what it means to be
17 board certified.

18 A. It means that I've taken some
19 coursework and an exam as well as done continuing
20 medical education, certain prescribed number of
21 medical education hours, in order to get that
22 designation and also passed a pretty comprehensive
23 exam on top of that.

24 Q. And are you licensed to practice
25 medicine in South Carolina?

1 A. Yes.

2 Q. And are you a member of any state or
3 national medical associations or boards?

4 A. Just a local South Carolina Academy of
5 Family Medicine.

6 MR. BARNES: At this time we'd move to
7 have Dr. Vega admitted as an expert in family
8 medicine.

9 MR. MASSEY: No objection.

10 BY MR. BARNES:

11 Q. Dr. Vega, we're here about Benjamin
12 Henderson. Is he a patient of yours?

13 A. Yes.

14 Q. And how did he come into your care?

15 A. He came on -- on follow-up from an
16 injury that he had several -- I believe several
17 years prior.

18 Q. And did you obtain a history?

19 A. Yes.

20 Q. And what did that history reveal?

21 A. That he had been in an accident where
22 he was trying to remove some tree limbs from the
23 road and another car on the opposite end hit the
24 tree limbs and he sustained an accident, left wrist
25 fracture at that time.

1 Q. And as part of your treatment of Mr.
2 Henderson, did you review other medical records?

3 A. Yes, I reviewed the record from the
4 Medical College of Georgia where he was first
5 diagnosed with the fracture. Where it was actually
6 set by orthopedics -- splinted and then set by
7 orthopedics and -- so, yes.

8 Q. Did you review the Aiken County EMS
9 record?

10 A. Yes.

11 Q. And do you have that there in front of
12 you?

13 A. Let me see if I have that. One
14 second...

15 I -- I do not seem to have that. If I
16 could borrow -- I'd appreciate that, yeah.

17 THE WITNESS: Excuse me.

18 BY MR. BARNES:

19 Q. I'll give you my copy there.

20 A. Okay.

21 Q. What did Mr. Henderson report on the
22 scene on July 27th, 2010?

23 A. Let's see, trauma to multiple sites
24 and...

25 Q. And what sites specifically?

1 A. Were hit by some of -- by some of the
2 tree -- left wrist pain, pain in his left leg and
3 right arm.

4 Q. And was he transported to the Medical
5 College of Georgia in Augusta?

6 A. Yes.

7 Q. And did you review those records?

8 A. Yes.

9 Q. As part of your treatment?

10 A. Yes.

11 THE WITNESS: Excuse me.

12 BY MR. BARNES:

13 Q. And did you review an x-ray that was
14 done?

15 A. Yes.

16 Q. And what did that x-ray of Benjamin
17 Henderson's wrist reveal?

18 A. It showed a compaction fraction --
19 fracture at the ulnar aspect of the distal radius
20 and small fracture fragments just distal to the
21 ulna.

22 MR. BARNES: Let's go off the record
23 for a minute.

24 THE WITNESS: Okay.

25 THE VIDEOGRAPHER: Going off the

1 record. The time is 2:35 PM.

2 (Off-the-record conference.)

3 THE VIDEOGRAPHER: We'll now go back on
4 the record. The time is 2:37 PM.

5 BY MR. BARNES:

6 Q. Dr. Vega, I've handed you a left wrist
7 and, if you could, explain to us the fracture that
8 Benjamin Henderson sustained or that was revealed
9 on this x-ray at MCG.

10 A. So I guess if we can put this in like
11 this, it's probably a better way to do it.

12 (Indicating.) And he had a small impaction
13 fraction (sic) at the distal radius. This is a
14 radial bone. (Indicating.) Distally would be in
15 this area. (Indicating.)

16 So an impaction fraction (sic) states
17 that basically what -- the bone was impacted. And
18 then there was also small impaction fraction (sic)
19 at the ulnar aspect of the distal radius.

20 (Indicating.) So this is the radial aspect and
21 this is the ulnar, so the medial is the ulnar
22 aspect so he had also an impaction fraction (sic)
23 of the distal radius there. (Indicating.)

24 Q. And he was later discharged from MCG?

25 A. Yes, I -- I believe he was splinted and

1 discharged, yes.

2 Q. It looks like the first visit I have
3 where you saw him was a couple months later on
4 October 4th, 2010?

5 A. Yes.

6 Q. And what did he see you for on that
7 visit?

8 A. This is -- from what I can recall, and
9 I don't have the -- unfortunately I don't have the
10 records here in front of me, but he had a left --
11 he had some wrist pain, I do remember that.

12 Q. (Indicating.)

13 A. Yeah, pain at the left wrist. It was
14 dull and throbby (sic). And then, you know, he
15 just got the history in terms of what had happened.

16 Q. And since that time, you've continued
17 to treat Benjamin Henderson?

18 A. That's correct.

19 Q. And it looks like from the records we
20 have the last visit was June 29th of 2011?

21 A. I believe so. And I apologize because
22 I -- I don't recall exactly if we saw him any time
23 after that and I wasn't able to -- to reach the
24 office to see if there were any subsequent visits.

25 Q. If I ask you your opinion, will your

1 opinion be to a reasonable degree of medical
2 certainty or more likely than not? Standard?

3 A. That -- reasonable --

4 Q. If I ask you your opinion --

5 A. Oh, yes. Yes.

6 Q. -- will it be to a reasonable degree of
7 medical certainty?

8 A. Yes.

9 Q. In your opinion, was the fracture to
10 Mr. Benjamin Henderson's left wrist and hand area,
11 was that a result of the incident of July 27th,
12 2010?

13 A. Yes.

14 Q. And was the medical treatment from the
15 Aiken County EMS, MCG, he also received some
16 treatment at Hampton Regional Medical Center --

17 A. (Nodding head up and down.)

18 Q. -- and your treatment, was that a
19 result of the incident of July 27th, 2010?

20 A. Yes.

21 Q. And was it necessary and proper to
22 properly treat Mr. Henderson?

23 A. Yes.

24 Q. And in coming to your opinions in this
25 case, have you relied on records from the Aiken

1 County EMS, MCG, and Hampton Regional Medical
2 Center in addition to your own records?

3 A. Yes.

4 MR. BARNES: We can go off the record.

5 THE VIDEOGRAPHER: Going off the
6 record. The time is 2:41 PM.

7 (Off-the-record conference.)

8 THE VIDEOGRAPHER: We are now back on
9 the record. The time is 2:42 PM.

10 BY MR. BARNES:

11 Q. Doctor, just a couple more questions.
12 I want to ask you about subjective complaints and
13 objective findings and ask you from a medical
14 standpoint what that means to you.

15 A. Subjective would be someone complaining
16 of -- of pain in a -- in a certain location and
17 objective would be an x-ray finding with some
18 abnormality consistent with that subjective
19 complaint, so...

20 Q. And in the treatment of Benjamin
21 Henderson, did the subjective complaints he was
22 making to you match the objective findings from the
23 x-ray from MCG?

24 A. Yes.

25 MR. BARNES: I don't have anything

1 else. Thank you, Dr. Vega.

2 EXAMINATION

3 BY MR. MASSEY:

4 Q. Dr. Vega, your first visit with
5 Benjamin Henderson was on October 4th, 2010, I
6 think that's what you told us; is that right?

7 A. That's correct, yes, sir.

8 Q. And at that visit he complained to you
9 about pain to his left wrist --

10 A. Yes.

11 Q. -- right?

12 Now, before he came to see you, as you
13 told us, he had some treatment with the ambulance
14 and then over at MCG --

15 A. Yes.

16 Q. -- is that right?

17 A. That's correct.

18 Q. Okay. And you -- you read to us from a
19 radiology report of an x-ray that was performed at
20 the emergency room; is that right?

21 A. That's correct, yes, sir.

22 Q. That's -- you were telling us it showed
23 a small impaction fraction (sic); is that right?

24 A. Yes.

25 Q. All right. Now, about ten days after

1 A. Yes.

2 Q. And your last visit with him was on
3 June 29th, 2011?

4 A. Yes.

5 MR. MASSEY: Okay. That's all I've
6 got. Thank you, sir.

7 THE WITNESS: Thank you.

8 EXAMINATION

9 BY MR. BARNES:

10 Q. Dr. Vega, how are they going to align
11 bones if they're not broken?

12 A. Yeah, that's -- that's why -- they --
13 they can't. I mean, orthopedists take that pretty
14 seriously because they have to give you some
15 medication to sedate you, then they have to align
16 bones together, so I -- you know, and the
17 impression here is like small impaction fraction
18 (sic) of ulnar aspect of distal radius. And then
19 the fact that they reduced it, you cannot -- you
20 can't -- I've never seen that.

21 MR. BARNES: I don't have anything
22 else. Thank you.

23 MR. MASSEY: I don't have anything.

24 THE VIDEOGRAPHER: This concludes the
25 video deposition of Luis Vega, MD. The time is

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF AIKEN) SS:
3)

4 IN THE COURT OF COMMON PLEAS

5 BENJAMIN K. HENDERSON,)
6 Plaintiff,)
7 -v-) Civil Action No.:
8 PATRICIA GREER,) 2012-CP-02-01691
9 Defendant.)

10

11

12 The videotaped/webcam deposition upon oral
13 examination of CRAIG THOMAS CARTER, M.D., a witness
14 produced and sworn before me, Sherry D. Lenn, RPR, and
15 Notary Public in and for the County of Warrick, State
16 of Indiana, taken on behalf of the Defendant at the
17 offices of Tri-State Orthopaedic Surgeons, Inc.,
18 225 Crosslake Drive, Evansville, Indiana, on
19 October 1, 2014 at 3:03 p.m., pursuant to the
20 applicable rules.

21

22

23

24

25

1 APPEARANCES

2 FOR THE PLAINTIFF:

3 William F. Barnes, III, Esq.
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7 FOR THE DEFENDANT:

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9 NANCE, McCANTS & MASSEY
10 218 Newberry Street, S.W.
11 Aiken, SC 29802-6200
12 asmlaw30@bellsouth.net

11

12 ALSO PRESENT:

13 Jerry Madden, Videographer

14

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1 VIDEOGRAPHER: We're going on the record at
2 3:03. This begins the deposition of Dr. Craig
3 Carter in the matter of Benjamin K. Henderson
4 versus Patricia Greer, Case 2012-CP-02-01691.

5 Today's date is October 1st, 2014. My name is
6 Jerry Madden. I'm the videographer. The court
7 reporter is Sherry Lenn. We are with Huseby Court
8 Reporting. Counsel, please introduce yourselves,
9 after which the court reporter will swear in the
10 witness.

11 MR. MASSEY: My name is Shane Massey. I
12 represent Patricia Greer.

13 MR. BARNES: And this is William Barnes, and I
14 represent Benjamin Henderson.

15 CRAIG THOMAS CARTER, M.D.,
16 called as a witness by the Defendant, having been first
17 duly sworn, was examined and testified as follows:

18 EXAMINATION

19 QUESTIONS BY MR. MASSEY

20 Q Good afternoon, Dr. Carter.

21 A Hey. How are you?

22 Q Doing well. My name is Shane Massey, and I
23 represent Ms. Greer in this -- this lawsuit. And
24 we're here, of course, to take your deposition this
25 afternoon. I appreciate you working with us.

1 A Oh, sure. Sorry I'm a couple minutes late.

2 Q That's no problem. Will you give us your -- your
3 full name, please?

4 A Sure. It's Craig Thomas Carter.

5 Q All right. And where do you work?

6 A I work at Tri-State Orthopaedics in Evansville,
7 Indiana.

8 Q All right. And what do you do there? What kind of
9 practice do you have?

10 A I'm a hand surgeon.

11 Q All right. And Dr. Carter, do you mind giving us a
12 rundown of your education, starting with college
13 and going through today?

14 A Sure. I graduated from University of Kentucky. I
15 got my undergraduate degree there. I did my
16 medical school at University of Louisville School
17 of Medicine. I did my residency in orthopaedics at
18 Medical College of Georgia, which is now, I
19 believe, called Georgia Regents University, down in
20 Augusta. And I did my hand surgery fellowship in
21 Birmingham, Alabama at UAB.

22 Q All right. When did you graduate from med school?

23 A I graduated from med school in 2007.

24 Q All right. You said 2007?

25 A Right, 2007, medical school. I finished my

1 residency in 2012 and fellowship the following
2 year.

3 Q Okay. All right. And I think you -- you might
4 have mentioned this earlier, but do you have a
5 specialty in your practice now?

