

224451

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2013-CP-42-2404  
Appellate Case No. 2015-001828

Lisa McKaughan, Individually  
and as Personal Representative  
of the Estate of William Farr,

.....

Appellant

v.

Upstate Lung and Critical Care  
Specialists, P.C. and Sau-Yin  
Wan, M.D.

.....

Respondents.

RECORD ON APPEAL (VOLUME 1)

Ashby W. Davis  
David L. Williford  
Davis, Snyder & Williford, P.A.  
5 Hawthorne Park Court  
Greenville, SC 29615  
(864) 335-3500

Andrew F. Lindemann  
Davidson & Lindemann, P.A.  
P.O. Box 8568  
1611 Devonshire Drive  
Columbia, SC 29202  
(803) 806-8222

*Attorneys for Respondents*

William A. McKinnon  
Jordan C. Calloway  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
(803) 327-7800

*Attorneys for Appellant*

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## FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP4202404

|                                                                  |                        |                                                                                                                                           |                |
|------------------------------------------------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Lisa Mckaughan<br>Individually And As<br>Personal Representative | William Farr Estate Of | Upstate Lung And<br>Critical Care Specialists,<br>Pc                                                                                      | Sun-Yin Wan Md |
| PLAINTIFF(S)                                                     |                        | DEFENDANT(S)                                                                                                                              |                |
| Submitted by:                                                    |                        | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> 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

At the close of the Plaintiff's case, defense made a Motion for a Directed Verdict and it was granted.

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(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

2132

Judge Code

Date



For Clerk of Court Office Use Only

This judgment was entered on 30<sup>th</sup> day of July 2015, and a copy <sup>emailed</sup> mailed first class or placed in the appropriate attorney's box on 30<sup>th</sup> day of July 2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Angus McKinnon 1539 Health Care Dr. Rock Hill,  
SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ashby W. Davis 5 Hawthorne Park Ct. Greenville, SC 29615  
David Lee Williford II 5 Hawthorne Park Ct. Greenville, SC  
29615

ATTORNEY(S) FOR THE DEFENDANT(S)

*M. Hope Blackley*

M Hope Blackley - Clerk of Court

*Masha Long, DC*

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.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2015 JUL 30 AM 10:21  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Lisa McKaughan, Individually and as  
the Personal Representative of the Estate  
of William Farr,

Plaintiff,

-vs-

Upstate Lung and Critical Care  
Specialists, PC; and Sau-Yin Wan, M.D.

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No: 2013-CP-42-\_\_\_\_\_

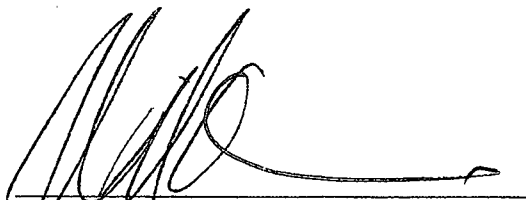
2013-CP-42-02404

SUMMONS

(Jury Trial Demanded)

TO THE DEFENDANTS IN THE ABOVE NAMED ACTION:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this  
action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said  
Complaint on the subscriber at his Office at 1539 Healthcare Drive, Rock Hill, South Carolina,  
29732, within thirty (30) days from the service hereof, exclusive of the date of such service; and  
if you fail to Answer the Complaint within the time aforesaid, judgment by default will be  
rendered against you for the relief demanded in the Complaint.



William A. McKinnon  
MCGOWAN, HOOD & FELDER, LLC  
1539 Health Care Drive  
Rock Hill, South Carolina 29732

Tel: (803) 327-7800  
Fax: (803) 328-5656  
[bmckinnon@mcgowanhood.com](mailto:bmckinnon@mcgowanhood.com)  
Attorney(s) for Plaintiff

May 31, 2013  
Rock Hill, South Carolina

FILED  
CLERK OF COURT  
SALUDAD COUNTY  
2013 MAY -3 PM 4:17  
M. ROPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Lisa McKaughan, Individually and as  
the Personal Representative of the Estate  
of William Farr,

Plaintiff,

v.

Upstate Lung and Critical Care  
Specialists, PC and Sau-Yin Wan, M.D.;

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Civil Action No: 2013-CP-42-\_\_\_\_\_

2013-CP-42-

02464

Complaint for Damages  
Jury Trial Demanded

The Plaintiff, by and through her undersigned counsel, for a Complaint against the  
Defendants, alleges as follows:

**Plaintiff:**

1. The Plaintiff, Lisa McKaughan, is the duly appointed Personal Representative of the estate her natural father, William Farr. At all times relevant hereto, Lisa McKaughan brings this action individually and as Personal Representative of the estate for the Survival and Wrongful Death actions. Plaintiff is a citizen and resident of Lexington County, South Carolina and Decedent Farr was a citizen and resident of Union County, South Carolina.

**Defendants:**

2. Upon information and belief, Defendant Upstate Lung and Critical Care Specialists, PC (hereinafter "Upstate") is a domestic corporation organized and existing under the laws of the State of South Carolina,

with its principal place of business at 1091 Boiling Springs Rd, Spartanburg, SC 29303..

3. Defendant Sau-Yin Wan, M.D., (hereinafter "Wan") is, upon information and belief, a citizen and resident of South Carolina.

#### **Jurisdictional Allegations and Venue**

4. Defendant Upstate Lung and Critical Care Specialists, PC is, upon information and belief, an entity organized and existing under the laws of South Carolina and which has its principal place of business in South Carolina, and is therefore subject to the general personal jurisdiction of this Court.
5. Defendant Wan is, upon information and belief, a citizen and resident of South Carolina and is therefore subject to the general personal jurisdiction of this Court.
6. Venue is appropriate in Spartanburg County pursuant to S.C. Code § 15-7-30.

#### **Factual Allegations Common to All Causes of Action**

7. Defendants Upstate Lung and Critical Care Specialists, PC has the right and/or power to direct and control the manner in which its employees and/or agents provide medical care and operate the business of delivering health care for a fee.
8. Upon information and belief, Defendant Upstate Lung and Critical Care Specialists, PC, has attending physicians, nurses and other staff who are

its agents, servants, and employees, and all acts or omissions complained of herein and performed by said agents, servants, and employees occurred during the course and scope of such agency and/or employment and are therefore imputed to Defendant Upstate Lung and Critical Care Specialists, PC.

9. At all times relevant to this action, physicians, nurses, residents, interns and staff health care providers caring for Decedent Farr were employees and/or agents of Upstate Lung and Critical Care Specialists, PC or were apparent agents and were acting within the course and scope of their employment and/or agency or apparent agency.
10. Decedent Farr and members of his family justifiably and reasonably believed that certain physicians, nurses, residents, interns and other staff health care providers at Upstate Lung and Critical Care Specialists, PC, were agents and/or employees of Upstate Lung and Critical Care Specialists, PC.
11. Upon information and belief, Defendant Wan at all times complained of herein, including but not limited to undertaking any and all treatment on Decedent Farr, was the agent, servant or employee of Defendant Upstate Lung and Critical Care Specialists, PC.
12. All acts or omissions complained of herein occurred during the course and scope of Defendant Wan's employment and/or agency with Defendant Upstate Lung and Critical Care Specialists, PC and are

therefore imputed to the Defendant Upstate Lung and Critical Care Specialists, PC under the doctrine of respondeat superior.

13. The negligent acts, omissions and liability of all Defendants includes their agents, principals, employees and/or servants, both directly and vicariously, pursuant to principles of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or respondeat superior.
14. That all of the above-named Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, wanton and reckless acts and omissions, singularly or in combination, are a proximate cause of the Plaintiff's damages, injuries and losses.
15. On or about January 11, 2010, Decedent Farr was seen by Defendant Wan at Defendant Upstate Lung, where the medical records note he was complaining of difficulty breathing.
16. On or about January 11, 2010, Dr. Wan ordered a chest x-ray, which Defendant Wan read and interpreted as "nodule (no)".
17. This chest x-ray was also read and interpreted by Defendant Doe as negative for any mass.
18. This chest x-ray was not sent for an overread by a radiologist.
19. The January 11, 2010 chest x-ray revealed a 2cm mass in Decedent Farr's lung which was missed by Defendant Wan.
20. On November 2, 2010 a malignant mass was discovered in Decedent Farr's lung.

21. Decedent Farr expired from lung cancer on June 19, 2012.
22. Upon information and belief, despite clear evidence of a mass on the January 11, 2010 chest x-ray, Defendant Wan incorrectly interpreted the x-ray and failed to note the mass.
23. Decedent Farr experienced pain, suffering, unnecessary medical expenses, and eventually died, all as a proximate result of the erroneous interpretation of the January 11, 2010 chest x-ray.