6 A I do. I'm a hand surgeon.

7 Q Okay.

8 MR. MASSEY: Well, at this time I would move
9 to have Dr. Carter qualified as an expert in
10 orthopaedic medicine.

11 MR. BARNES: No objection.

12 MR. MASSEY: All right.

13 Q Dr. Carter, you told us that you completed your
14 residency at the Medical College of Georgia over in
15 Augusta?

16 A Yes, sir.

17 Q Were you -- were you working there in July and
18 August of 2010?

19 A Yes, sir.

20 Q All right. And while you were over at the Medical
21 College of Georgia, did you have an opportunity to
22 treat Mr. Benjamin Henderson?

23 A Yes, sir. It looks like, by this note, that I saw
24 him in clinic.

25 Q All right. And it looked like, from the

1 information that I have, that you saw Mr. Henderson
2 in the Hand & Upper Extremity Clinic over at MCG on
3 August 5th, 2010; does that sound right?

4 A Yes, sir.

5 Q All right. And it looks like that was in a
6 followup from a visit that he'd had to the
7 emergency room just about a week earlier; is that
8 right?

9 A Yes, sir.

10 Q All right. Did you see Mr. Henderson when he came
11 into the emergency room?

12 A No, I did not.

13 Q And did you have the records from Mr. Henderson's
14 visit to the emergency room?

15 A I do have those. They're difficult to read through
16 the -- the way they were sent, but I do have those.

17 Q Okay. If you don't mind, flip over to the second
18 page --

19 A Okay.

20 Q -- of those records.

21 A (Witness complies with request.)

22 Q And there's a box up in the top right corner that
23 says, "History of Present Illness." Do you see
24 that?

25 A Yes, sir.

1 Q All right. Will you tell us what Mr. Henderson
2 complained about when he came into the emergency
3 room that day?

4 A It looked like he complains of left wrist pain.

5 Q All right.

6 A And I think that's all -- that's all I can tell on
7 here that he complained about.

8 Q Okay. Well, as a result of those complaints,
9 Mr. Henderson had a couple x-rays of his left --
10 left wrist when he was there at the emergency room;
11 is that right?

12 A Yes, sir.

13 Q All right. And it looks like a radiologist
14 interpreted those x-rays; is that right?

15 A Yes, sir.

16 Q And the -- did the radiologist who interpreted
17 those x-rays that night indicate that he thought
18 there was a small impaction fracture? Is that
19 right?

20 A That's what it looks like on their report here
21 (indicating).

22 Q Okay.

23 A Yes, sir.

24 Q All right. Let's skip forward now to your visit
25 with Mr. Henderson on August 5th --

1 A Okay.

2 Q -- a little over a week later.

3 A Okay.

4 Q All right. Do you have the records from -- from
5 your visit with him that day?

6 A I do.

7 Q All right. And what was the reason you saw
8 Mr. Henderson on August 5th?

9 A I saw Mr. Henderson when he was following up -- one
10 of our other residents had seen him when he came
11 into the emergency department, not myself. So they
12 set him up to follow up in our clinic.

13 Q Okay. And did you examine Mr. Henderson at that
14 visit?

15 A I did.

16 Q Did you review any x-rays at that visit?

17 A I did. I reviewed the x-rays from the emergency
18 department.

19 Q Okay. And after reviewing the records from
20 Mr. Henderson's visit to the emergency department
21 and his x-rays and after examining him yourself
22 that day, were you able to form an assessment of
23 his injury and his condition?

24 A Yes, sir.

25 Q And what was that assessment?

1 A Reading through my note here, it looks like I felt
2 he had a wrist sprain. Reviewing his imaging, I
3 did not see any acute fractures. So I diagnosed
4 him with a wrist sprain.

5 Q Okay. Well, let's talk about this a little bit
6 more. And let's go back just a minute to
7 Mr. Henderson's visit to the emergency room --

8 A Okay.

9 Q -- on July 27th. Did -- the radiologist who looked
10 at that x-ray of Mr. Henderson's left wrist that
11 night said he thought there was a small impaction
12 fracture, right?

13 A Yes, sir.

14 Q All right. And are those the same x-rays that you
15 reviewed when you saw Mr. Henderson a week or so
16 later?

17 A Yes, sir.

18 Q All right. And when you reviewed those x-rays,
19 what did you see as to whether Mr. Henderson had a
20 fracture to his left wrist?

21 A When I looked at his x-rays, I did not see an acute
22 fracture. I thought he had some chronic changes,
23 some calcification within the soft tissues about
24 his wrist. But I did not see an obvious impaction
25 fracture of his distal radius.

1 Q All right. When you say chronic changes and
2 calcification in his wrist, explain to us a little
3 bit more what that means.

4 A Okay. Looking at the x-rays, and I'm not sure if
5 you guys can see those or not, he does have some
6 calcification in the soft tissue just distal to his
7 ulnar head. They mentioned on that x-ray that they
8 saw that. But it appears to just be some calcium
9 deposits rather than bony fragments from an acute
10 fracture.

11 Q All right. Now, Doctor, you told us earlier, I
12 think, that you've been practicing medicine as an
13 orthopaedist for, what, seven or eight years now?

14 A Yes, sir.

15 Q All right. And, more specifically, I think you
16 said that you focus on hand injuries?

17 A I do.

18 Q All right. And as part of your job, do you treat
19 fractures and broken bones in hands?

20 A Yes, sir, I do.

21 Q All right. Is that a regular part of your
22 practice?

23 A Yes, sir.

24 Q Now, this may sound like a silly question, but do
25 you know what an impaction fracture is?

1 A Yes, sir.

2 Q Have you ever seen one?

3 A I have.

4 Q Have you ever treated one?

5 A Yes, sir.

6 Q All right. As part of your job, do you regularly
7 order x-rays?

8 A Yes, sir.

9 Q And as you were training for your work in
10 orthopaedics and -- and in treating hand injuries,
11 did you receive any training in reading and
12 interpreting x-rays?

13 A Yes, sir, I did.

14 Q Well, what kind of training did you receive?

15 A So we -- as a first-year resident, we actually
16 rotate through the musculoskeletal radiology
17 department. And then throughout the rest of our
18 training we work with our attending physicians who
19 read their own x-rays. So that's part of our
20 practice in residency, to read our own x-rays.

21 Q Okay. Well, and -- and as an orthopaedist, when
22 you order x-rays, do you review those x-rays
23 yourself --

24 A Yes, sir.

25 Q -- for fractures or other type of injuries?

1 A Yes, sir, I do.

2 Q Is that a regular part of your job as an
3 orthopaedist, focusing on hand injuries?

4 A Yes, it is.

5 Q All right. And you reviewed Mr. Henderson's x-rays
6 a week or so later after this car accident
7 happened?

8 A Right.

9 Q All right. Dr. Carter, do you have an opinion, to
10 a reasonable degree of orthopaedic certainty, as to
11 whether Mr. Henderson fractured his left wrist?

12 A Yes, sir. I don't believe that he had an acute
13 fracture when we saw him in the emergency
14 department -- or when I saw him a couple weeks
15 later in clinic.

16 Q All right. Well, and if -- if he had a fracture on
17 July 27th, I mean, it would have -- you would have
18 -- would you have seen some evidence of it on
19 August 5th?

20 A Yes.

21 Q Okay. All right. And you may have touched on this
22 a little bit already. But if the x-rays did not
23 show a fracture, what did they show?

24 A Well, they show some calcium deposit in the soft
25 tissues of his wrist, which looks more like a

1 chronic issue, and again no obvious bony injury
2 that looks like an acute-type injury, like a
3 fracture.

4 Q All right. When you say, "chronic issue," most
5 people probably understand what that means. But
6 chronic means long-term?

7 A Right. I think the x-ray findings that we see were
8 nothing that was acute.

9 Q All right. And "acute" mean- -- meaning recent?

10 A Right, happened at the time of his injury.

11 Q All right. And is -- if something happened within
12 a couple weeks, would that be considered to be
13 acute?

14 A I don't know if I follow your question.

15 Q Well, I'm just trying to make sure, for those
16 people who may be hearing this testimony later, for
17 the -- for the jury members later on, the -- the
18 x-rays were taken on the day of the accident.

19 A Right.

20 Q So if something happened, if there was a fracture
21 in this accident, would it have been an acute
22 injury?

23 A Yes.

24 Q All right. And you told us you didn't see an acute
25 injury?

1 A I did not.

2 Q Okay. And if he had something that was chronic,
3 the calcification that you were talking about,
4 would that have been something that existed before
5 the accident?

6 A On his imaging, yes, I believe it would.

7 Q All right. Dr. Carter, how did you leave it with
8 Mr. Henderson? Was he -- was he supposed to return
9 to you, follow up or anything?

10 A The plan was, reading through my note here, we gave
11 him a wrist splint. We told him to take some
12 anti-inflammatory medication for his symptoms that
13 he's having. He could work on his range of motion
14 as his symptoms improved. And I told him I would
15 see him back if needed.

16 Q Okay. Now, I will represent to you that the -- the
17 17 pages of records that you have from the Medical
18 College of Georgia are all the records that we have
19 from the Medical College of Georgia.

20 A Okay.

21 Q Is there any indication that you saw Mr. Henderson
22 after that visit on August 5th, 2010?

23 A There's not in these notes that I looked through.
24 I don't see any other records of visits.

25 MR. MASSEY: Okay. Dr. Carter, those are all

1 the questions I have for you right now. Mr. Barnes
2 may have some. Then I may have some followup, but
3 I appreciate your answers.

4 THE WITNESS: Well, thank you.

5 EXAMINATION

6 QUESTIONS BY MR. BARNES

7 Q Dr. Carter, this is William Barnes. And I am a
8 lawyer in Hampton, South Carolina, and I represent
9 Benjamin Henderson in this incident where he was
10 struck by a tree. And I just have a couple of
11 questions for you.

12 Do you have in front of you the 17 pages --

13 A Yes.

14 Q -- of records?

15 A Yes, sir, I do.

16 MR. BARNES: I would like to mark those as
17 Exhibit 1, please.

18 (Plaintiff's Exhibit No. 1 marked for
19 identification.)

20 COURT REPORTER: They have been so marked as
21 Plaintiff's Exhibit 1.

22 MR. BARNES: Thank you, Sherry.

23 COURT REPORTER: You're welcome.

24 Q All right. Dr. Carter, you saw Mr. Henderson on
25 one occasion, and that was August 5th, 2010; is

1 that correct?

2 A Yes, sir.

3 Q And you were working as a resident at the Hand &
4 Upper Extremity Surgery Clinic there at MCG, right?

5 A Yes, sir.

6 Q And when you were a resident, you were working
7 under the supervision of another doctor; is that
8 correct?

9 A Yes, sir.

10 Q And that was about nine days after July 27th when
11 Mr. Henderson was struck by the tree. And you
12 didn't see him at any point in time during those
13 nine days, did you?

14 A No, sir, I did not.

15 Q And I want to walk through some of these records
16 that's contained in Plaintiff's Exhibit 1.

17 A Okay.

18 Q The first page, it says at the top left, is the
19 Patient Discharge Summary and Instructions?

20 A Yes, sir.

21 Q And it says your diagnosis is a left wrist
22 fracture, correct?

23 A Yes, sir.

24 Q And on the right-hand side it says you were seen
25 today, and it says Fly and Verma?

1 A Yes, sir.

2 Q And those are the doctors that saw Mr. Henderson
3 when he was at the emergency room at MCG, correct?

4 A Yes, sir.

5 Q And I want to go to the second page of Exhibit 1
6 and under History of Present Illness, kind of on
7 the top right it says, "48-year-old male was trying
8 to move a tree limb from the road when another car
9 hit the tree and knocked him into a ditch; isn't
10 that correct?

11 A Yes, sir.

12 Q And then down at the bottom, it has "Pertinent
13 Physical Findings," correct?

14 A Yes, sir.

15 Q And it says, "left wrist" and it says, "positive
16 for swelling and deformity," correct?

17 A Yes, sir.

18 Q And that means that he had swelling of his left
19 wrist, and there was also a deformity of the left
20 wrist?

21 A Yes, sir.

22 Q And it says, "small abrasion over left wrist"?

23 A Yes, sir.

24 Q And it says, "abrasions on low back"?

25 A Yes, sir.

1 Q And I want to next turn to page four --

2 A Okay.

3 Q -- of Exhibit 1. And about halfway down the
4 right-hand side it says, "diagnosis." And it again
5 says, "left wrist fracture," correct?

6 A Yes, sir.

7 Q And over on the left-hand side, about 75 percent
8 down, it says, "X-Ray results," and it says,
9 "distal radius fracture on AP of forearm," correct?

10 A Yes, sir.

11 Q And it says, "Initial impressions and differential
12 diagnosis" under that. And it says, "left wrist,"
13 and it has listed fracture, contusions and
14 dislocation, correct?

15 A Yes, sir.

16 Q And over on the right-hand side it says, "Attending
17 documentation." It says, "Patient examined,
18 discussed with resident, agree and documented,"
19 correct?

20 A Yes, sir.

21 Q And down below that it says, "Attending faculty's
22 signature and print," correct?

23 A Yes, sir.

24 Q And Dr. Fly signed his name approving the diagnosis
25 of a left wrist fracture, correct?

1 A Yes, sir.

2 Q And Dr. Fly was the attending faculty member at the
3 hospital during Mr. Henderson's visit on the 27th
4 of July, correct?

5 A Yes, sir.

6 Q I want to next turn to page ten of Exhibit 1.

7 A (Witness complies with request.)

8 Q And let me know when you get there, please.

9 A Yes, sir, I'm here.

10 Q And this is a preliminary report from the
11 Department of Radiology at MCG, correct?

12 A Yes, sir.

13 Q And this says, "Small impaction fracture at ulnar
14 aspect of distal radius," correct?

15 A Yes, sir.

16 Q And it's got a signature down there at the bottom?

17 A Yes, sir.

18 Q And it's dated July 27, 2010, at 2118, correct?

19 A Yes, sir. It looks like they also put a question
20 mark at the beginning of their diagnosis, of their
21 findings here.

22 Q Correct. But Dr. Fly signed off on the diagnosis
23 on the page -- the previous page we just looked at
24 of a left wrist fracture, correct?

25 A Yes, sir. Yes, sir.

1 Q And the next page is another handwritten page of a
2 preliminary report. And that's dated July 28 at
3 0044 or 44 minutes after midnight, correct?

4 A Yes, sir.

5 Q And it says, "S/P." What does that mean?

6 A Status post.

7 Q Okay. And it says, "Reduction of distal fracture,
8 anatomic alignment"?

9 A Yes, sir.

10 Q So they did a reduction of Mr. Henderson's wrist?

11 A Well, that's what this radiology report says.

12 Q Okay. And you don't have any information to
13 dispute that they did a reduction of the wrist, do
14 you, because you weren't there?

15 A No, sir, I was not there.

16 Q The next page is the radiology report. And it is
17 dated July 27 of 2010, at 9:30 p.m., correct?

18 A Yes, sir.

19 Q And it shows the ordering provider as Christopher
20 Fly?

21 A Yes, sir.

22 Q And under two views of the left forearm, it says,
23 "There's a small impaction fracture of the distal
24 radius with bony fragments just distal to the ulna.
25 The radiocarpal joint space and radioulnar joint

1 appear intact," correct?

2 A Yes, sir.

3 Q And down at the bottom it says that the imaging
4 study was reviewed by Alexander Daley, and it was
5 dictated by Melissa McGet- -- McGettigan, correct?

6 A Yes, sir.

7 Q And the next page, which is page 13, is another
8 part of the radiology report, correct?

9 A Yes, sir.

10 Q And it shows -- at the top it says exam date of
11 July 28th, 2010, at 1:02:54 a.m., correct?

12 A Yes, sir.

13 Q And it says, "Patient history," and it says,
14 "48-year-old male," and it says, "post reduction of
15 left upper extremity," correct?

16 A Yes, sir.

17 Q And this confirms that there was a reduction done
18 of the wrist?

19 A Again, that -- that's what it says on this
20 radiology report, yes, sir.

21 Q And explain to us what a reduction is and how
22 that's done.

23 A A reduction is putting the bones back in normal
24 alignment. So taking a fracture that is malaligned
25 and putting it back into normal alignment.

1 Q And it says under that two views of left wrist, it
2 says, "There has been an interval placement of a
3 splint stabilizing the distal radius fracture,"
4 correct?

5 A Yes, sir.

6 Q "Bones remain in anatomic alignment," correct?

7 A Yes, sir.

8 Q And describe this splint for us.

9 A Well, I mean, all I can tell what the splint is
10 what I can see on the x-ray. It appears to be a
11 plaster splint. I can't tell how high it goes
12 above what I can see on the x-ray. Sorry. I'm
13 getting to the splint films here. And that's about
14 all I can tell on the x-ray. And again, I was not
15 there in the emergency department when they put it
16 on.

17 Q Okay. I want to go to your visit on August 5th on
18 page 15. Let me know when you get there.

19 A Yes, sir, I'm here.

20 Q And you took a history, and it says, "Mr. Henderson
21 is seen today for a followup visit, correct?"

22 A Yes, sir.

23 Q And he was placed in a splint, and he presented on
24 August 5th in the splint, correct?

25 A Yes, sir.

1 Q It says he feels his wrist is somewhat better than
2 it did, although he is some -- still having some
3 pain in his wrist?

4 A Yes, sir.

5 Q And under physical -- you also did a physical exam,
6 correct?

7 A Yes, sir.

8 Q And you noted his splint was removed, correct?

9 A Yes, sir.

10 Q And he had mild tenderness to palpation to the
11 dorsal aspect of his radiocarpal joint?

12 A Yes, sir.

13 Q And explain what mild tenderness to palpation
14 means.

15 A It means he had some tenderness when I pushed on
16 the dorsal aspect of his wrist.

17 Q And you noted he had some limitation on flexion and
18 extension of the wrist secondary to pain and
19 stiffness?

20 A Yes, sir.

21 Q And explain to us what limitation on flexion and
22 extension is.

23 A It just means he had less flexion and extension
24 than the normal range of motion of a wrist. And it
25 seemed to be mainly secondary to some pain.

1 Q And -- and then on the second page of your note on
2 page 16 of Exhibit 1, you note that it was your
3 opinion that he injured his left wrist on July 27th
4 in the incident with the tree, correct?

5 A Yes, sir.

6 Q And you don't -- it's your opinion that he didn't
7 have a left wrist fracture, but instead he had a
8 left wrist sprain, correct?

9 A Yes, sir.

10 Q But regardless of whether he has a sprain or a
11 fracture, it's still your opinion that the injury
12 and the treatment he received at MCG was a result
13 of this -- these events on July 27th, correct?

14 A Yes, sir.

15 Q And it was the opinion of the radiologist and
16 Dr. Fly at MCG that Mr. Henderson had a fracture to
17 his left wrist, correct?

18 A Yes, sir.

19 Q And Mr. Henderson had a reduction at MCG, correct?

20 A Only per the radiology note that I can tell, yes,
21 sir.

22 Q And if a reduction -- if a reduction puts bones
23 back in alignment, and it's your testimony that he
24 didn't have a fracture, what are they doing the
25 reduction for?

1 A Well, you asked whether or not he had a reduction,
2 and I see in the radiology note he had a reduction.
3 It looked like one of our orthopaedic residents saw
4 him in the emergency department as well. And I did
5 not see any record in his note that he did a
6 reduction on the patient. It looks like he placed
7 the patient in a splint. And so again all -- the
8 only note I see that mentioned reduction is the
9 radiology report.

10 Q But as you testified earlier, the purpose of a
11 reduction is to put bones back into alignment,
12 correct?

13 A Yes, sir.

14 Q And you've relied on the records in Exhibit 1 there
15 before you for the purpose of giving your opinions
16 today in this case, correct?

17 A Yes, sir.

18 MR. BARNES: I don't have anything else.

19 Thank you.

20 THE WITNESS: Thank you.

21 EXAMINATION

22 QUESTIONS BY MR. MASSEY

23 Q Dr. Carter, just a few followups, if I may.

24 A Sure.

25 Q You and Mr. Barnes spent a little while talking

1 about whether a reduction was done in the emergency
2 room. And you've told us what a reduction is.

3 A Yes, sir.

4 Q What kind of a doctor would perform a reduction on
5 a fracture?

6 A That would be an orthopaedic surgeon, usually.
7 Occasionally emergency medicine physicians will
8 also perform those.

9 Q All right. Would a radiologist ever perform a
10 reduction of a broken bone or a fractured bone?

11 A No.

12 Q All right. And the -- the notes that you and
13 Mr. Barnes were talking about where it said that
14 there was a reduction performed, that was on the
15 radiologist's reports; is that right?

16 A Yes, sir.

17 Q All right. And would the radiologist just get that
18 information from someone else, I suppose?

19 A I suppose. Again, I was not there at the time,
20 so. . .

21 Q Yes. All right. And Mr. Henderson actually did
22 have an orthopaedic doctor visit with him when he
23 was in the emergency room; is that right?

24 A Yes, sir.

25 Q All right. And there is an orthopaedic

1 consultation note in the emergency department
2 records; is that right?

3 A Yes, sir.

4 Q All right. Have you had an opportunity to look at
5 that --

6 A I have.

7 Q -- that orthopaedic consult report?

8 A I have.

9 Q Dr. Carter, did you see anything in -- in that
10 orthopaedist's note indicating that he had actually
11 performed a reduction?

12 A I did not, and I looked through it a couple times.
13 And it's difficult to read. Again, my copies
14 aren't great, and the handwriting was very small,
15 but I did not see anything in there.

16 Q All right. Then you followed up with Mr. Henderson
17 on August the 5th, I think Mr. Barnes said about
18 nine days later. And did you perform your own
19 examination at that visit?

20 A Yes, I did.

21 Q All right. And what -- what would that involve?
22 An examination of a wrist complaint, what would
23 that involve?

24 A Well, in this case, I took his splint off, assessed
25 his wrist, in general, for swelling, any other

1 obvious abnormalities on visualization. I check
2 his range of motion of his wrist, whether or not he
3 has pain with range of motion. I check the
4 stability of his wrist and also check for
5 tenderness about his wrist.

6 Q All right. And from the examination that you did
7 at that visit on August 5th, was there anything to
8 indicate at that point that he did have a fracture?

9 A He had pain in his wrist. Correlating that with
10 the x-rays, no. And that's why my diagnosis was a
11 sprain.

12 Q Okay. And we've talked about those x-rays some
13 because I think you told us you reviewed those
14 x-rays at that visit on August 5th, 2010?

15 A Yes, sir.

16 Q All right. And have you seen the x-rays since that
17 day?

18 A I have.

19 Q All right. In fact, do you have them there with
20 you now?

21 A I do have them here with me now.

22 Q All right. And in looking at them now, do you see
23 a fracture in Mr. Henderson's left wrist?

24 A I do not see one.

25 Q All right. So the opinion that you had as to

1 Mr. Henderson's left wrist in August of 2010, is it
2 the same as it is today? Do you have the same
3 opinion today?

4 A Yes.

5 MR. MASSEY: Okay. All right. I think that's
6 all I have. Thank you, Dr. Carter.

7 THE WITNESS: Thank you.

8 EXAMINATION

9 QUESTIONS BY MR. BARNES

10 Q Dr. Carter, just a couple of followups to that.

11 A Yes, sir.

12 Q It was Dr. Fly's opinion, when he saw Mr. Henderson
13 in the emergency department on July 27th and the
14 28th, that he had a fracture, correct?

15 A Yes, sir.

16 Q And regardless of whether it's a fracture or a
17 sprain, it's still a significant injury to
18 Mr. Henderson's left hand, correct?

19 A Yes, sir.

20 MR. BARNES: I don't have anything else.
21 Thank you, Dr. Carter.

22 THE WITNESS: Thank you.

23 VIDEOGRAPHER: This concludes the deposition
24 of Dr. Craig Carter. We're off the record at 3:34.
25 (Deposition concluded at 3:34 p.m.)

01 STATE OF SOUTH CAROLINA)
02) IN THE COURT OF COMMON PLEAS
03 COUNTY OF AIKEN)
04 BENJAMIN K. HENDERSON,)
05)
06 Plaintiff,)
07)
08 vs.) CASE NO. 2012-CP-02-01691
09)
10 PATRICIA GREER,)
11)
12 Defendant.)
13 - - - - -

14 VIDEO DEPOSITION OF EDWARD WARREN, M.D.
15 taken by Counsel for the Defendant
16 before Lisa M. Adams, Certified Court Reporter
17 at The Hampton Regional Medical Center
18 595 West Carolina Avenue, Varnville, South Carolina
19 on Thursday, the 9th day of October, 2014
20 commencing at 12:16 p.m.
21 - - - - -

22 APPEARANCES OF COUNSEL

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32 ALSO PRESENT: RACHEL ???, VIDEOGRAPHER

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01 STIPULATIONS

02 IT IS STIPULATED AND AGREED BY and between counsel
03 appearing for the respective parties that: the
04 deposition of EDWARD WARREN, M.D. shall be taken
05 pursuant to agreement of the parties, for purposes of
06 discovery, cross-examination and all other purposes
07 permitted by the South Carolina Rules of Civil
08 Procedure.

09 The deposition is taken by agreement as to the time
10 and place, and all formalities respecting the taking,
11 transcribing and filing of the deposition are waived.

12 All objections are reserved until the time of trial
13 or other use of the deposition, except objections as to
14 the form of the question and the responsiveness of the
15 answer.