**FOR A FIRST CAUSE OF ACTION**  
**(Negligence, Gross Negligence and Recklessness as to all Defendants)**  
**(SURVIVAL ACTION)**

24. The Plaintiff repeats and realleges paragraphs 1 through 23 as fully as if set forth verbatim herein, and would further allege:
25. At all times relevant to this action, physicians, nurses, residents, interns and staff health care providers caring for Decedent Farr at Upstate were employees and/or agents of Upstate or were apparent agents and were acting within the course and scope of their employment and/or agency or apparent agency, and the actions and omissions of those persons are attributable to and imputed to Defendant Upstate.
26. Employees and/or agents of Defendant Upstate, including but not limited to Defendant Wan, did undertake a duty to render medical care to Plaintiff in accordance with the prevailing professional standards of care for medical offices in the national community.
27. Notwithstanding their duty and while Plaintiff's decedent was under their care, employees and/or agents Defendant Upstate, including but not



limited to Defendant Wan, departed from prevailing professional standards of care and treatment of Decedent Farr and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Plaintiff's Decedent, and their acts and omissions proximately caused the injuries and death of Decedent Farr. These negligent, reckless, and grossly negligent acts and omissions include, but are not limited to the following (see also Affidavit of Merit of Robert A. Halvorsen, M.D., attached hereto as Exhibit A), all of which are departures from the prevailing professional standards of care:

- a. Failing to properly read the January 2010 chest x-ray;
- b. Failing to identify a lung mass in the January 2010 chest x-ray; and
- c. Failing to properly report findings to the treating physicians;
- d. Failing to properly have in place and adequate policies, procedures and protocols for reading chest x-rays or, if such policies, procedures and protocols were in place, in failing to use due care to enforce them;
- e. Failing to properly train and educate their nurses and other employees or, if properly trained and educated, the failure of said nurses and employees to exercise independent judgment and skill;
- f. Failing to have appropriate policies, procedures, and protocols to ensure that patients with conditions similar to plaintiff are treated in an appropriate manner, or if the defendants had such policies,

procedures, and protocols, in failing to ensure such were carried out and followed;

- g. Failing to insure that proper diagnostic procedures were conducted on the Plaintiff's decedent, given the totality of the circumstances;
- h. Failing to exercise appropriate clinical judgment; and
- i. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

28. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Decedent Farr suffered from severe debilitating injuries which resulted in his permanent injury and disability, and conscious pain and suffering, and eventual death as a result of which Decedent Farr is entitled to recover a sum to compensate his estate for his conscious pain and suffering, medical expenses, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these Defendant and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

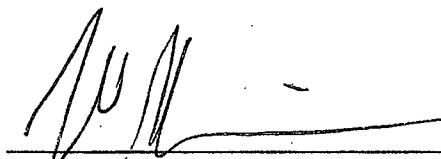
**FOR A SECOND CAUSE OF ACTION**  
**(Negligence, Gross Negligence and Recklessness as to all Defendants)**  
**(WRONGFUL DEATH ACTION)**

29. The Plaintiff repeats and realleges paragraphs 1 through 28 as fully as if set forth verbatim herein, and would further allege:

30. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Decedent Farr suffered from severe debilitating injuries which resulted in her death, and thus the negligence was the cause of the loss of the support, aid, society, comfort, and companionship of his heirs at law. The estate is therefore entitled to recover from Defendants a sum of money to compensate the heirs at law for the medical expenses, funeral expenses, mental anguish, loss of earnings capacity, and loss for the aid, society, comfort, and companionship of the decedent. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these Defendants and others like them from similar conduct in the future. All damages should be in an amount determined by a jury in this action.

WHEREFORE, Plaintiff, respectfully prays for judgment against the Defendants for all actual damages, special damages, consequential damages and punitive damages, the costs and disbursements of this action, and for such other and further relief as this court deems just and proper.

**[SIGNATURE PAGE FOLLOWS]**



William A. McKinnon  
MCGOWAN, HOOD & FELDER, LLC  
1539 Health Care Drive  
Rock Hill, South Carolina 29732  
Tel: (803) 327-7800  
Fax: (803) 328-5656  
[bmckinnon@mcgowanhood.com](mailto:bmckinnon@mcgowanhood.com)

Attorney(s) for Plaintiff

May 30, 2013  
Rock Hill, South Carolina

FILED  
CLERK OF COURT  
ROCK HILL, SC  
JUL 1 2013  
MICHE BLADLEY

# Exhibit A

FILED  
CLERK OF COURT  
JAN 3 1967  
H. ROSE BLAUGLEY

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

Lisa F McKaughan, as the appointed  
Personal Representative of the  
Estate of William G. Farr, Deceased, )

Plaintiff, )

vs. )

Upstate Lung and Critical Care  
Specialists, PC; Sau-Yin Wan, M.D.;  
ABC Radiology Group and John Doe, )  
Radiologist, )

Defendants. )

IN THE COURT OF COMMON PLEAS

C.A. File No. \_\_\_\_\_

2013-CP-42-02404

AFFIDAVIT

ROBERT A. HALVORSEN, MD  
(S.C. Code Ann. § 15-36-100)

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY  
SWORN, AND SAYS AS FOLLOWS:

1. I am board certified in Radiology by the American Board of Radiology. My clinical practice involves treating all types of patients in a busy hospital setting as well as teaching resident physicians the proper work up for emergency medicine patients. My education, training and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care which should have been rendered to William Farr in this case.

2. My medical practice is primarily in Richmond, Virginia. I have been practicing Radiology for more than 30 years.

3. I have reviewed the radiology study of William Farr, which was performed at Upstate Lung and Critical Care Specialists on January 11, 2010. The study I have reviewed and the report are the type documents which I would consider in rendering an expert medical opinion in this case.

4. It is my opinion, within a reasonable degree of medical certainty that the Medical providers at issue here, specifically Sau-Yin Wan, MD and John Doe Radiologist, deviated in one or more ways from the applicable standard of care for a patient like Mr. Farr. It is further my opinion that one or more of the deviations from the standard of care caused or substantially contributed to Mr. Farr's death.

5. Without intending to limit the scope of my opinions, some of the specific breaches of the standard by Dr. Wan and John Doe Radiologist I have identified are as follows:

- a. Failure to identify a lung mass; and
- b. Failure to communicate the possible diagnosis of lung mass to Sau-Yin Wan, M.D.; the ordering physician.

6. As a result of these deviations from the standard of care, Mr. Farr suffered injuries as a direct and proximate result, which led to his death.

7. The factual basis for my opinion about the breaches of the standard of care by Dr. Wan and John Doe, Radiologist at this time are the medical records of William Farr. The factual basis of my opinions may be supplemented at a later time.

8. This affidavit is given in compliance with South Carolina Code of Laws §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any Defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving additional medical records, documents, depositions and/or information.



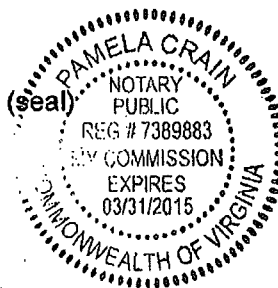
ROBERT A. HALVORSEN, M.D.

Sworn to and signed before me  
this 17<sup>th</sup> day of ~~September~~ OCTOBER, 2012

Pamela Crain

Notary Public in and for

City Richmond  
County of \_\_\_\_\_  
State of Virginia



REG # 7389883  
exp March 31, 2015

FILED  
CLERK OF COURT  
JAN 3 2013  
M. JOFE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Lisa McKaughan, Individually and as the  
Personal Representative of the Estate of  
William Farr,

Plaintiff,

-vs-

Upstate Lung and Critical Care Specialists,  
PC; Sau-Yin Wan, M.D.; ABC Radiology  
Group and John Doe, Radiologist,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 2012-CP-42-

2013-CP-42-62404

RESPONSES TO STANDARD  
INTERROGATORIES

TO: ALL DEFENDANTS:

**RESPONSES TO STANDARD INTERROGATORIES**

1) Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

**RESPONSE:**

Lisa Farr McKaughan  
1506 Gunter Drive  
West Columbia, SC 29169

Kurt S. McKaughan  
1506 Gunter Drive  
West Columbia, SC 29169

Deloris F. Farr



1506 Gunter Drive  
West Columbia, SC 29169

Mr. William Farr had seven brothers & sisters, some of whom would take him to an occasional doctor's appointment but have no real facts about the case.

Carolina Medical Affiliates  
1330 Boiling Springs Road  
Suite 2500  
Spartanburg, SC 29303

Palmetto Hematology Oncology  
380 Serpentine Drive  
Spartanburg, SC 29303

Upstate Lung & Critical Care Specialists  
1091 Boiling Springs Road  
Spartanburg, SC 29303

Ronald H. Littlefield, MD  
319 North Pine Street  
Spartanburg, SC 29302

Lung & Chest Medical Associates  
2030 N. Church Street Place  
Spartanburg, SC 29303

Gibbs Surgical Oncology  
101 East Wood Street  
Spartanburg, SC 29303

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CLERK OF COURT  
JAN 11 2007  
SPARTANBURG, SC  
H. HOPE BLADNLEY

All medical providers are expected to testify in accordance with the medical records of William G. Farr.