16 The reading and signing of the deposition by the
17 deponent is not waived.

01 [PLAINTIFF'S EXHIBIT 1 IS MARKED FOR IDENTIFICATION]

02 [PLAINTIFF'S EXHIBIT 2 IS MARKED FOR IDENTIFICATION]

03 - - - - -

04 EDWARD WARREN, M.D.

05 having been first duly sworn, was examined

06 and testified as follows:

07 - - - - -

08 EXAMINATION

09 BY MR. MASSEY:

10 Q. Dr. Warren, I know we met just a couple of
11 minutes ago. My name is Shane Massey. I'm an attorney
12 from Aiken. I represent Ms. Greer in this lawsuit.

13 A. Um-huh, [yes].

14 Q. Do you mind just starting off with just
15 telling us your full name?

16 A. Edward Warren, III.

17 Q. All right. And you are a radiologist --

18 A. Yes.

19 Q. -- is that right? All right. Do you mind
20 giving us a brief rundown of your education and
21 experience, starting with college and coming through
22 today?

23 A. Sure. I graduated from Wofford College in
24 1970; went to Clemson for a brief period of time;
25 entered medical school in 1971 at MUSC; graduated from

http://www.yeslaw.net/help

01 MUSC Medical School December of '74; entered residency
02 program at MUSC radiology, 1975, January sometime;
03 finished my residency in December of '78; board
04 certified, June 1980.

05 Q. Okay. And have you been practicing radiology
06 since that time?

07 A. Yes, I have. Right.

08 Q. All right. And where do you work now?

09 A. I work three days a week here at Hampton
10 Regional Hospital.

11 Q. Okay.

12 MR. MASSEY: At this point, I'd move to
13 qualify Dr. Warren as an expert in radiology.

14 MR. BARNES: I have no objection.

15 MR. MASSEY: All right.

16 Q. [Mr. Massey] Dr. Warren, just as a little bit
17 of background for the jurors who may not be familiar
18 with medical technology, tell us what a radiologist
19 does.

20 A. We perform and interpret x-ray procedures
21 and/or imaging procedures, which would include x-ray
22 examination; CT examinations; ultrasound; breast
23 imaging; MR, Magnetic Resonance sometimes. Basically,
24 that's what we do.

25 Q. All right, so do you actually treat patients

01 or are you limited to -- is your practice limited to --
02 to performing and interpreting those tests that you told
03 us about?

04 A. My -- my practice here is -- is limited to
05 interpretation of procedures, yes.

06 Q. Okay. All right, how long have you been
07 working here at the Hampton Regional Hospital?

08 A. Since October 2005.

09 Q. All right. Let's go to December 2010.

10 A. Okay.

11 Q. Did you have an opportunity, in December 2010,
12 to interpret some x-rays that were performed on Mr.
13 Benjamin Henderson?

14 A. I did.

15 Q. All right. And the information I have is that
16 that x-ray was performed on December 30th, 2010. Is
17 that right?

18 A. That's correct.

19 Q. Okay. And when -- when -- when Mr. Henderson
20 came to you, were you given any preliminary information;
21 any type of clinical indications as to why he was having
22 an x-ray performed?

23 A. Yes. The information that I had at that time
24 was -- excuse me -- pain in the left hand and wrist.
25 There was a reported fracture, according to my records

01 here. I said approximately three months ago, but I did
02 not have any old films to look at, so all I had was the
03 films that were supplied to me on 12/30/10.

04 Q. All right. And, specifically, which part of
05 his body did you perform that x-ray on?

06 A. We did an examination of the left hand, which
07 included the wrist.

08 Q. All right. And tell us what the x-rays that
09 you performed revealed. What did those x-rays show?

10 A. I saw some calcifications at the left wrist
11 region. I did not see a fracture, a dislocation or a
12 bone lesion at all. That's what I saw.

13 Q. All right. Now, this was -- this x-ray was
14 done back in December of 2010, and I assume you actually
15 looked at the -- the films, the x-ray, when you made
16 this report that you're talking about now?

17 A. Yes, I looked at the -- I interpreted the
18 films that were obtained here on 12/30/2010.

19 Q. All right. Have you looked at those films
20 since that day?

21 A. Yes, I have.

22 Q. Have you looked at them recently?

23 A. Yes.

24 Q. Okay. You told us when you were reading from
25 your report there that you prepared in December 2010,

01 you told us what your interpretations were in December
02 2010. After looking at the x-rays recently, do you have
03 the same interpretation of what was on --

04 A. No changes in opinion at all.

05 Q. Okay. Now, have -- I assume you've done
06 several x-rays of broken bones --

07 A. Yes.

08 Q. -- fractures --

09 A. Yes.

10 Q. -- during the 30 plus years at your career?

11 A. Exactly. Several.

12 Q. Several?

13 A. Yes.

14 Q. Right. The -- the accident that we're here
15 about with Ms. -- Mr. Henderson and Ms. Greer happened
16 on July 27th of 2010.

17 A. Okay.

18 Q. You performed that x-ray about five months
19 later in December -- December 30th, 2010?

20 A. Yes.

21 Q. Based on your 30 plus years of experience, if
22 -- if there had been a fracture there in -- in July, is
23 that something that typically would still show up in
24 December?

25 A. You know, I don't know that I'm really

01 qualified to answer that question. It could be better
02 answered by an orthopedist, but fractures can completely
03 heal in that amount of time.

04 Q. All right. Okay, but -- but when you -- when
05 you interpret -- when you saw his x-ray in December
06 2010, and then again when you've seen it recently, your
07 interpretation of it is that there was no fracture on
08 what you saw?

09 A. I saw no fracture deformity in December 30th
10 of 2010.

11 Q. Now, you told us, also, that you -- you found,
12 on that x-ray, some evidence of some calcification.

13 A. Right.

14 Q. Tell us what that means.

15 A. Well, this looked like -- to me, it looked
16 like there were calcifications there and I stated that
17 it could represent calcium pyrophosphate deposition
18 disease, and that is a -- an arthritic kind of change
19 with calcium pyrophosphate crystals in the joint fluid.

20 Q. And if it's arthritic is that something that
21 happens over a long period of time?

22 A. It could, yes.

23 Q. Okay. Dr. Warren, other than reading this one
24 x-ray from Mr. Henderson, have you had any other
25 involvement with him, to your knowledge?

01 A. No, not that I'm aware of.

02 Q. Thank you, sir. That's all I have --

03 A. Um-huh, [yes].

04 Q. -- for right now.

05 - - - - -

06 EXAMINATION

07 BY MR. BARNES:

08 Q. Dr. Warren, my name is William Barnes and I
09 represent Mr. Henderson in this collision that occurred
10 on July 27th, 2010.

11 A. Um-huh, [yes].

12 Q. And you've had the opportunity, today, to
13 review the Aiken County EMS report, and also the records
14 from The Medical College of Georgia --

15 A. Yes.

16 Q. -- is that correct?

17 A. Correct.

18 Q. And I just want to ask you a couple of
19 questions about those since you've been qualified as an
20 expert. And I've handed you --

21 A. Right.

22 Q. You have before you there Exhibit 1, and
23 that's the --

24 A. Right.

25 Q. -- EMS report; is that correct?

01 A. Correct.

02 Q. And, basically, the EMS attendants said that
03 Mr. Henderson reported trauma to multiple sites due to
04 -- struck by blunt/thrown objects. Is that correct?

05 A. That's correct.

06 Q. And there on the third line, it says, "Patient
07 complains of left wrist pain and pain in his leg and
08 right arm." Is that correct?

09 A. Correct.

10 Q. [Reading] Patient state -- relates they pulled
11 up on a tree laying into the middle of the roadway.
12 They got out of the truck and started moving the limbs
13 and branches out of the roadway. Patient relates the
14 driver of the car was going, estimated, 60 miles an hour.
15 and never slammed on the brakes or slid. Is that
16 correct?

17 A. That's what's written here, yes.

18 Q. And it says, a couple of lines down, they did
19 a trauma assessment on Mr. Henderson?

20 A. Correct. I see it.

21 Q. And it says, "Crew noted some swelling to the
22 left wrist area. Possible fracture."

23 A. That's written here, yes.

24 Q. And they also reported some abrasions to the
25 -- Mr. Henderson's right upper forearm. Is that

01 correct?

02 A. That's correct, and it's written here.

03 Q. And the EMS, the Aiken County EMS took Mr.
04 Henderson to The Medical College of Georgia; is that
05 correct?

06 A. That looks like what happened, yes.

07 Q. I want to hand you -- what you have there
08 before you, Exhibit 2, and ask you -- and The Medical
09 College of Georgia is a teaching hospital?

10 A. Right.

11 Q. And explain to us what that means, to be a
12 teaching hospital.

13 A. Well, teaching hospitals educate medical
14 students, nurses, lab techs, residents, doctors,
15 surgeons, orthopedists, et cetera.

16 Q. And usually there's an attending faculty
17 member?

18 A. There usually is.

19 Q. On Exhibit 2, I want you to start at the first
20 page there and this -- these are Mr. Henderson's
21 records. Is that correct? Up in the top right, that's
22 Benjamin K. Henderson?

23 A. Yes, it is.

24 Q. And there on the top left, it says, "Your
25 diagnosis is left wrist fracture." Is that --

01 A. That's written here. That's not my diagnosis,
02 but that's what the statement says, yes.

03 Q. That's what the physicians at MCG diagnosed
04 Mr. Henderson with; is that correct?

05 A. Yes. That's what's written here, yes.

06 Q. And on the right side there, it says, "You
07 were seen today by Fly, slash, Verma"?

08 A. That's written here, yes.

09 Q. And I want to next go to page two, and this is
10 another record from MCG; correct?

11 A. Yes.

12 Q. And it says, "Chief complaint, left wrist
13 pain"?

14 A. Correct.

15 Q. And it says, "History of present illness. 48-
16 year-old male was trying to move a tree limb from the
17 road when another car hit the tree and knocked him into
18 a ditch."

19 A. Yes.

20 Q. Correct? And down at the bottom, it says,
21 "Details of pertinent -- pertinent physical findings"?

22 A. Correct.

23 Q. It says, "Left wrist positive for swelling and
24 deformity"?

25 A. Yes.

01 Q. [Reading] Small abrasions over left wrist?
02 A. Yes.
03 Q. [Reading] Decreased range of motion?
04 A. Yes.
05 Q. And right below there, it says, "Abrasions on
06 low back"?
07 A. Wait a minute. Let me see.. Yes.
08 Q. I want to next ask you to turn to page four of
09 Exhibit 2.
10 A. Got it.
11 Q. And there on the -- kind of toward the bottom
12 left, it says, "X-ray results." It says, "X-ray," it
13 says, "Distal radius fracture on AP of -- " -- is that
14 forearm?
15 A. That looks like what is written here, yes.
16 Q. And it says, "Attending documentation"?
17 A. Wait a minute. Where is that?
18 Q. On the right side there. It says, "Patient
19 examined. Discussed with resident. Agree and
20 documented"?
21 A. I see that.
22 Q. Is that what it says?
23 A. That's what it says, yes.
24 Q. And then over there on the bottom left, it
25 says, "Initial impressions and differential diagnosis,"

01 it says, "Left wrist, fracture, contusion and
02 dislocation"?

03 A. That's what it says here.

04 Q. And then on the bottom right, it says,
05 "Attending faculty signature," and Dr. Fly is the
06 attending physician that signed off on that diagnosis?

07 A. That's what's written.

08 Q. I want to next ask you to turn to page 10.

09 A. Got it.

10 Q. And this is a preliminary report from the
11 department of radiology at MCG.

12 A. That's what it says, yes.

13 Q. And it says, "The findings -- and these are --
14 this in handwriting, it says, "Small impaction fracture
15 at ulnar aspect of distal radius. Small fracture
16 fragments just distal to ulna." Is that correct?

17 A. It's -- you missed the question mark, small
18 impaction fraction at ulna aspect of distal radius.

19 Q. Okay.

20 A. But, yes, that's what it says otherwise.

21 Q. And we'll -- we'll get to that in a minute.

22 A. All right.

23 Q. The next page, page 11, says -- is it a
24 similar document?

25 A. Yes.

01 Q. It says, "S, slash, P."
02 A. Right.
03 Q. What does --
04 A. Status -- Status Post.
05 Q. And what's that mean?
06 A. That means following.
07 Q. Following what?
08 A. Well, it says here, "Following -- Status Post,
09 reduction of distal -- " -- that looks more like tibial,
10 but I can't read the next writing. Can y'all read it?
11 Q. It says something then fracture.
12 A. Correct.
13 Q. And then below that it says --
14 A. Anatomic alignment.
15 Q. Right. And what is a reduction?
16 A. Reduction is an attempt to manipulate.
17 Q. Is it also used to align bones?
18 A. Yes.
19 Q. And I want to next ask you to turn to page 12,
20 and this is the formal radiology report from MCG;
21 correct?
22 A. Yes, that is the formal --
23 Q. Much like the one Mr. Massey asked you about
24 from December 30th, that you did here? This is --
25 A. Yes.