Plaintiff is not in possession of any statements of these witnesses.

This Interrogatory may be supplemented at a later date or time as Plaintiff becomes aware of additional information responsive to this Interrogatory.

2) Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

**RESPONSE:** Other than the medical records and a 2010 chest x-ray Plfs.  
Have no such other documents or photos.

**This Interrogatory may be supplemented at a later date or time as Plaintiff becomes aware of additional information responsive to this Interrogatory.**

3) In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

**RESPONSE:**

Carolina Medical Affiliates  
1330 Boiling Springs Road  
Suite 2500  
Spartanburg, SC 29303

Palmetto Hematology Oncology  
380 Serpentine Drive  
Spartanburg, SC 29303

Upstate Lung & Critical Care Specialists  
1091 Boiling Springs Road  
Spartanburg, SC 29303

Ronald H. Littlefield, MD  
319 North Pine Street  
Spartanburg, SC 29302

Lung & Chest Medical Associates  
2030 N. Church Street Place  
Spartanburg, SC 29303

Gibbs Surgical Oncology  
101 East Wood Street  
Spartanburg, SC 29303

FILED  
CLERK OF COURT  
SPARTANBURG, SOUTH CAROLINA  
JAN 20 2011  
H. HOPE BLACKLEY

No billing records have been received as of this date, they are being ordered.

**This Interrogatory may be supplemented at a later date or time as Plaintiff becomes aware of additional information responsive to this Interrogatory.**

4) Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

**RESPONSE:**        None Known

**This Interrogatory may be supplemented at a later date or time as Plaintiff becomes aware of additional information responsive to this Interrogatory.**

5) Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

**RESPONSE:**        No billing records have been received as of this date, they are being ordered, however Mr. Farr died as a result of the Def. negligence.

**This Interrogatory may be supplemented at a later date or time as Plaintiff becomes aware of additional information responsive to this Interrogatory.**

6) List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

**RESPONSE:**        Plaintiff has not retained trial experts as of yet.

**This Interrogatory may be supplemented at a later date or time as Plaintiff becomes aware of additional information responsive to this Interrogatory.**

7) For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

**RESPONSE:**

**Lisa Farr McKaughan  
1506 Gunter Drive  
West Columbia, SC 29169**

**Kurt S. McKaughan  
1506 Gunter Drive  
West Columbia, SC 29169**

**Deloris F. Farr  
1506 Gunter Drive  
West Columbia, SC 29169**

**Lisa & Kurt McKaughan and Deloris Farr are expected to testify to the treatment of William G. Farr as stated in the Complaint of this action and other facts & circumstances.**

**Carolina Medical Affiliates  
1330 Boiling Springs Road  
Suite 2500  
Spartanburg, SC 29303**

**Palmetto Hematology Oncology  
380 Serpentine Drive  
Spartanburg, SC 29303**

**Upstate Lung & Critical Care Specialists  
1091 Boiling Springs Road  
Spartanburg, SC 29303**

**Ronald H. Littlefield, MD  
319 North Pine Street  
Spartanburg, SC 29302**

**Lung & Chest Medical Associates  
2030 N. Church Street Place  
Spartanburg, SC 29303**

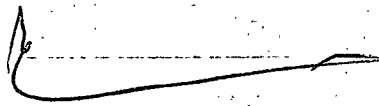
**Gibbs Surgical Oncology**

FILED  
CLERK OF COURT  
JAN 10 2007  
M. HOPE ELAKEY

101 East Wood Street  
Spartanburg, SC 29303

All medical providers are expected to testify in accordance with the medical records of William G. Farr.

This Interrogatory may be supplemented at a later date or time as Plaintiff becomes aware of additional information responsive to this Interrogatory.

  
William A. McKinnon  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
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(803) 328-5656 Facsimile

FILED  
CLERK OF COURT  
ROCK HILL, SOUTH CAROLINA  
MAY 31 2013

May 31 2013  
December 31, 2012  
Rock Hill, South Carolina.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SPARTANBURG )

Lisa McKaughan, Individually and  
as the Personal Representative of  
the Estate of William Farr,

C.A. No.: 2013-CP-42-02404

Plaintiff,

v.

Upstate Lung and Critical Care  
Specialists, PC; and Sau-Yin Wan,  
M.D.

**ANSWER OF DEFENDANTS**

Defendants.

**TO: WILLIAM A. MCKINNON, ATTORNEY FOR PLAINTIFF:**

NOW COME Defendants, answering the complaint of the Plaintiff as follows:

1. These Defendants, upon information and belief, admit the allegations in Paragraph 1 of the Complaint.

2. These Defendants admit the allegations contained in Paragraphs 2 and 3 of the Complaint.

3. These Defendants admit the allegations contained in Paragraphs 4, 5, and 6 of the Complaint.

4. Answering Paragraphs 7, 8, and 9 of the Complaint, these Defendants admit that Upstate Lung and Critical Care Specialists, PC employs staff, including physicians qualified, experienced and competent to provide medical services to patients seeking medical care. These Defendants deny that any agent, servant, or employee of Upstate Lung and Critical Care Specialists, PC was in any way negligent as alleged in the Complaint or deviated from any standard of care that caused or contributed to any injuries or damages complained of in the Complaint. These

Defendants further admit that the agents, servants, and employees providing any medical care to William Farr were acting within the course and scope of their employment with Upstate Lung and Critical Care Specialists, PC.

5. Answering Paragraph 10 of the Complaint, these Defendants lack sufficient information or knowledge to either admit or deny what William Farr or members of his family may or may not have reasonably or justifiably believed and therefore respectfully deny the allegations contained therein.

6. Answering Paragraph 11 of the Complaint, these Defendants admit that Dr. Wan provided appropriate medical care to William Farr and did so as an agent, servant, or employee of Upstate Lung and Critical Care Specialists, PC.

7. Answering Paragraph 12 of the Complaint, these Defendants admit that Dr. Wan provided appropriate medical care to William Farr as an agent, servant, or employee of Upstate Lung and Critical Care Specialists, PC.

8. Answering Paragraph 13 of the Complaint, these Defendants deny that any servant, agent, or employee of Upstate Lung and Critical Care Specialists, PC was in any way negligent in any care provided to William Farr.

9. Answering Paragraph 14 of the Complaint, these Defendants deny the allegations contained therein and demand strict proof thereof.

10. Answering Paragraph 15 of the Complaint, these Defendants admit that William Farr was seen by Dr. Wan at Upstate Lung and Critical Care Specialists, PC on January 11, 2010 for evaluation, having been referred by another physician.

11. Answering Paragraph 16 of the Complaint, these Defendants admit that on January 11, 2010, Dr. Wan ordered a chest x-ray and interpreted the films appropriately and within the standard of care for the facts and circumstances then and there existing.

12. Answering Paragraph 17 of the Complaint, these Defendants deny that the x-rays ordered by Dr. Wan on January 11, 2010 were read or interpreted by "Defendant Doe".

13. Answering Paragraph 18 of the Complaint, these Defendants admit that the chest x-rays ordered and interpreted by Dr. Wan on January 11, 2010 were not sent to be overread by a radiologist and further admit that there was no indication or requirement within the standard of care for those films to be sent to a radiologist for overreading.

14. These Defendants deny the allegations contained in Paragraph 19 of the Complaint.

15. Answering Paragraph 20 of the Complaint, these Defendants lack sufficient information or knowledge to either admit or deny the allegations contained therein and therefore respectfully deny the same and demand strict proof thereof.

16. Answering Paragraph 21 of the Complaint, these Defendants, upon information and belief, admit that Mr. Farr expired on or about June 19, 2012.

17. These Defendants deny the allegations contained in Paragraph 22 of the Complaint and demand strict proof thereof.

18. Answering Paragraph 23 of the Complaint, these Defendants deny that the January 11, 2010 chest x-rays of Mr. Farr read or interpreted by Dr. Wan were below the standard of care for a physician in the same or similar circumstances.

19. Answering Paragraph 25 of the Complaint, these Defendants admit that any physicians, nurses, or staff healthcare providers providing medical care to William Farr at Upstate



Lung and Critical Care Specialists, PC were at that time employees or agents of Upstate acting within the course and scope of their employment.

20. Answering Paragraph 26 of the Complaint, these Defendants admit that Dr. Wan provided medical care to William Farr in accordance with prevailing professional standards of care as an agent, servant, or employee of Upstate Lung and Critical Care Specialists, PC, and that any and all care rendered to William Farr by Dr. Wan was appropriate and within the standard of care for the facts and circumstances then and there existing.

21. These Defendants deny each and every allegation contained in Paragraph 27 of the Complaint and demand strict proof thereof.

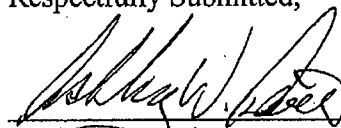
22. These Defendants deny the allegations contained in Paragraph 28 of the Complaint and demand strict proof thereof.

23. Answering Paragraph 30 of the Complaint, these Defendants deny the allegations contained therein and demand strict proof thereof.

24. Any allegation contained in the Complaint which has not been specifically admitted is hereby denied and strict proof demanded thereof.

WHEREFORE, having fully answered the Complaint of the Plaintiff, these Defendants request that the action be dismissed and for any other relief deemed just and appropriate by this Honorable Court.

Respectfully Submitted,



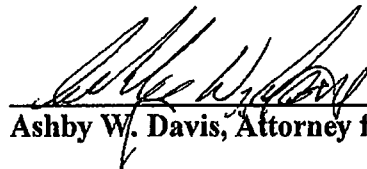
Ashby W. Davis (SC Bar No. 1560)  
David L. Williford (SC Bar No. 73129)  
DAVIS, SNYDER & WILLIFORD, P.A.  
5 Hawthorne Park Court  
Greenville, SC 29615  
(864) 335-3500

**ATTORNEY FOR DEFENDANTS  
UPSTATE LUNG AND CRITICAL CARE  
SPECIALISTS, PC AND SAU-YIN WAN, M.D.**

Greenville, South Carolina

August 7, 2013

**THESE DEFENDANTS RESPECTFULLY  
REQUEST TRIAL BY JURY.**



Ashby W. Davis, Attorney for Defendants

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF SPARTANBURG )

COURT OF COMMON PLEAS

3  
4 LISA MCKAUGHAN, INDIVIDUALLY AND  
5 AS THE PERSONAL REPRESENTATIVE OF  
6 THE ESTATE OF WILLIAM FARR,

7 PLAINTIFF,

8 vs.

9 UPSTATE LUNG AND CRITICAL CARE  
10 SPECIALISTS, P.C. AND SAU-YIN WAN,  
11 M.D.,

12 DEFENDANT.

TRANSCRIPT

OF

RECORD

2013-CP-42-2404

13 July 27th - 29th, 2015  
14 Spartanburg, South Carolina

15 B E F O R E:

16 THE HONORABLE J. MARK HAYES, II, Judge, and a jury.

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

18 WILLIAM A. MCKINNON and JORDAN C. CALLOWAY  
19 ESQ.  
20 Attorneys for the Plaintiff

21 ASHBY DAVIS and DAVID WILLIFORD  
22 ESQ.  
23 Attorneys for the Defendants

24 PAMELA E. GREEN  
25 Circuit Court Reporter  
Seventh Judicial Circuit

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P R O C E E D I N G S

(WHEREUPON, the following takes place outside the presence of the entire jury panel.)

THE COURT: Is Ashby -- where did he go?

MR. WILLIFORD: He, he is here and I think he just went to put something back in his car. He should be back in the next moment or two.

THE COURT: Okay. We are -- y'all were nice enough to email over your -- some information, but I didn't get it in my email box until, until my law clerk got here. So we're just now printing off the stuff that y'all submitted.

MR. MCKINNON: I apologize, Your Honor.

THE COURT: That's all right.

What I'm hoping to do is I know, I know Judge Hill is gonna be qualifying and I think that usually the lawyers like to be in on qualification. So we will stop whenever he gets to the point where he's fixing to qualify and let y'all go over there. He's gonna be qualifying in the east courtroom right across the hall in Judge Couch's courtroom.

(Pause.)

THE COURT: You want to step out and see where Ashby is?

MR. WILLIFORD: Yes, Your Honor. Be happy to.

(Pause.)



1 MR. DAVIS: Sorry, Judge.

2 (Pause.)

3 THE COURT: All right. All right. Mr. Davis, what I  
4 told the other attorneys is that I intend to stop and let  
5 y'all go over during the qualification that Judge Hill is  
6 gonna do to let y'all observe the, the witnesses. But until  
7 he gets ready to start I'm gonna like to move through these  
8 motions in limine as, as best we can so that we can make  
9 some good use of time. So I've got the defendant's motion  
10 in limine.

11 Is there anything we need to, to do before we take up  
12 that?

13 MR. MCKINNON: Your Honor, we have a memorandum in  
14 response, Your Honor, that the -- I believe the Clerk's  
15 office's making a copy of right now. Somehow we ended up  
16 with two copies instead of three.

17 THE COURT: Okay.

18 THE CLERK: It's finished.

19 MR. MCKINNON: Oh, it's finished.

20 Okay. Wonderful.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 All right. Let's take a look at defendant's motion in  
24 limine. I reviewed the motion. You've got five different  
25 subjects you want to start with.

1       Number one, any testimony or other evidence that Mr.  
2       Farr's lung cancer spread or metathesized through the  
3       endochronal (phonetic) or aerogenic mechanism.

4       MR. WILLIFORD: Yes, Your Honor.

5       May it please the Court.

6       The defendant's filed this motion in limine with, with  
7       various matters as Your Honor noted. The first matter is a  
8       motion to exclude the testimony of Doctor Milby, the  
9       Plaintiff's pathology expert, on the basis that is  
10      unreliable under Rule 702 and South Carolina case law.

11      Your Honor, just for a brief description of the facts,  
12      this is a lung cancer case. The Plaintiffs allege that  
13      Doctor Wan, our client, misread an x-ray, did not diagnose  
14      lung cancer, and the allegations are that that misdiagnosis  
15      caused the patient's death. Well, just a brief summary of  
16      the facts.

17      Doctor Wan saw Mr. Farr only one time and that was in  
18      January of 2010. It was ultimately diagnosed at surgery in  
19      December of 2010. So later in the year at the end of the  
20      year. Doctor Christophe Nguyen did surgery, removed all of  
21      the cancer. The pathology of the cancer was determined to  
22      be, by Doctor Wren, pathologist here in Spartanburg, as  
23      adenocarcinoma with papillary features, papillary  
24      predominate adenocarcinoma.

25      The -- a couple months later the pathology specimens

1 were read by pathologists at the Medical University of South  
2 Carolina. They likewise determined that it was  
3 adenocarcinoma papillary predominant, and, in addition, both  
4 sets of pathologists determined that there was no spread in  
5 terms of lymphatic spread or direct extension spread. There  
6 was no evidence in the whole case of distant metastases,  
7 which would be evidence of blood spread, spread through the,  
8 the blood, which is also termed hematogenous spread.

9 So all 13 lymph nodes were negative. The margins were  
10 clear, according to Doctor Wren, and confirmed by the  
11 pathologist at MUSC. Doctor Christophe Nguyen, the surgeon,  
12 testified that he removed all the cancer.

13 About a year and a half after that surgery, a year and,  
14 and four months, Mr. Farr was diagnosed with a new cancer, a  
15 cancer on his left side. It was determined to be  
16 adenocarcinoma lepidic predominant with an acinar pattern.  
17 That was determined to be a separate cancer, a new primary  
18 cancer, that's not metastatic from the right lung cancer.  
19 Mr. Farr died a couple months after that and it's unclear as  
20 to what he died from.

21 well, the Plaintiff's case is that -- their, their  
22 theory of causation is even though the three known  
23 mechanisms of spread are metastases, either through the  
24 lymphatics, through the blood, or through direct extension  
25 into other tissues, did not occur. Plaintiff's expert,

1 Doctor Milby, said and agreed there's no evidence that that  
2 occurred. However, he claimed that it did spread, but  
3 through this endobronchial or aerogenous theory. In other  
4 words, and he mentioned it in his deposition, by breathing.  
5 Basically you can breathe cancer where it goes from one  
6 airway, you know, up and down to the other airway by  
7 breathing.

8 Coincidentally, it's the only theory where there would  
9 be no evidence of spread other than Doctor Milby's opinion.  
10 It is unreliable. Mr. McKinnon, not Doctor Milby, has  
11 produced a set or articles, about eight articles last week,  
12 mid-week, supporting this theory. After we filed the motion  
13 and, and sent the motion to him we received some articles on  
14 that theory.

15 The theory is mentioned, but it's simply a theory. It  
16 is not proven by any kind of medical science. It's not  
17 proven and accepted as a reliable theory of spread in anyway  
18 whatsoever particularly with this kind of cancer, with  
19 adenocarcinoma papillary predominate morphing into a  
20 different kind of adenocarcinoma through the airways.  
21 There's absolutely no literature establishing that as a  
22 reliable basis for spread.

23 This motion is very ripe for that kind of issue, and if  
24 it's not reliable in the medical community, and if, if Your  
25 Honor is the gatekeeper of determining whether or not

1 evidence is reliable, considers it, and it's, and it's not  
2 clear, certainly the jury will not be able to make that  
3 distinction and the jury would be misled to hearing some  
4 theories about aero, aerogenous spread or breathing spread.  
5 But certainly it's not reliable, the basis of that is not  
6 reliable.