01 Q. -- a radiology report?

02 A. Right. Yes.

03 Q. And it shows the exam was done on July 27th,
04 2010, at 9:30 p.m.?

05 A. Yes.

06 Q. And it says, "There is a small impaction
07 fracture of the distal radius with bony fragments just
08 distal to the ulna"?

09 A. That's what the report says.

10 Q. And that was the diagnosing radiologist's
11 opinion?

12 A. That's what he's written here.

13 Q. Is that correct?

14 A. Yes. Or --

15 Q. And --

16 A. -- it may be a lady, Melissa.

17 Q. And Dr. Fly, from our previous page that we
18 looked at, was the attending faculty member? He also
19 signed off on that diagnosis?

20 A. I have up here -- are we still on document
21 number 12?

22 Q. Correct.

23 A. If you'll look at the top, it says, "Ordering
24 provider," so that may have been the ordering physician
25 rather than the attending radiologist physician.

01 Q. Right, but Dr. Fly was the attending faculty
02 member, as we talked about on page four --

03 A. Correct. Okay.

04 Q. -- where he signed at the bottom right --

05 A. Right.

06 Q. -- regarding Mr. Henderson's diagnosis?

07 A. Right.

08 Q. I want to ask you to turn to page 13.

09 A. I'm there.

10 Q. And this is July 28th at 1:02 a.m.?

11 A. That is what it says, yes.

12 Q. And it says, "Patient history," it says, "Post
13 reduction of left upper extremity"?

14 A. Correct, that's what it says.

15 Q. And it basically says there's been a placement
16 of a splint stabilizing the distal radius fracture?

17 A. That's what this person says, yes.

18 Q. And you haven't seen these films?

19 A. No. I can't attest to the accuracy of these
20 at all.

21 Q. And I think your testimony was earlier, you
22 said that you couldn't testify of whether or not this
23 fracture would have healed in the five months that --
24 between this visit at MCG and your --

25 A. Correct, I couldn't --

01 Q. -- visit in December?

02 A. I can't say one way or the other about that,
03 no.

04 Q. Thank you, Dr. Warren.

05 A. Yeah.

06 Q. I don't have anything else.

07 A. All right. Thank you.

08 - - - - -

09 REEXAMINATION

10 BY MR. MASSEY:

11 Q. Dr. Warren, just a couple of brief follow-up
12 questions.

13 A. Sure.

14 Q. Will you look on page -- starting at page 15
15 of those records from The Medical --

16 A. Sure.

17 Q. -- College of Georgia?

18 A. Right.

19 Q. Is -- this is -- that's the first page of a
20 three-page record from an orthopedist?

21 A. Right.

22 Q. Turn over to the next page, page 16. At the
23 top, there's a category that says, "Radiological
24 studies."

25 A. Right.

01 Q. Do you see that?

02 A. I see it.

03 Q. The -- the orthopedist indicated there that he
04 didn't -- he didn't see a fracture in the x-ray but he
05 saw some evidence of calcification in the -- is that
06 flexor carpi?

07 A. Right.

08 Q. [Reading] Could be an indication for -- what's
09 that word?

10 A. Chondrocalcinosis. That's calcifications in
11 the joint space.

12 Q. All right. Is what you read right there from
13 the -- the radiologist's interpretation of that x-ray in
14 July of 2010, is that consistent with what you found in
15 the x-ray in December of 2010?

16 A. It's consistent with it. We use different
17 terminology there for the calcifications, but the rest,
18 from what I can tell here, would be consistent with the
19 findings that I had in December of 2010.

20 Q. All right. That's all I have. Thank you,
21 sir.

22 A. Sure.

23 MR. BARNES: Thank you, Dr. Warren.

24 MR. MASSEY: Thank you.

25 [VIDEO DEPOSITION CONCLUDED AT 12:37 P.M.]

C-E-R-T-I-F-I-C-A-T-E

S O U T H C A R O L I N A

HAMPTON COUNTY

I hereby certify that the foregoing deposition was reported, as stated in the caption, by means of Stenomask and speech recognition, with backup, and the questions and answers thereto were reduced to written form by me or under my direction; that the foregoing pages 1 through 20 represent a true, correct, and complete transcript of the evidence given on Thursday, the 9th day of October 2014, by the witness, EDWARD WARREN, M.D., who was first duly sworn by me; that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I financially interested in the action.

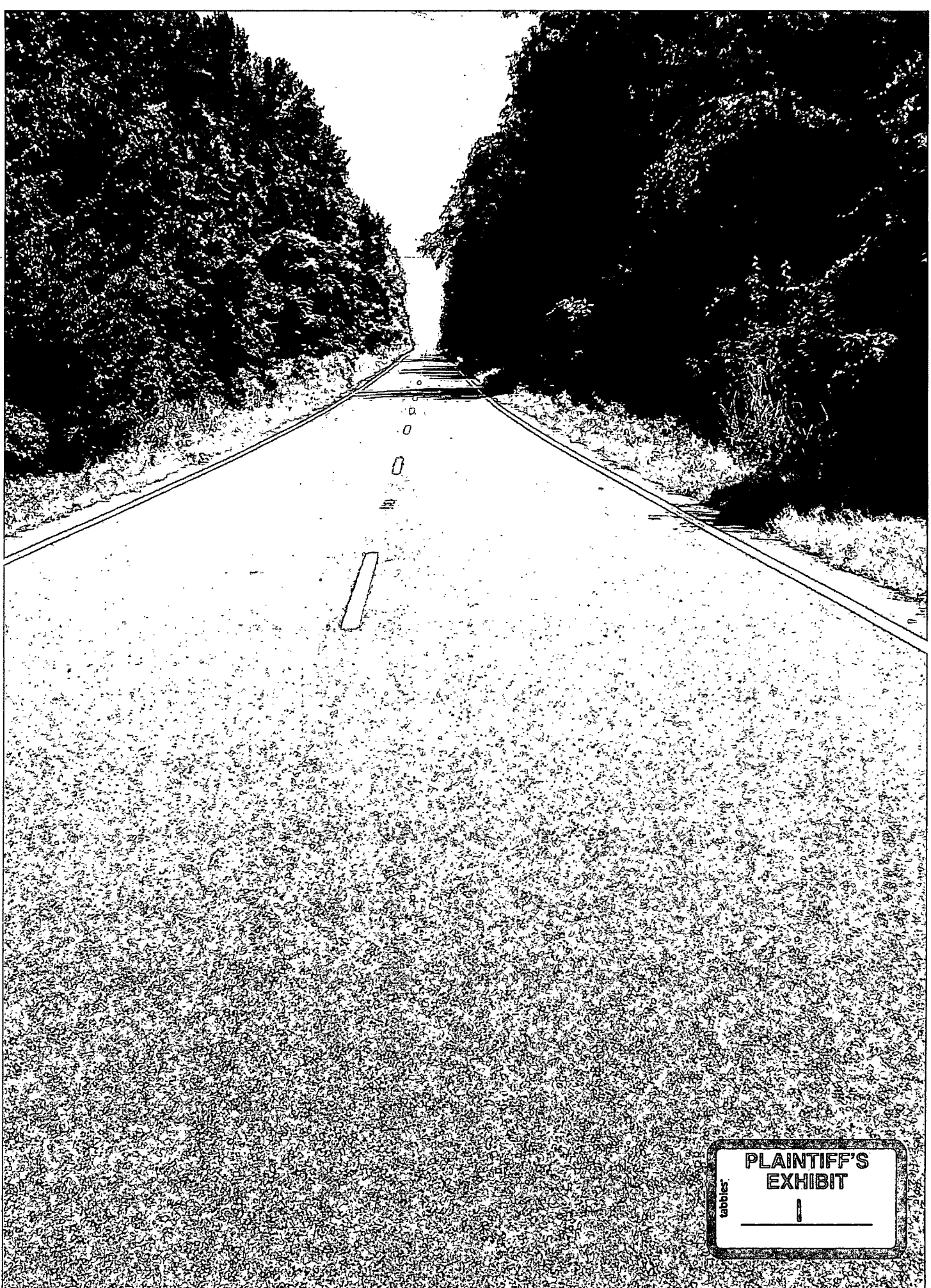
This, the 9th day of October 2014.

Lisa M. Adams

LISA M. ADAMS, CVR

CERTIFIED COURT REPORTER

NVRA CERTIFIED



03.00/1

03.00



tabbies
**PLAINTIFF'S
EXHIBIT
3**



03.01 / 1

03.01

II III I II IV V VI VII VIII IX X XI XII

03.02/1

03.02

II I III I I P I I I I



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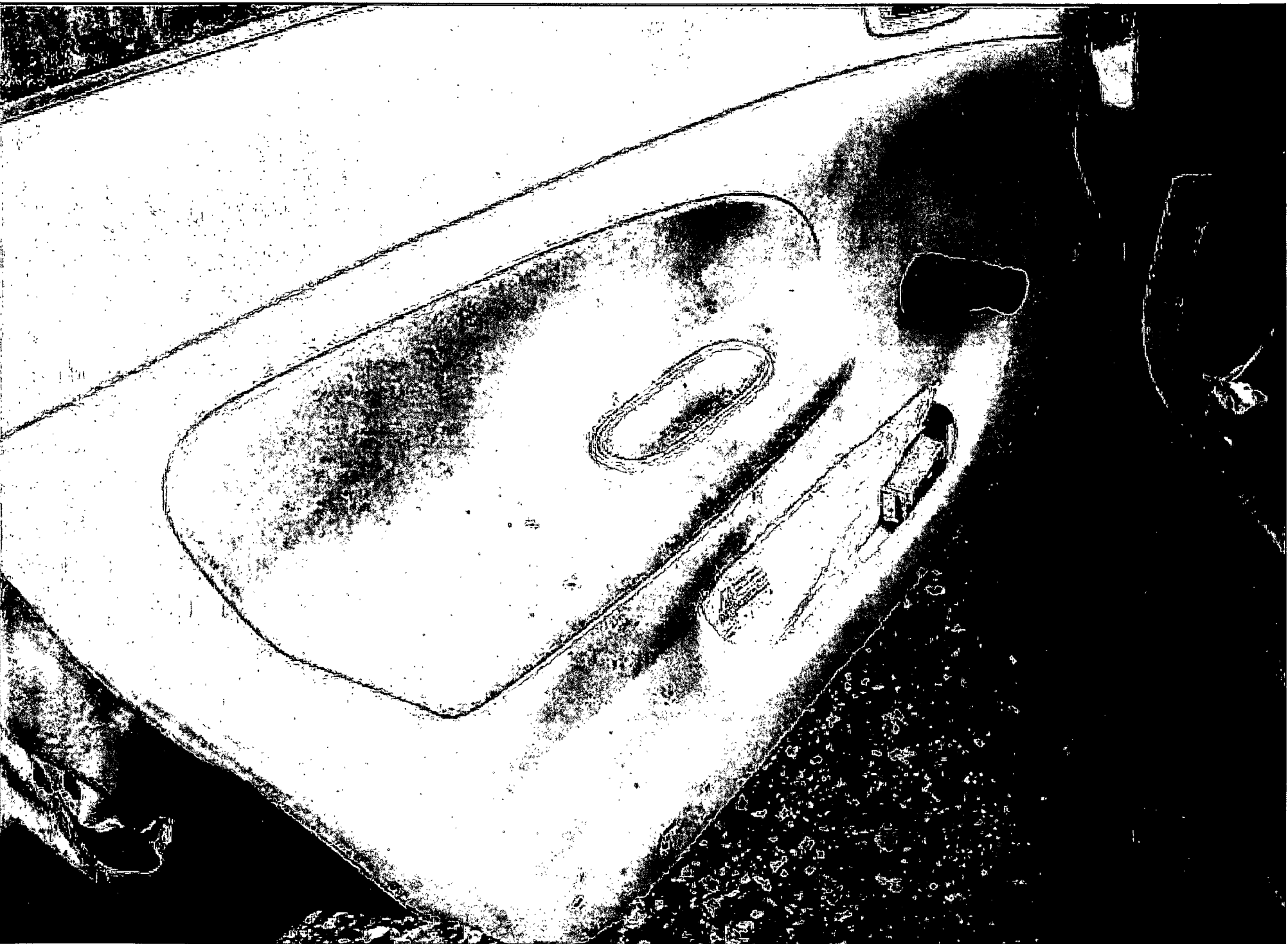
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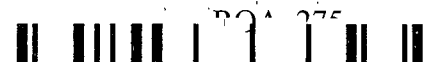
Medical Expense Worksheet
Benjamin Henderson
DOB: 03/30/
Occurrence Date: 07/27/2010

**PLAINTIFF'S
EXHIBIT**

tabbies

12

Provider	Account Number	Service Date(s)	Costs Incurred			
Aiken County EMS		7/27/2010	\$ 822.00			
MCG Health System, Inc.		07/27/2010 - 07/28/2010	\$ 2,403.00			
MCG Health System, Inc.		8/5/2010	\$ 166.00			
Physicians Practice Group-MCG		7/27/2010	\$ 444.00			
Physicians Practice Group-MCG		7/28/2010	\$ 45.00			
Physicians Practice Group-MCG		8/5/2010	\$ 276.00			
Hampton Regional Medical Center		12/30/2010	\$ 600.00			
Edward Warren, M.D., Coastal Plains Physician Associates		12/30/2010	\$ 39.20			
Palmetto Primary Care Physicians		10/4/2010	\$ 102.00			
Palmetto Primary Care Physicians		10/18/2010	\$ 63.00			
Palmetto Primary Care Physicians		12/27/2010	\$ 84.00			
Palmetto Primary Care Physicians		2/1/2011	\$ 100.00			
Palmetto Primary Care Physicians		4/22/2011	\$ 100.00			
Palmetto Primary Care Physicians		6/29/2011	\$ 100.00			
Vincent's Drug Store		10/7/2010 - 6/30/2011	\$ 187.00			
Total Medical Costs			\$ 5,531.20			



Invoice for Ambulance/Medical Services

10-007792 / 1212524

Aiken County EMS/Central Collections
828 Richland Ave W
Aiken SC 29801
576000299

Invoice Date 08/31/2011
Date of Service 07/27/2010

Patient:
BENJAMIN K HENDERSON

Call us at: (803)642-2067

Transport From / Response Location

278 Hwy
AIKEN SC 29805

Transport To:

Medical College of Georgia
1120 15th St
Augusta GA 30912

Services / Procedures / Medications**ALS1 Emergency**

07/27/2010	A0425	Mileage-ALS/BLS	47.00 @	\$8.00 =	\$376.00
07/27/2010	A0427	ALS1 Emergency	1.00 @	\$446.00 =	\$446.00
Total Charges:					\$822.00

Make checks payable to: Aiken County EMS/Central Collection

Please cut on the dotted line and return this portion with your payment.

Patient: BENJAMIN K HENDERS **Service Date:** 07/27/2010 **Run ID:** 10-007792 / 975498
Check Nbr: _____ **Amount Paid:** _____



Patient
HENDERSON, BEJNAMIN K

Account #

Patient
Type **Admitted** **Discharged** **Statement**
07/27/10 07/28/10 08/04/10

Addressee
BEJNAMIN K HENDERSON

MCG Health Inc.
Augusta, GA 30912-5200

FOR BILLING INQUIRIES, CALL, ACCOUNT REPRESENTATIVE PHONE 706/721-2961

Patient		Statement			
HENDERSON, BEJNAMIN K		Date	Pg #		
		08/04/10	1		
Serv Date	CPT Code	Description	Total	Insurance	Patient
07/27/10		CEFAZOLIN INJ 1GM	22.00		22.00
07/27/10		OXYCODONE (PERCOCET) TAB	7.00		7.00
07/27/10	73110	WRIST COMPLETE MIN 3 VIEWS	238.00		238.00
07/27/10	73090	FOREARM X RAY	234.00		234.00
07/27/10	99285	LEVEL 5 EMERGENCY VISIT	1,125.00		1,125.00
07/27/10	29085	APPLY HAND WRIST CAST GAUNTL	182.00		182.00
07/27/10	29240	STRAPPING SHOULDER EG VELPEA	198.00		198.00
07/27/10	96374	INTRAVENOUS INJECTION	198.00		198.00
07/28/10	73100	WRIST LIMITED	199.00		199.00
		TOTAL CHARGES	2,403.00		2,403.00
		GRAND TOTAL	2,403.00		
		ESTIMATED PATIENT LIABILITY			2,403.00

Patient
HENDERSON, BEJAMIN K

Account #

Patient
Type **Admitted** **Discharged** **Statement**
08/05/10 08/05/10 08/13/10

Addressee
BEJAMIN K HENDERSON

MCG Health Inc.
Augusta, GA 30912-5200

FOR BILLING INQUIRIES, CALL, ACCOUNT REPRESENTATIVE PHONE 706/721-2961

Patient		Statement			
HENDERSON, BEJAMIN K		Date	Pg #		
		08/13/10	1		
Serv Date	CPT Code	Description	Total	Insurance	Patient
08/05/10	99204	NP EXTENSIVE VISIT	166.00		166.00
		TOTAL CHARGES	166.00		166.00
		GRAND TOTAL	166.00		
		ESTIMATED PATIENT LIABILITY			166.00

PHYSICIANS PRACTICE GROUP
1499 WALTON WAY
SUITE 1400
AUGUSTA, GA 30901

11/17/2011

Patient Name and Account Number

HENDERSON, BEJAMIN K

Invoice Number	Doctor Last Name	Date of Service	Date Posted	Transaction Description CPT-4	Procedure Description	Debits Adjustment	Payments	Credit
10245675	FLY	07/27/2010	08/04/2010	CHARGES	99284 EMERGENCY DEPT VISIT03	348.00		
	FLY		11/08/2010	SENT TO COL				348.00
10268401	FULCHER	08/05/2010	08/11/2010	CHARGES	99204 OFFICE/OUTPATIENT VISI	276.00		
	FULCHER		11/08/2010	SENT TO COL				276.00
10275432	DALEY	07/28/2010	08/13/2010	CHARGES	73100 X-RAY EXAM OF WRIST	45.00		
	DALEY		11/08/2010	SENT TO COL				45.00
10275433	DALEY	07/27/2010	08/13/2010	CHARGES	73090 X-RAY EXAM OF FOREARM	46.00		
	DALEY		11/08/2010	SENT TO COL				46.00
10323518	DALEY	07/27/2010	08/30/2010	CHARGES	73110 X-RAY EXAM OF WRIST01	50.00		
	DALEY		11/08/2010	SENT TO COL				50.00



PROCEDURE	DESCRIPTION	COUNT	AMOUNT
3201260	HAND 3 OR MORE LEFT	1	299.00
3202850	WRIST - LEFT 3 OR MORE VIEWS	1	301.00

HAMPTON REGIONAL
Medical Center
595 W. Carolina Ave.
Varnville, S.C. 29944
803-943 2771

ACCOUNT CHARGE ACTIVITY SUMMARY
08/31/2011

No. 0740 P. 8

CLINIC:
NAME COASTAL PLAINS
ADDRESS PO BOX 602147
CHARLOTTE, NC 282602147
803-943-7600
GUARANTOR:
FC: S
NAME ENDERSON, BENJAMIN
ADDRESS

DATA SELECTION CRITERIA:
CUSTOMER: 10537
FIN CLASS:
PHYSICIAN:
SITE:
AGC:
DEPARTMENT:
LOCATION:
PRINT: Summary
DATE SELECTION: Date of service
DATE FROM:
DATE TO:
PROC CODE FROM:
PROC CODE TO:
RESPONSIBLE: All
CHARGE STATUS: Both

SORT BY:
PRIMARY: Date of service
SECONDARY:
TERTIARY:

PAGE: 1

OPERATOR: laymba

Aug. 31. 2011 1:19PM



12.0-007

12.0/7

GUARANTOR:
PATIENT:

ACCOUNT CHARGE ACTIVITY SUMMARY
HENDERSON, BENJAMIN

P. 9
No. 0740

DOS	CODE	DESCRIPTION	PATIENT	INS	ADJ	PHYSICIAN	PAT PAID
	BILL	AMOUNT	ID			RESP	
12/30/2010	73110	X-RAY EXAM OF WRIST	BENJAMIN	HENDERSON		WARREN, EDWARD	
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		39.20 0.00	0.00	0.00		39.20	0.00

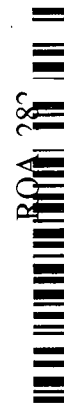
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PAGE: 2

OPERATOR: laymba

12.0/8

12.0-008



Palmetto Primary Care Physicians
2550 Elms Center Road
N. Charleston, SC 29406
Tax ID #: 57-1056849

Printed: 3/9/2012

Transaction Ledger

HENDERSON, BENJAMIN

Account:
PType: MVA
FType: MULTIPLAN

SVC Date	CPT Mod	Description	ICD9	Charge	Credits	Pat Bal	Doctor	Facility
10/4/2010	99202	OV NEW LEVEL 2	729.5	\$102.00	\$0.00	\$102.00	LRVHAM	HAMPTON
10/18/2010	99212	OV EST LEVEL 2	729.5	\$63.00	\$0.00	\$63.00	LRVHAM	HAMPTON
12/27/2010	99213	OV EST LEVEL 3	733.95	\$84.00	\$0.00	\$84.00	LRVHAM	HAMPTON
2/1/2011	99213	OV EST LEVEL 3	729.5	\$100.00	\$0.00	\$100.00	LRVHAM	HAMPTON
4/22/2011	99213	OV EST LEVEL 3	729.5	\$100.00	\$0.00	\$100.00	LRVHAM	HAMPTON
6/29/2011	99213	OV EST LEVEL 3	729.5	\$100.00	\$0.00	\$100.00	LRVHAM	WALTERBORO

	Charges	Credits	Pat Bal	Tot Bal
Totals:	\$549.00	\$0.00	\$549.00	\$549.00

 * MEDICAL EXPENSES BGN DTE:07/27/2010 END DTE:01/16/2012 *

FOR: HENDERSON, BENJAMIN VINCENT DRUGS
 CARE OF: 203 LEE AVENUE
 HAMPTON, SC 29924
 PHARMACIST - JT
 Store LIC# - Store PH # - 803-943-3521
 Store DER# - AVB470635 Provider # -
 Birth Date - 03/30/1962 Pat. Sex - M
 Social Security# - - - Medical Record# -

 DATE RX# DRUG (ITEM) NAME QTY PRESCRIBER PRICE PR TYPE
 N/R NDC# MFG# D/S DEA# GEN IND

10/07/10	04011798	HYDR/APAP 5/500	60	TAB	VEGA	24.00	Rx
	NEW	00406-0357-05 MALLI	20DAYS		BV7863978		GENERIC
	DAN Ind - NO Policy# ECS Auth # -						
10/10/10	02004342	OXYCODONE W/APAP 5 60	60	TAB	VEGA	24.00	Rx
	NEW	00406-0512-05 MALLI	30DAYS		BV7863978		GENERIC
	DAN Ind - NO Policy# ECS Auth # -						
12/03/10	02004411	OXYCODONE W/APAP 5 60	60	TAB	VEGA	24.00	Rx
	NEW	00406-0512-05 MALLI	30DAYS		BV7863978		GENERIC
	DAN Ind - NO Policy# ECS Auth # -						
12/27/10	02004446	OXYCODONE-APAP 7.5 60	60	TAB	VEGA	24.00	Rx
	NEW	00406-0522-01 MALLI	30DAYS		BV7863978		GENERIC
	DAN Ind - NO Policy# ECS Auth # -						
02/03/11	02004508	OXYCODONE-APAP 7.5 60	60	TAB	VEGA	28.00	Rx
	NEW	00406-0522-01 MALLI	30DAYS		BV7863978		GENERIC
	DAN Ind - NO Policy# ECS Auth # -						
04/25/11	02004627	OXYCODONE-APAP 7.5 60	60	TAB	VEGA	28.00	Rx
	NEW	00406-0522-01 MALLI	30DAYS		BV7863978		GENERIC
	DAN Ind - NO Policy# ECS Auth # -						
05/30/11	02004728	OXYCODONE-APAP 7.5 60	60	TAB	VEGA	35.00	Rx
	NEW	00406-0522-01 MALLI	30DAYS		BV7863978		GENERIC
	DAN Ind - NO Policy# ECS Auth # -						

157.00 TOTAL

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No.: 12-CP-02-1691

Benjamin K. Henderson,..... Appellant,

-v-

Patricia Greer,.....Respondent

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Appellant, Benjamin Henderson ("Henderson"), pursuant to Rule 203, SCACR, appeals the following Orders and Judgment in this matter:

- Jury verdict rendered October 14, 2014 (Exhibit A);
- Judgment filed October 15, 2014 (Exhibit B); and
- Order denying Plaintiff's motion for a new trial *nisi additur*, or in the alternative for a new trial, signed February 5, 2015 (Exhibit C).

Appellant received notice of the order denying the motion for a new trial *nisi additur* pursuant to SCRCF 59, or, in the alternative, for a new trial pursuant to SCRCF 59 by email on February 9, 2015.