7       What Mr. McKinnon has produced is not -- one, it's not  
8 been established by their experts at all as authoritative.  
9 So it's hearsay under Rule 803(18), and, number two, it's  
10 just not proven in the medical literature.

11       Our experts have considered that theory and said, in  
12 their years and years of experience, they've never heard of  
13 it. The two pathologists in the case, defense expert Doctor  
14 Latham, and I see treating pathologist, but the pathologist  
15 who actually looked at the second lung cancer in April of  
16 2012, Doctor Rosanna Lapham, she would -- she gave a  
17 deposition and she said I've, I've never heard of that  
18 theory as well.

19       It's not established in the medical community and I  
20 think testimony would elucidate that it would, that it would  
21 at least be considered as some, as some theory, acceptable  
22 theory, but the, the evidence weighs heavily in favor of, of  
23 it being unreliable and there's certain factors, and I just  
24 want to point to the law. It's in our, it's in our motion  
25 in limine and there's certain factors that need, need to be

1 considered by the Court in determining whether or not  
2 evidence is reliable and they're four factors under Council,  
3 State versus Council and that has been elucidated further by  
4 other cases like Graves versus CAS Medical Systems where the  
5 Courts are looking at the reliability of, of expert  
6 testimony a little bit more, and, and trying to vet that  
7 before it goes to the, the Court. The normal mantra that is  
8 often invoked that well, it goes to weight and not  
9 admissibility certainly can not be invoked, you know, by the  
10 Court.

11 So there's certain factors that the Court must  
12 consider. Let me point to those just real real briefly.  
13 Under Council, number one, the publication and peer review  
14 of the, of the technique for scientific medical evidence.

15 Number two, prior application of the method to the type  
16 of evidence involved in the case.

17 Number three, the quality control procedures used to  
18 ensure reliability.

19 Number four, the consistency of the method with  
20 recognized scientific clause and procedures.

21 Those are the four factors the Court must consider.

22 Going through each factor, the Plaintiff has not  
23 satisfied any of them, and in weighing those factors, if  
24 none weigh in favor of the Plaintiff, then certainly it's  
25 not reliable and, again, the basis of that is Plaintiffs,

1 through their experts, have not said that these articles are  
2 authoritative. It's not accepted in the medical community  
3 by other physicians, and the, the evidence in the case is  
4 that it did not spread, except this one theory, and that's  
5 what it is, just a theory, that it spread even though  
6 there's no evidence of that spread as admitted by Doctor  
7 Milby, Plaintiff's expert.

8 That's essentially the basis of the motion, and I  
9 appreciate Your Honor's consideration.

10 MR. MCKINNON: Thank you, Your Honor.

11 Your Honor, as my colleague said, this is an argument  
12 over whether the tumor in the right lung spread to the left  
13 lung or whether there was a totally separate tumor in the  
14 left lung. Our expert, Doctor Milby, the pathologist,  
15 testified, based on his examination under a microscope of  
16 cells of both tumors, it clearly was a metastasis and they  
17 are attacking his theory and saying it's without scientific  
18 basis, Your Honor, is ludicrous and they are more than happy  
19 to, to cross-examine him on this theory. But they asked  
20 Doctor Milby to provide them with sources. He sent them two  
21 textbooks back in March that referred to it. I sent them  
22 eight more after Mr. Williford wrote me a letter this past  
23 week.

24 Brought a few with me today, Your Honor. Your Honor,  
25 this is a 2012 textbook from the Cambridge Medical Library

1 on Lung Cytohistology. It's a study of cells in the lung  
2 and, Your Honor, the textbooks says lung adenocarcinoma  
3 spread via the lymphatic, lymphatic system or lymph nodes,  
4 homogeneously or aerogenously to other areas of the lung.  
5 It's right out of the textbook, an introduction to the type  
6 of cancer we're talking about.

7 It's not controversial. It's standard, straight out of  
8 the textbook, Your Honor. I'll just hand -- if it's okay --  
9 may I approach, Your Honor?

10 (The Court nods affirmatively.)

11 MR. MCKINNON: It's just right there in the  
12 introduction, Your Honor. That's, that's a 2012 textbook.

13 THE COURT: Okay.

14 MR. MCKINNON: Your Honor, I've got articles here. Mr.  
15 Williford says we don't have any science backing up the  
16 mechanism. This is an article from the Medical Journal of  
17 Human Cancer Biology, and I've provided it to Mr. Williford,  
18 from 2007. It describes in detail the mechanism, how  
19 neutrophils, which are immune system cells, attack these  
20 types of tumors causing cancer cells to strip off and spread  
21 through the bronchiales.

22 Your Honor, we've got multiple articles. This article  
23 is called Aerogenous Spread of Primary Lung Cancer, Your  
24 Honor. I mean I -- if Your Honor wants me to go through all  
25 these I'm happy to. But this is not some crazy theory.



1 I've got a stack of medical articles here, Your Honor. This  
2 is standard pathology.

3 THE COURT: All right. Seeing how that I don't have  
4 access to any of the testimony, I could not grant the  
5 motion. But I will have my antennas up that if -- for  
6 something that does not -- even if you can't lay your  
7 foundation, you don't establish it, then that -- they can  
8 probably renew the motion. But I can -- could not grant  
9 their motion at, at this time because they're basing their  
10 motion--

11 MR. MCKINNON: Thank you, Your Honor.

12 THE COURT: ---based on a rule that requires the Court  
13 to engage in a balancing test that's -- so I would actually  
14 have to have received the testimony. So I would not grant  
15 their motion at that -- at this time.

16 MR. MCKINNON: Thank you, Your Honor.

17 MR. WILLIFORD: Thank you, Your Honor.

18 THE COURT: Uh-huh. (Affirmative).

19 Anything on the status of them?

20 THE CLERK: No, Your Honor.

21 THE COURT: Okay.

22 All right. What about -- you want to do two?

23 MR. WILLIFORD: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. WILLIFORD: Our second motion in limine is

1 essentially to ask the Court to exclude any testimony from  
2 experts or questions from attorneys asking is it possible  
3 that this caused this or is it possible that that occurred  
4 in terms of spread or other questions of fact in the case or  
5 opinion testimony, and the law clearly, in South Carolina,  
6 says that expert testimony must be given "to a reasonable  
7 degree of medical certainty" and "most probably," not what  
8 is merely possible, and that's well established law in South  
9 Carolina.

10 I cited the case law in our motion in limine and that's  
11 just a basic motion that we would ask the Court ahead of  
12 time to instruct the attorneys on.

13 THE COURT: Well -- all right. I mean the -- we are in  
14 agreement that, on the standard, that experts that are being  
15 offered for the -- for one side or the other, that their  
16 opinions need to be to a reasonable degree of medical  
17 certainty?

18 MR. MCKINNON: Of course we are, Your Honor.

19 THE COURT: All right. Then I, I think we're in  
20 agreement on that. But I would not consider, on  
21 cross-examination, I think the lawyers have the ability to  
22 be able to cross-examine the witnesses on possibilities.

23 MR. WILLIFORD: Okay. Well, we're certainly -- we  
24 certainly disagree with that in the sense that if, on  
25 cross-examination, the question's asked is it possible, and

1 if someone says well, it's possible -- because medical  
2 doctors often think in their mind if it's 000.1 percent it  
3 might be possible, but it's unlikely, and, therefore, can  
4 mislead the jury and that's where---

5 THE COURT: All right. I've made my ruling because I  
6 can see that lawyers can approach a witness and can -- and  
7 set them up with their cross-examination with possible here,  
8 possibly here, possible here, possibly here to actually get  
9 the witness to eliminate all other possibilities even though  
10 the witness would not say most probable. So I think it's  
11 a -- I think it is a strategy that both sides can employ in  
12 cross-examination.

13 MR. WILLIFORD: Thank you, Your Honor.

14 THE COURT: You want to do number three?

15 MR. WILLIFORD: Yes, Your Honor.

16 MR. MCKINNON: Your Honor, if I may?

17 (The Court nods affirmatively.)

18 MR. MCKINNON: Your Honor, Plaintiff has no objection  
19 to number three. We're, we're not gonna argue for punitive  
20 damages.

21 THE COURT: Okay.

22 MR. WILLIFORD: And, and, Your Honor, so -- it's a  
23 little bit more specific than that. It's not merely just  
24 punitive damages. We're asking the Court, ahead of time, to  
25 not allow any evidence that Doctor Wan was grossly

1 negligent, reckless, or acting with a conscious disregard  
2 and, and -- because there's certainly no testimony by anyone  
3 in the case.

4 MR. MCKINNON: No objection, Your Honor.

5 THE COURT: All right.

6 MR. WILLIFORD: Thank you, Your Honor.

7 THE COURT: And number four?

8 MR. WILLIFORD: Number four is the Plaintiff's Reptile  
9 Theory. Often times this is invoked in, in Courts. There's  
10 a book many attorneys know, it's by David Ball, and another  
11 attorney -- another writer out of Georgia. It's called The  
12 Reptile and the Reptile is essentially a handbook for many  
13 attorneys to, to invoke those principles to basically make a  
14 jury feel that they should render a verdict because they  
15 fear what may happen if they don't, and so they're, they're  
16 many forms of that theory out there.

17 The, the fear is, which is unlawful in South Carolina,  
18 that there's a heightened duty of care in terms of scaring  
19 people, in terms of talking about danger, and there's one  
20 case that really is, is similar to this in that it was a  
21 Sulton versus HealthSouth case. In fact, it was Mr.  
22 McKinnon's firm. I believe the attorneys were Chad McGowan  
23 and Jones Andrews where the Supreme Court of South Carolina  
24 reversed a verdict for the plaintiff on the basis that there  
25 were -- there was a jury charge about danger and, and how,

1 you know, the heightened danger, then there's a heightened  
2 standard of care, and the Supreme Court said no, that's,  
3 that's an improper verdict. Punitive damages were awarded  
4 in the case, and the Court said, you know, certainly that,  
5 that played a part in that conceivably, and, regardless,  
6 that was in error.

7 So the Reptile Theory plays along the danger theory  
8 that often is invoked in Court. They're many cases that  
9 support our motion all throughout our motion in limine. The  
10 Reptile Theory, it violates the Golden Rule argument and  
11 asks for speculative damages to the community at large. The  
12 verdict is based essentially on passion or prejudice or  
13 sympathy and fear. The Reptile Approach, it falsely implies  
14 intent rather than negligence. The verdict is based on  
15 safety or safety rules that are not in medicine and danger  
16 instead of what the standard of care is and then the  
17 potential harm versus the actual harm in the case.

18 So those are the primary reasons for, for those kind of  
19 questions, and to the extent that that occurs in trial, we  
20 will be making objections in that regard.

21 MR. MCKINNON: Your Honor, I'm not entirely sure what  
22 the specific ruling Mr. Williford wants is. I mean I'm not  
23 gonna make any reference to reptiles. I, I am gonna say  
24 that Doctor Wan was not -- may have been rushed or didn't  
25 act with appropriate safety and conscientiousness when she

1 read that x-ray, but that's pretty standard argument, Your  
2 Honor. So I'm not exactly sure what Mr. Williford wants to  
3 prevent me from saying.

4 MR. WILLIFORD: And I think if Mr. McKinnon asked those  
5 questions, we're certainly fine with that. I think that's  
6 appropriate. But I don't know what questions he's gonna  
7 ask. I just want to alert the Court, through our motion in  
8 limine, to those, to those issues to the extent that those  
9 are asked in Court and, and also ask for a ruling that any  
10 question that goes to a heightened sense of duty or danger  
11 would be inappropriate under case law in South Carolina.

12 MR. MCKINNON: I'm still a little vague, Your Honor, on  
13 what Mr. Williford wants to prevent me from saying, but I'm  
14 more than happy to, you know --.

15 MR. WILLIFORD: Well---

16 THE COURT: It's hard for me to make a ruling. I mean  
17 the law will be the law. I mean if that's what -- if that  
18 law applies, then that law will apply. I don't know whether  
19 that law will apply or not cause I have not heard the  
20 questions that are gonna be asked. So I can't tell you that  
21 I can't -- I feel it would be improper for me to restrain a  
22 lawyer from doing something when I don't know what it is  
23 he's gonna do or the relevance of it and not even heard  
24 it -- much of it. So -- but if you need to object during  
25 the trial, feel free to object.

1 MR. WILLIFORD: Okay. Yes, Your Honor, and obviously  
2 I'm alerting the Court to that kind of issue --

3 THE COURT: All right.

4 MR. WILLIFORD: -- more than anything else.

5 THE COURT: Okay.

6 MR. WILLIFORD: Okay.

7 THE COURT: And now since you're not seeking punitive  
8 damages, we don't have to worry about the confidentiality of  
9 Doctor Feldman's---

10 MR. MCKINNON: Actually we do, Your Honor.

11 THE COURT: We do?

12 MR. MCKINNON: If I, if I---

13 THE COURT: Okay.

14 MR. MCKINNON: David, you want to speak on that?

15 MR. WILLIFORD: Well, yes, Your Honor.

16 We would ask the Court to exclude any details of the  
17 income of Doctor Feldman. There's a confidentiality order,  
18 protective order in that regard and it is what was produced  
19 in discovery.

20 Mr. McKinnon asked Doctor Feldman -- Doctor Feldman,  
21 Doctor Greg Feldman is a partner with the practice of  
22 Upstate Lung and Critical Care and basically a partner with  
23 Doctor Wan, and he became cognizant about the case because  
24 his employee/physician, Doctor Wan, was sued and the  
25 practice was sued. So he became, you know, knowledgeable

1 about it and, and certainly offered testimony. So we,  
2 because he wasn't a treating physician, we named him as an  
3 expert witness.

4 So, when Mr. McKinnon took his deposition, Mr. McKinnon  
5 asked for details of his income and the practice's income  
6 and it was broader than, than just Doctor Feldman's income  
7 and I objected, asked him not to answer the question. We  
8 appropriately filed a motion seeking a protective order. It  
9 was granted and Mr. McKinnon wants to ask Doctor Feldman and  
10 show the jury or at least ask him what his specific income  
11 is from Upstate Lung and Critical Care to show bias or  
12 prejudice in that regard.

13 I think Rule 608 allows Mr. McKinnon to show bias or  
14 prejudice in some way, but certainly not by going into his  
15 detailed income, and the point is that, if he wants to show  
16 bias or prejudice cause you have a physician from the  
17 practice testifying, then he certainly can, can make that  
18 association. But Rule 403, the fact that it would be un,  
19 unfairly prejudicial in, in weight of -- in weighing the  
20 probative value of that, of a specific income, would be  
21 inappropriate and we're not at the punitive damages stage.  
22 I think that would be an appropriate time if there was one,  
23 but certainly not to show bias.

24 He can, he can make that association, bias, without  
25 going into his income and we would ask the Court to exclude



1 details of Doctor Feldman's income.

2 MR. MCKINNON: Your Honor, very briefly.

3 Doctor Feldman is the owner of the practice or one of  
4 the partners in the practice and founder of the practice who  
5 is a defendant in this case. They have named him as an  
6 expert witness and he is the only witness they have on the  
7 standard of care issue, Your Honor, and, you know, they  
8 could of named -- there's probably 5,000 radiologist in this  
9 country they could of named as expert witnesses. They chose  
10 to name the one who owns the practice and he is Doctor Wan's  
11 boss.

12 If they do that, Your Honor, bias evidence is  
13 admissible and it's just a yes or -- it's not a yes or no  
14 question, Your Honor. The jury is entitled to hear how much  
15 bias. Just like a regular expert witness who gets paid by  
16 the hour, the jury gets to hear how much are they being paid  
17 to come to Court, how much are they being paid by the hour.

18 Doctor Feldman owns this practice. He makes almost a  
19 half a million dollars a year from this practice and he --  
20 and the practice is a named defendant.

21 We are absolutely entitled to explore that with the  
22 jury, Your Honor. They could of chosen any other experts.  
23 They chose Doctor Feldman and now they're stuck with him,  
24 Your Honor, and, Your Honor, they instructed Doctor Feldman  
25 not to answer those questions at this deposition. I got a

1 Court order requiring him to produce financial records, and  
2 that order specifically says it may not be cited in  
3 opposition to admission at trial, Your Honor.

4 So, in other words, there's a confidentiality order  
5 also, but that order says it may not be used as a basis to  
6 prevent admission at trial. I mean he's, he's an expert.  
7 They named him as such. We're entitled to explore his  
8 income ultimately, Your Honor.

9 MR. WILLIFORD: Your Honor, Rule 403 would except out  
10 of the admissibility of bias or prejudice the, the specific  
11 income of Doctor Feldman. I mean I certainly think he can  
12 ask about association biases, as I mentioned.

13 There's a case on point and, in fact, it's the Sulton  
14 versus HealthSouth case by Mr. McKinnon's firm. It talked  
15 about HealthSouth. The K-10 financial form produced into  
16 evidence with error, and the Court, the Court made a point  
17 and said "informing the jury of a corporation's net  
18 operating revenue is improper under Branham, a case, and the  
19 prejudicial effect of doing so is self-evident. Net revenue  
20 has no necessary relation to net worth and it could be, as  
21 HealthSouth contends, that shareholder equity was actually  
22 negative (the corporation had no net worth). Putting in  
23 this huge sum of money into the mind's of a jury reflect the  
24 company's net income but accounting for none of its expenses  
25 and obligations was almost certainly misleading and very --

1 I mean very likely to have stirred any jury bias against big  
2 businesses" and they reversed the Court, the Trial Court in  
3 that regard.