[SIGNATURE PAGE TO FOLLOW]

RECEIVED

MAR 02 2015

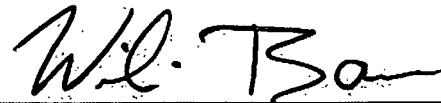
SC Court of Appeals

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

February 20, 2015
Hampton, South Carolina

BY: _____



William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: wbarnes@pmped.com

Other Counsel of Record:

A. Shane Massey, Esquire
NANCE, MCCANTS & MASSEY
P.O. Box 2881
Aiken, SC 29801

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-02-1691

VERDICT FORM

FILED October 15 2014
Shirley Godard
C.C.P. & J.
Debra Comar
Deputy Clerk 9:30am

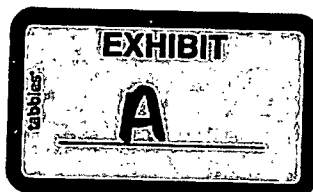
VERDICT

We, the Jury, find for the Plaintiff against the Defendant in the amount
of 5,531.20 actual damages.

James B
FOREPERSON

We, the Jury find for the Defendant.

FOREPERSON



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Shirley Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing is a true and correct copy of the
original document which have been filed in my office this
15th day of October 2014
Shirley Godard
C.C.P. & J. Aiken County, S.C.
Debra Comar

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Jury finds for the Plaintiff against the Defendant in the amount of \$5,531.20.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

FILED

October 15, 2014

L. J. Stoddard

Deputy Clerk

9:30am

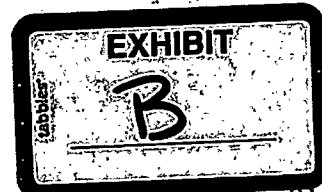
INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Benjamin K. Henderson	Patricia Greer	5,531.20

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

2145

Judge Code

10/15/2014

Date

For Clerk of Court Office Use Only

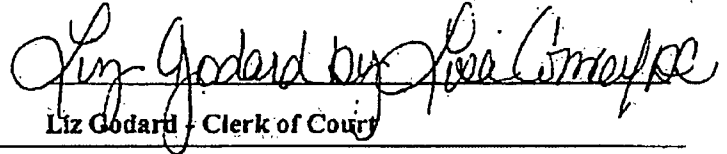
This judgment was entered on 10-14-2014, and a copy mailed first class or placed in the appropriate attorney's box on 10-15-2014, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III
PO Box 457
101 Mulberry Street East
Hampton, SC 29924-0457

Anthony Shane Massey
PO Box 2881
Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
BENJAMIN K. HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
) Case No. 2012-CP-02-1691
)

ORDER

FILED 2-9-15

Arita Knoepfle / AS
Deputy Clerk

The Plaintiff, Benjamin K. Henderson, moves this Court for a new trial *nisi additur* pursuant to SCRPC 59, or, in the alternative, for a new trial pursuant to SCRPC 59. SCRPC 59(f) provides that the Court may, in its discretion, rule on the motion without oral arguments.

This action was tried before a jury in Aiken County on October 13-14, 2014. Following the Defendant's case, the Court granted a directed verdict on the issue that the Plaintiff was not comparatively negligent. Following the conclusion of testimony, argument, and charge, the jury found Defendant, Patricia Greer, negligent and that her negligence proximately caused Mr. Henderson's damages. The jury's verdict awarded the Plaintiff \$5,531.20 in actual damages. This amount was the exact amount of the Plaintiff's medical expenses as contained in Plaintiff's Exhibit 12.

Whether or not the Plaintiff suffered further actual damages due to pain and suffering caused by the Defendant's negligence is a question of fact for the jury. In ruling on a motion for a new trial *nisi additur*, the trial judge must consider the adequacy or excessiveness of the verdict in light of the evidence presented. Compelling reasons must be given to justify invading the jury's province in this manner.

[Handwritten signature]



Considering all of the evidence and testimony presented at trial, the jury could have reasonably determined the Plaintiff suffered little or no damage as a result of pain and suffering. Further, the jury could have reasonably determined the only damages suffered by the Plaintiff as a result of the Defendant's negligence were the Plaintiff's actual medical expenses.

The Court finds no compelling reasons that would justify invading the jury's province in this manner. The Court further finds the amount of damages awarded the Plaintiff in this matter are adequate in light of all of the evidence presented. Accordingly, Plaintiff's Motion for a new trial *nisi additur* pursuant to SCRCP 59, or, in the alternative, for a new trial pursuant to SCRCP 59 is hereby denied.

IT IS SO ORDERED.

Lexington, South Carolina
January 5th, 2015
FAB

By:


R. Knox McMahon, Circuit Court Judge

RECEIVED

MAR 02 2015

SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

2/9/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 2-9-15, and a copy mailed first class or placed in the appropriate attorney's box on 2-9-15, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III PO Box 457 101 Mulberry
Street East Hampton, SC 29924-0457

ATTORNEY(S) FOR THE PLAINTIFF(S)

Anthony Shane Massey PO Box 2881 Aiken, SC 29802
Karl Stephen Brehmer PO Box 7966 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECEIVED

MAR 02 2015

SC Court of Appeals

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No.: 12-CP-02-1691

Benjamin K. Henderson,..... Appellant,

-v-

Patricia Greer,.....Respondent.

PROOF OF SERVICE

I, William F. Barnes, III, certify that I have served the Notice of Appeal on Patricia Greer, by depositing a copy of it in the United States Mail, postage prepaid, on February 26, 2015, addressed to her attorney of record as follows:

A. Shane Massey, Esquire
NANCE, MCCANTS & MASSEY
P.O. Box 2881
Aiken, SC 29801

ATTORNEY FOR RESPONDENT

The Honorable Liz Godard
Aiken County Clerk of Court
Post Office Box 583
Aiken, SC 29802

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY:



William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: wbarnes@pmped.com

February 26, 2015
Hampton, South Carolina

RECEIVED

MAR 02 2015

SC Court of Appeals

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION

101 MULBERRY STREET EAST

P.O. BOX 457

HAMPTON, SOUTH CAROLINA

29924-0457

JOHN E. PARKER
* CLYDE A. ELTZROTH, JR.
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN H. CROSBY

* INACTIVE

RANDOLPH MURDAUGH, SR.
(1887-1940)

RANDOLPH MURDAUGH, JR.
(1915-1998)

J. ROBERT PETERS, JR.
(1927-2008)

TELEPHONE

(803) 943-2111

TOLL FREE

(866) 943-2113

FACSIMILE

(803) 943-3943

(803) 914-2014

WEBSITE

www.pmped.com

February 26, 2015

William F. Barnes, III

Direct Dial: (803) 914-6702

Email: wbarnes@pmped.com

Asst Email: mdavis@pmped.com

Brenda W. Sigwald
Post Office Box 206
Jackson, SC 29831

Re: Benjamin Henderson v. Patricia Greer
Civil Action No.: 12-CP-02-1691

Dear Ms. Sigwald:

The above-referenced matter was tried before Judge McMahon on October 13-14th, 2014 in Aiken County. As the court reporter for this trial, please allow this letter to serve as our formal request for a copy of the complete transcript as soon as conveniently possible.

If you need any additional information, please let us know.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd

cc: Honorable Jenny Abbott Kitchings, SC Court of Appeals
SC Court Administration
A. Shane Massey, Esquire

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION
101 MULBERRY STREET EAST
P.O. BOX 457
HAMPTON, SOUTH CAROLINA
29924-0457

JOHN E. PARKER
* CLYDE A. ELTZROTH, JR.
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
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LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN H. CROSBY

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RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1998)
J. ROBERT PETERS, JR.
(1927-2008)

TELEPHONE
(803) 943-2111
TOLL FREE
(866) 943-2113
FACSIMILE
(803) 943-3943
(803) 914-2014
WEBSITE
www.pmped.com

February 26, 2015

William F. Barnes, III
Direct Dial: (803) 914-6702
Email: wbarnes@pmped.com
Asst Email: mdavis@pmped.com

The Honorable Liz Godard
Aiken County Clerk of Court
PO Box 583
Aiken, SC 29802

Re: Benjamin Henderson v. Greer
Civil Action No.: 12-CP-02-1691

Dear Ms. Godard:

Enclosed for filing in your office are two copies of the Notice of Appeal in the above entitled matter. Please return a copy of the same marked filed in the envelope provided. The original Notice of Appeal has been filed with the SC Court of Appeals.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: A. Shane Massey, Esquire

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No.: 12-CP-02-1691

Benjamin K. Henderson,..... Appellant,

-v-

Patricia Greer,.....Respondent

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Appellant, Benjamin Henderson ("Henderson"), pursuant to Rule 203, SCACR, appeals the following Orders and Judgment in this matter:

- Jury verdict rendered October 14, 2014 (Exhibit A);
- Judgment filed October 15, 2014 (Exhibit B); and
- Order denying Plaintiff's motion for a new trial *nisi additur*, or in the alternative for a new trial, signed February 5, 2015 (Exhibit C).

Appellant received notice of the order denying the motion for a new trial *nisi additur* pursuant to SCRCF 59, or, in the alternative, for a new trial pursuant to SCRCF 59 by email on February 9, 2015.

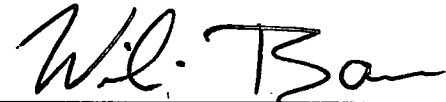
[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

February 20, 2015
Hampton, South Carolina

BY: _____



William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: wbarnes@pmped.com

Other Counsel of Record:

A. Shane Massey, Esquire
NANCE, MCCANTS & MASSEY
P.O. Box 2881
Aiken, SC 29801

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-02-1691

VERDICT FORM

FILED October 15 2014
Shi Godard
Clerk C.P. & J.
Dea Conner
Deputy Clerk 9:30am

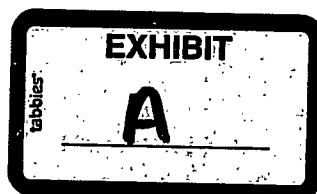
VERDICT

We, the Jury, find for the Plaintiff against the Defendant in the amount
of 5,531.20 actual damages.

James B
FOREPERSON

We, the Jury find for the Defendant.

FOREPERSON



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
In the Court of Common Pleas and to wit:
Benjamin Henderson, Plaintiff, vs. Patricia Greer, Defendant.
The foregoing is a true and correct copy of the
verdict as rendered by the jury in the above case.
15th October 2014
Dea Conner
Deputy Clerk

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Jury finds for the Plaintiff against the Defendant in the amount of \$5,531.20.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

FILED

October 15, 2014

Shirley Godard
Clerk, C.P. & G.S.

Patricia Greer
Deputy Clerk 9:30am

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Benjamin K. Henderson	Patricia Greer	5,531.20

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

2145 10/15/2014
Judge Code Date

For Clerk of Court Office Use Only

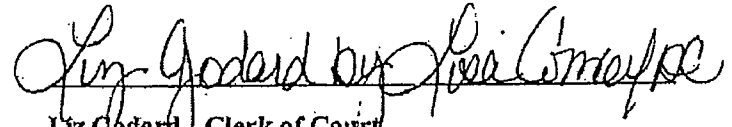
This judgment was entered on 10-14-2014, and a copy mailed first class or placed in the appropriate attorney's box on 10-15-2014, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III
PO Box 457
101 Mulberry Street East
Hampton, SC 29924-0457

Anthony Shane Massey
PO Box 2881
Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN K. HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Case No. 2012-CP-02-1691

ORDER

FILED 2-9-15
L. J. Haddad
J.C. Haddad
Arita Knapp / ar
Deputy Clerk

The Plaintiff, Benjamin K. Henderson, moves this Court for a new trial *nisi additur* pursuant to SCRCP 59, or, in the alternative, for a new trial pursuant to SCRCP 59. SCRCP 59(f) provides that the Court may, in its discretion, rule on the motion without oral arguments.

This action was tried before a jury in Aiken County on October 13-14, 2014. Following the Defendant's case, the Court granted a directed verdict on the issue that the Plaintiff was not comparatively negligent. Following the conclusion of testimony, argument, and charge, the jury found Defendant, Patricia Greer, negligent and that her negligence proximately caused Mr. Henderson's damages. The jury's verdict awarded the Plaintiff \$5,531.20 in actual damages. This amount was the exact amount of the Plaintiff's medical expenses as contained in Plaintiff's Exhibit 12.

Whether or not the Plaintiff suffered further actual damages due to pain and suffering caused by the Defendant's negligence is a question of fact for the jury. In ruling on a motion for a new trial *nisi additur*, the trial judge must consider the adequacy or excessiveness of the verdict in light of the evidence presented. Compelling reasons must be given to justify invading the jury's province in this manner.

Page 1 of 2

[Handwritten signature]

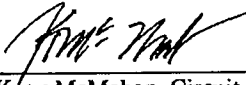


Considering all of the evidence and testimony presented at trial, the jury could have reasonably determined the Plaintiff suffered little or no damage as a result of pain and suffering. Further, the jury could have reasonably determined the only damages suffered by the Plaintiff as a result of the Defendant's negligence were the Plaintiff's actual medical expenses.