4 This is very analogous in the fact that it's, it's just  
5 his income doesn't account, account for paying employees or  
6 overhead or any of those kind of things, and, and all of  
7 that is -- the probative value of those details will be a  
8 trial in and of itself and it's certainly unfairly  
9 prejudicial, you know, even if Mr. McKinnon believes it's  
10 biased and it's just---

11 THE COURT: All right.

12 MR. WILLIFORD: ---you know---

13 THE COURT: I'm not going to tell them that they can't  
14 do it. So based on the fact that he is, if it is, if he is  
15 the expert witness on causation, and he is -- the fact that  
16 he is also the employer of the doctor who's being sued, I  
17 think that that is relevant -- yeah, on its face it appears  
18 to be relevant. If he gets into it too far and you believe  
19 that he's, he's ventured into that area of being more  
20 prejudicial than probative, definitely assert your objection  
21 and I'll make the appropriate ruling at the time.

22 I am informed that Judge Hill is starting. So I'm  
23 gonna step down and let y'all go over there.

24 MR. DAVIS: Thank you, Your Honor.

25 MR. MCKINNON: Thank you, Your Honor.

1 THE COURT: Be right back.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: Okay. All right. I propose we proceed  
4 with selecting our jury and get that over with, and then we  
5 can send our jury to lunch and then let Judge Hill do what  
6 he wants to do with the rest of them.

7 Can y'all move that box and put it down in the floor  
8 for right now?

9 (Parties comply.)

10 THE COURT: Yeah.

11 okay. All right. And I would, and I would, Madam.  
12 Bailiff, I would propose that we can go ahead and bring the  
13 jury. I'm gonna step in the back. He's going to the  
14 restroom and then we'll start with the selection process.

15 THE BAILIFF: Yes, sir.

16 THE COURT: All right.

17 MR. MCKINNON: Your Honor, they're, they're two jurors  
18 that have very limited command of the English language and  
19 Mr. Davis and I spoke and we're think -- we're going to  
20 jointly move that they be disqualified.

21 THE COURT: Do you know what number they are?

22 MR. MCKINNON: Yes, sir, I had the list. They are --  
23 yes.

24 MR. CALLOWAY: 118 and 167.

25 MR. WILLIFORD: I believe 119 and 167.

1 MR. CALLOWAY: That's right.

2 MR. MCKINNON: 119 and 160 -- 118 and 167, Your Honor.

3 THE COURT: 118 and one---

4 MR. WILLIFORD: I think it's 119.

5 MR. CALLOWAY: It's 119 I think.

6 THE COURT: 119?

7 MR. WILLIFORD: 118 was---

8 MR. MCKINNON: Yes, sir, that's right. You are

9 correct. 119 and 167, Your Honor.

10 THE COURT: All right. Go ahead and remove 119 and  
11 167.

12 MR. MCKINNON: Those medical terms are hard enough for  
13 us, Your Honor. I figured someone, you know---

14 THE COURT: Certainly.

15 MR. MCKINNON: Your Honor, Mr. Davis and I spoke about  
16 that. But apparently Mr. Williford hasn't had a chance to  
17 weigh in. So that may be premature that we have an  
18 agreement.

19 (WHEREUPON, a bench conference was held at this time.)

20 (WHEREUPON, the following takes place within the  
21 presence of the entire jury panel.)

22 THE COURT: Good morning, ladies and gentlemen.

23 My name is Mark Hayes. I'm a Circuit Court Judge from  
24 Spartanburg and it's my pleasure and privilege to be with  
25 you this week.

1 Judge Hill has now qualified you as jurors to serve  
2 this week. We are going to select the first jury for the  
3 week.

4 We're gonna select the jury in a case captioned as Lisa  
5 McKaughan, individually and as personal representative of  
6 the Estate of William Farr, Plaintiff, versus Upstate Lung  
7 and Critical Care Specialists, P.C. and Sau-Yin Wan, M.D.,  
8 Defendants.

9 Ladies and gentlemen, this is a, just briefly, this is  
10 a medical malpractice case in which the Plaintiff alleges  
11 that the Defendants deviated from the standard of care by  
12 failing to timely diagnose lung cancer in Mr. William Farr  
13 in January of 2010 which allegedly caused his death in  
14 January of 2012.

15 Now, the Defendants have denied those allegations and  
16 that is just a nutshell of what this case is about.

17 I have a few questions that I need to ask you prior to  
18 jury selection, and so, but before I ask you these  
19 questions, I need for you all to please stand, raise your  
20 right-hand, and allow the Clerk of Court to swear you in.

21 (WHEREUPON, the jury panel was placed under oath at  
22 this time.)

23 THE COURT: Thank you. You may be seated, ladies and  
24 gentlemen.

25 (Jurors comply.)

1 THE COURT: All right. Ladies and gentlemen of the  
2 jury, just to let you know, we are making a recording of  
3 everything that happens here. This lady over here to my  
4 right, she's a court reporter. She's taking down everything  
5 that's said. So, in response to my questions, if you need  
6 to ever respond to my questions, I'm gonna ask, if you  
7 would, to please stand up and let me call on you one at a  
8 time, and then, whenever you're giving the verbal responses  
9 to my questions, please speak up loud enough so that both  
10 she and I can hear you, and if ever during this process you  
11 can not hear me, immediately let me know and I will speak up  
12 as well.

13 Again, ladies and gentlemen, I'm gonna now ask Lisa  
14 Mckaughan to please stand and face the ladies and gentlemen  
15 of the jury.

16 (Plaintiff complies.)

17 THE COURT: Ladies and gentlemen, this is Lisa  
18 Mckaughan. She is the personal representative of the Estate  
19 of William Farr.

20 Ladies and gentlemen, is there anyone -- member of the  
21 jury who is related by blood or marriage to Mrs. Mckaughan  
22 or to Mr. Farr or do you, or do you have or did you have a  
23 close personal relationship with Mr. Farr, if so, please  
24 stand at this time.

25 (No response.)

1 THE COURT: Thank you very much, ma'am. You may be  
2 seated.

3 (Plaintiff complies.)

4 THE COURT: Ladies and gentlemen, the Defendants in  
5 this case again are Upstate Lung and Critical Care  
6 Specialists, P.C. and Doctor Sau-Yin Wan.

7 Doctor, if you will, please stand.

8 (Defendant complies.)

9 ~~THE COURT: This is Doctor Wan.~~  
10 ~~Ladies and gentlemen, if you are related by blood or~~  
11 ~~marriage to the doctor or if you have a close personal or~~  
12 ~~social relationship with the doctor or you've ever been a~~  
13 ~~patient of this doctor I need for you to please stand at~~  
14 ~~this time.~~

15 (No response.)

16 THE COURT: Thank you very much, ma'am.

17 (Defendant sits down.)

18 THE COURT: And, ladies and gentlemen, again, the other  
19 Defendant is Upstate Lung and Critical Care Specialists,  
20 P.C.

21 If you have ever been treated by this group or any of  
22 its doctors or if you have a close personal or social  
23 relationship with any of the members of that medical  
24 practice I need for you to please stand at this time.

25 (Juror responds.)



1 THE COURT: Yes, sir, your, your number?

2 THE JUROR: Eleven.

3 THE COURT: Give me just one moment.

4 (Pause.)

5 THE COURT: You're Mr. Boyd?

6 THE JUROR: Yes, sir.

7 THE COURT: And, sir, the fact that that has occurred,  
8 would that, in anyway, affect your ability to give both the  
9 Plaintiff and the Defendant a fair and impartial trial in  
10 the event you're selected as a member of this jury?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Thank you, sir. You may be  
13 seated.

14 (Juror complies.)

15 THE COURT: Ladies and gentlemen, I'm now gonna read a  
16 list of witnesses who may potentially be called as witnesses  
17 as part of this trial. I need for you to please listen to  
18 these names because, after I've called, after I've read all  
19 of these names out, I'm gonna ask you, if you would, to  
20 please stand if you're related by blood or marriage to any  
21 of these individuals or if you have a close personal or  
22 social relationship with any of these individuals.

23 Then I'd also ask if any of these individuals are  
24 present in the courtroom, if they would, to please stand and  
25 face the ladies and gentlemen of the jury.

1 Kurt McKaughan.

2 (Witness stands.)

3 THE COURT: Doctor Barry Singer.

4 Doctor William Woodruff.

5 Doctor Milby. I'm sorry. Doctor Willard Milby.

6 Doctor Sarah Vidito.

7 Did I say that correctly?

8 MR. WILLIFORD: Vidito.

9 THE COURT: Vidito.

10 MR. WILLIFORD: Yes, sir.

11 THE COURT: Doctor Christophe Nguyen.

12 Doctor J. Thomas Latham.

13 Doctor Mark O'Rourke.

14 Doctor Greg Feldman.

15 Doctor Rosanna Lapham.

16 Now, ladies and gentlemen, if you have a close personal  
17 or social relationship with any of those individuals or if  
18 you're related by blood or marriage to them or if you've  
19 ever been treated by any of those physicians, I need for you  
20 to please stand at this time.