The Court finds no compelling reasons that would justify invading the jury's province in this manner. The Court further finds the amount of damages awarded the Plaintiff in this matter are adequate in light of all of the evidence presented. Accordingly, Plaintiff's Motion for a new trial *nisi additur* pursuant to SCRCP 59, or, in the alternative, for a new trial pursuant to SCRCP 59 is hereby denied.

IT IS SO ORDERED.

Lexington, South Carolina
January 27, 2015
FVB

By: 

R. Knox McMahon, Circuit Court Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

2/9/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on **2-9-15**, and a copy mailed first class or placed in the appropriate attorney's box on **2-9-15**, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III PO Box 457 101 Mulberry
Street East Hampton, SC 29924-0457

ATTORNEY(S) FOR THE PLAINTIFF(S)

Anthony Shane Massey PO Box 2881 Aiken, SC 29802
Karl Stephen Brehmer PO Box 7966 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

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

R. Knox McMahon, Circuit Court Judge

Case No.: 12-CP-02-1691

Benjamin K. Henderson,..... Appellant,

-v-

Patricia Greer,.....Respondent.

PROOF OF SERVICE

I, William F. Barnes, III, certify that I have served the Notice of Appeal on Patricia Greer, by depositing a copy of it in the United States Mail, postage prepaid, on February 26, 2015, addressed to her attorney of record as follows:

A. Shane Massey, Esquire
NANCE, MCCANTS & MASSEY
P.O. Box 2881
Aiken, SC 29801

ATTORNEY FOR RESPONDENT

RECEIVED
DEC 31 2015
SC Court of Appeals

The Honorable Liz Godard
Aiken County Clerk of Court
Post Office Box 583
Aiken, SC 29802

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: Wil. Barnes
William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: wbarnes@pmped.com

February 26, 2015
Hampton, South Carolina

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION

101 MULBERRY STREET EAST

P.O. BOX 457

HAMPTON, SOUTH CAROLINA

29924-0457

JOHN E. PARKER
• CLYDE A. ELTZROTH, JR.
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN H. CROSBY

• INACTIVE

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1998)
J. ROBERT PETERS, JR.
(1927-2008)

TELEPHONE

(803) 943-2111

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FACSIMILE

(803) 943-3943

(803) 914-2014

WEBSITE

www.pmped.com

February 26, 2015

William F. Barnes, III
Direct Dial: (803) 914-6702
Email: wbarnes@pmped.com
Asst Email: mdavis@pmped.com

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: Benjamin Henderson v. Patricia Greer
Civil Action No.: 12-CP-02-1691

Dear Ms. Kitchings:

Please find enclosed for filing in your office the original and two copies of the Notice of Appeal in the above entitled matter along with the following:

1. Proof of Service of the Notice of Appeal on the respondents and the Clerk of Court for Aiken County;
2. Jury verdict rendered October 14, 2014 (Exhibit A), Judgment filed October 15, 2014 (Exhibit B) and Order denying Plaintiff's motion for a new trial *nisi additur*, or in the alternative for a new trial signed February 5, 2015 (Exhibit C), which is being challenged on appeal; and
3. Our check in the amount of \$100.00 for the filing fee.

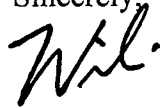
Please return a copy of the filed documents in the envelope provided.

By copy of this letter a copy of the Notice of Appeal and Proof of Service is being served on the Clerk of Court for Aiken County and a copy served on counsel for the respondents, A. Shane Massey, Esquire, NANCE, MCCANTS & MASSEY, Post Office Box 2881, Aiken, South Carolina 29801.

*Peters, Murdaugh, Parker,
Eltzroth & Detrick, P.A.
February 26, 2015
Page 2*

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read 'W.F. Barnes, III'.

William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: A. Shane Massey, Esquire

The Honorable Liz Godard
Aiken County Clerk of Court
Post Office Box 583
Aiken, SC 29802

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

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

R. Knox McMahon, Circuit Court Judge

Case No.: 12-CP-02-1691

Benjamin K. Henderson,..... Appellant,

-v-

Patricia Greer,.....Respondent

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Appellant, Benjamin Henderson (“Henderson”), pursuant to Rule 203, SCACR, appeals the following Orders and Judgment in this matter:

- Jury verdict rendered October 14, 2014 (Exhibit A);
- Judgment filed October 15, 2014 (Exhibit B); and
- Order denying Plaintiff’s motion for a new trial *nisi additur*, or in the alternative for a new trial, signed February 5, 2015 (Exhibit C).

Appellant received notice of the order denying the motion for a new trial *nisi additur* pursuant to SCRCF 59, or, in the alternative, for a new trial pursuant to SCRCF 59 by email on February 9, 2015.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

February 20, 2015
Hampton, South Carolina

BY: W.F. Barnes, III
William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: wbarnes@pmped.com

Other Counsel of Record:

A. Shane Massey, Esquire
NANCE, MCCANTS & MASSEY
P.O. Box 2881
Aiken, SC 29801

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-02-1691

VERDICT FORM

FILED October 15 2014
Shirley Godard
C.C.P. & J.
Deputy Clerk 9:30am

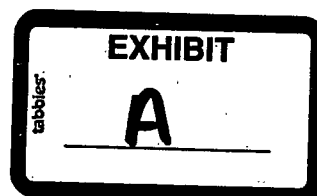
VERDICT

We, the Jury, find for the Plaintiff against the Defendant in the amount
of 5,531.20 actual damages.

James B
FOREPERSON

We, the Jury find for the Defendant.

FOREPERSON



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Lee Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original document which have been filed in my office this
15th day of October 2014
Shirley Godard
C.C.P. & J. Aiken County S.C.
Deputy Clerk

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Jury finds for the Plaintiff against the Defendant in the amount of \$5,531.20.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

FILED

October 15, 2014

J. H. Godard

J. H. Godard

J. H. Godard

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Benjamin K. Henderson	Patricia Greer	5,531.20

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.

EXHIBIT

B


Circuit Court Judge

2145

Judge Code

10/15/2014

Date

For Clerk of Court Office Use Only

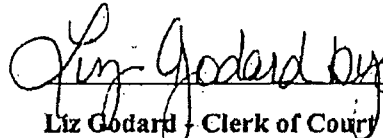
This judgment was entered on 10-14-2014, and a copy mailed first class or placed in the appropriate attorney's box on 10-15-2014, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III
PO Box 457
101 Mulberry Street East
Hampton, SC 29924-0457

Anthony Shane Massey
PO Box 2881
Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BENJAMIN K. HENDERSON,

Plaintiff,

vs.

PATRICIA GREER,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
) Case No. 2012-CP-02-1691

ORDER

FILED 2-9-15

Arita Knappe / ar
Deputy Clerk

The Plaintiff, Benjamin K. Henderson, moves this Court for a new trial *nisi additur* pursuant to SCRCP 59, or, in the alternative, for a new trial pursuant to SCRCP 59. SCRCP 59(f) provides that the Court may, in its discretion, rule on the motion without oral arguments.

This action was tried before a jury in Aiken County on October 13-14, 2014. Following the Defendant's case, the Court granted a directed verdict on the issue that the Plaintiff was not comparatively negligent. Following the conclusion of testimony, argument, and charge, the jury found Defendant, Patricia Greer, negligent and that her negligence proximately caused Mr. Henderson's damages. The jury's verdict awarded the Plaintiff \$5,531.20 in actual damages. This amount was the exact amount of the Plaintiff's medical expenses as contained in Plaintiff's Exhibit 12.

Whether or not the Plaintiff suffered further actual damages due to pain and suffering caused by the Defendant's negligence is a question of fact for the jury. In ruling on a motion for a new trial *nisi additur*, the trial judge must consider the adequacy or excessiveness of the verdict in light of the evidence presented. Compelling reasons must be given to justify invading the jury's province in this manner.

Page 1 of 2

[Handwritten signature]

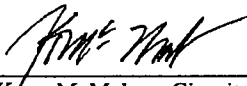


Considering all of the evidence and testimony presented at trial, the jury could have reasonably determined the Plaintiff suffered little or no damage as a result of pain and suffering. Further, the jury could have reasonably determined the only damages suffered by the Plaintiff as a result of the Defendant's negligence were the Plaintiff's actual medical expenses.

The Court finds no compelling reasons that would justify invading the jury's province in this manner. The Court further finds the amount of damages awarded the Plaintiff in this matter are adequate in light of all of the evidence presented. Accordingly, Plaintiff's Motion for a new trial *nisi additur* pursuant to SCRCP 59, or, in the alternative, for a new trial pursuant to SCRCP 59 is hereby denied.

IT IS SO ORDERED.

Lexington, South Carolina
January 5th, 2015
FAB

By: 

R. Knox McMahon, Circuit Court Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0201691

Benjamin K Henderson

Patricia Greer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
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☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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Circuit Court Judge

Judge Code

2/9/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on **2-9-15**, and a copy mailed first class or placed in the appropriate attorney's box on **2-9-15**, to attorneys of record or to parties (when appearing pro se) as follows:

William Franklin Barnes III PO Box 457 101 Mulberry
Street East Hampton, SC 29924-0457

ATTORNEY(S) FOR THE PLAINTIFF(S)

Anthony Shane Massey PO Box 2881 Aiken, SC 29802
Karl Stephen Brehmer PO Box 7966 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

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

R. Knox McMahon, Circuit Court Judge

Case No.: 12-CP-02-1691

Benjamin K. Henderson,..... Appellant,

-v-

Patricia Greer,.....Respondent.

PROOF OF SERVICE

I, William F. Barnes, III, certify that I have served the Notice of Appeal on Patricia Greer, by depositing a copy of it in the United States Mail, postage prepaid, on February 26, 2015, addressed to her attorney of record as follows:

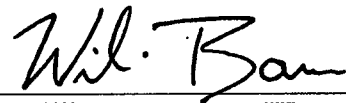
A. Shane Massey, Esquire
NANCE, MCCANTS & MASSEY
P.O. Box 2881
Aiken, SC 29801

ATTORNEY FOR RESPONDENT

The Honorable Liz Godard
Aiken County Clerk of Court
Post Office Box 583
Aiken, SC 29802

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY:



William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: wbarnes@pmped.com

February 26, 2015
Hampton, South Carolina

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

JOHN E. PARKER
* CLYDE A. ELTZROTH, JR.
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
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LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN H. CROSBY

* INACTIVE

PROFESSIONAL ASSOCIATION
101 MULBERRY STREET EAST
P.O. BOX 457
HAMPTON, SOUTH CAROLINA
29924-0457

June 24, 2015

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1998)
J. ROBERT PETERS, JR.
(1927-2008)

TELEPHONE
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TOLL FREE
(866) 943-2113
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(803) 914-2014
WEBSITE
www.pmped.com

William F. Barnes, III
Direct Dial: (803) 914-6702
Email: wbarnes@pmped.com
Paralegal: mdavis@pmped.com

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: Benjamin Henderson v. Patricia Greer
Civil Action No.: 12-CP-02-1691
Appellate Case No.: 2015-000409

Dear Ms. Kitchings:

Please be advised the transcript of record ordered from Brenda J. Sigwald, the court reporter who covered the trial in the above-referenced matter, was received on June 24th, 2015.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd

cc: A. Shane Massey, Esquire
SC Court Administration

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No.: 2015-000409

RECEIVED
DEC 31 2015
SC Court of Appeals

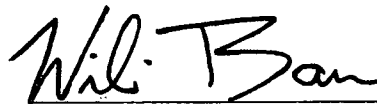
Benjamin K. Henderson, ... Appellant,

-v-

Patricia Greer, ... Respondent

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



William F. Barnes, III
PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
ATTORNEY FOR APPELLANT

December 29, 2015
Hampton, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No.: 2012-CP-02-1691
Appellate Case No.: 2015-000409

RECEIVED
DEC 31 2015
SC Court of Appeals

Benjamin K. Henderson, ... Appellant,

-v-

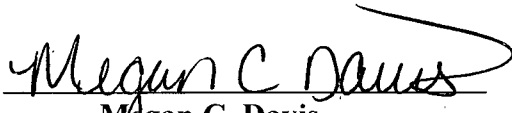
Patricia Greer, ... Respondent

CERTIFICATE OF SERVICE

This is to certify that I, **Megan C. Davis**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorney for the Appellant, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within the **Record on Appeal with Certificate of Counsel** to:

A. Shane Massey, Esquire
Nance, McCants & Massey
Post Office Box 2881
Aiken, SC 29801

Attorney for Respondent, Patricia Greer


Megan C. Davis

December 29th 2015
Hampton, South Carolina