21 (Jurors respond.)

22 THE COURT: All right. We'll start over here.

23 Yes, ma'am, your juror number?

24 THE JUROR: Thirty-eight.

25 THE COURT: You're Ms. Felton?

1 THE JUROR: Yes.

2 THE COURT: And, ma'am, the fact that that has  
3 occurred, would that, in anyway, affect your ability to give  
4 both the plaintiff and the defendant a fair and impartial  
5 trial in the event you're selected as a member of the jury?

6 THE JUROR: No.

7 THE COURT: Thank you, ma'am. You may be seated.  
8 Yes, sir, in the stripe, your, your number?

9 THE JUROR: ~~Twenty-one.~~

10 THE COURT: ~~You're Mr. Crocker?~~

11 THE JUROR: That's correct.

12 THE COURT: Sir, the fact that that has occurred, would  
13 that, in anyway, affect your ability to give both the  
14 Plaintiff and the Defendant a fair and impartial trial in  
15 the event you're selected as a member of this jury?

16 THE JUROR: No, sir, it will not.

17 THE COURT: Thank you, sir. You may be seated.  
18 Yes, ma'am, your juror number?

19 THE JUROR: Twenty-two.

20 THE COURT: Twenty-two.

21 You're Ms. Crowley?

22 THE JUROR: Yes, sir.

23 THE COURT: Ma'am, the fact that that has occurred,  
24 would that, in anyway, affect your ability to give both the  
25 State -- and give both the Plaintiff and the Defendant a

1 fair and impartial trial in the event you're selected as a  
2 member of this jury?

3 THE JUROR: No, it will not.

4 THE COURT: Thank you, ma'am. You may be seated.

5 Ladies and gentlemen of the jury, at this time I'm  
6 gonna ask that the lawyers that are going to be  
7 participating in the trial of this case to please stand and  
8 introduce themselves and also the names of their firms to  
9 you.

10 MR. MCKINNON: I'm Bill McKinnon from McGowan, Hood &  
11 Felder firm in Rock Hill.

12 MR. CALLOWAY: Hi, I'm Jordan Calloway with the same  
13 firm.

14 MR. WILLIFORD: My name's David Williford and I work at  
15 Davis, Snyder, & Williford.

16 MR. DAVIS: I'm Ashby Davis of Davis, Snyder, and  
17 Williford of Greenville.

18 THE COURT: Thank you, gentlemen.

19 Ladies and gentlemen, if you are related by blood or  
20 marriage to any of these attorneys or if you have a close  
21 personal or social relationship with any of these attorneys  
22 or if you have ever been represented by or if you or a  
23 member of your family has ever been represented by any of  
24 these attorneys or their firm, I need for you to please  
25 stand at this time.

1 (No response.)

2 THE COURT: Thank you.

3 Has any member of this -- excuse me.

4 Has any member of the jury panel or any member of their  
5 immediate family or any of their very close friends ever  
6 been employed as or received training as a doctor, nurse,  
7 paramedic, medical technician, CNA, or other healthcare  
8 worker, if so, please stand at this time.

9 ~~(Jurors respond.)~~

10 ~~THE COURT: All right. We will start here with the~~  
11 ~~lady in the pink sweater.~~

12 Your, your number?

13 THE JUROR: 226.

14 THE COURT: And, ma'am, the fact that that has  
15 occurred, would that, in anyway, affect your ability to give  
16 both parties a fair and impartial trial in the event you're  
17 selected as a member of the jury?

18 THE JUROR: No, it will not.

19 THE COURT: Thank you, ma'am. You may be seated.

20 Yes, ma'am, your juror number?

21 THE JUROR: 202.

22 THE COURT: And, ma'am, the fact that that has  
23 occurred, would that, in anyway, affect your ability to give  
24 both parties a fair and impartial trial in the event you're  
25 selected as a member of the jury?

1 THE JUROR: No, it would not.

2 THE COURT: Thank you, ma'am.

3 Yes, ma'am, your juror number?

4 THE JUROR: 217.

5 THE COURT: Ma'am, the fact that that has occurred,  
6 would that, in anyway, affect your ability to give both  
7 parties a fair and impartial trial in the event you're  
8 selected as a member of this jury?

9 THE JUROR: No, it would not.

10 THE COURT: Thank you, ma'am.

11 Yes, ma'am.

12 THE JUROR: 190.

13 THE COURT: And, ma'am, the fact that that has  
14 occurred, would that, in anyway, affect your ability to give  
15 both the Plaintiff and Defendant a fair and impartial trial?

16 THE JUROR: No.

17 THE COURT: Thank you, ma'am. You may be seated.

18 Yes, ma'am, on the end?

19 THE JUROR: 109.

20 THE COURT: Ma'am, the fact that that has occurred,  
21 would that, in anyway, affect your ability to give both  
22 parties a fair and impartial trial in the event you're  
23 selected as a member of the jury?

24 THE JUROR: No, it will not.

25 THE COURT: Thank you, ma'am. You may be seated.

1 Yes, ma'am, your juror number?

2 THE JUROR: 230.

3 THE COURT: Ma'am, the fact that that has occurred,  
4 would that, in anyway, affect your ability to give both the  
5 Plaintiff and the Defendant a fair and impartial trial?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, ma'am.

8 Yes, sir, your number again?

9 THE JUROR: ~~Twenty-one. Twenty-one.~~

10 THE COURT: ~~And, sir, the fact that that has occurred,~~  
11 would that, in anyway, affect your ability to give both the  
12 Plaintiff and the Defendant a fair and impartial trial?

13 THE JUROR: No, sir.

14 THE COURT: Thank you, sir.

15 Yes, ma'am, in the blue.

16 THE JUROR: Number 149.

17 THE COURT: Ma'am, the fact that that has occurred,  
18 would that, in anyway, affect your ability to give both the  
19 Plaintiff and the Defendant a fair and impartial trial?

20 THE JUROR: No, sir.

21 THE COURT: Thank you, ma'am.

22 Yes, ma'am, in the red.

23 THE JUROR: Number 13.

24 THE COURT: Ma'am, the fact that that has occurred,  
25 would that, in anyway, affect your ability to give both the

1 Plaintiff and the Defendant a fair and impartial trial?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, ma'am.

4 Yes, ma'am, in the red.

5 THE JUROR: Forty-eight.

6 THE COURT: And, ma'am, the fact that that has  
7 occurred, would that, in anyway, affect your ability to give  
8 both the Plaintiff and the Defendant a fair and impartial  
9 trial?

10 THE JUROR: No, sir.

11 THE COURT: Thank you, ma'am.

12 Yes, ma'am.

13 THE JUROR: 238.

14 THE COURT: Ma'am, the fact that that has occurred,  
15 would that, in anyway, affect your ability to give both the  
16 Plaintiff and the Defendant a fair and impartial trial?

17 THE JUROR: No, sir.

18 THE COURT: Thank you, ma'am.

19 Yes, ma'am.

20 THE JUROR: 121.

21 THE COURT: Ma'am, the fact that that has occurred,  
22 would that, in anyway, affect your ability to give both the  
23 Plaintiff and the Defendant a fair and impartial trial?

24 THE JUROR: No, sir.

25 THE COURT: Thank you, ma'am.



1 Yes, ma'am, in the stripes.

2 THE JUROR: Seventy-two.

3 THE COURT: And, ma'am, the fact that that has  
4 occurred, would that, in anyway, affect your ability to give  
5 both the Plaintiff and the Defendant a fair and impartial  
6 trial?

7 THE JUROR: No, sir.

8 THE COURT: Thank you, ma'am.

9 Yes, ma'am, your juror number?

10 THE JUROR: 221.

11 THE COURT: Ma'am, the fact that that has occurred,  
12 would that, in anyway, affect your ability to give, your  
13 ability to give both the plaintiff and the defendant a fair  
14 and impartial trial?

15 THE JUROR: No.

16 THE COURT: Thank you, ma'am.

17 Yes, sir, your juror number?

18 THE JUROR: Sixty-four.

19 THE COURT: And, sir, the fact that that has occurred,  
20 would that, in anyway, affect your ability to give both the  
21 Plaintiff and the Defendant a fair and impartial trial?

22 THE JUROR: No, sir.

23 THE COURT: Thank you, sir.

24 Yes, ma'am, your juror number?

25 THE JUROR: Sixty-eight.

1 THE COURT: Ma'am, the fact that that has occurred,  
2 would that, in anyway, affect your ability to give both the  
3 Plaintiff and the Defendant a fair and impartial trial?

4 THE JUROR: No, sir.

5 THE COURT: Thank you, ma'am.

6 Yes, ma'am, your juror number?

7 THE JUROR: 227.

8 THE COURT: And, ma'am, the fact that that has  
9 occurred, would that, in anyway, affect your ability to give  
10 both the Plaintiff and the Defendant a fair and impartial  
11 trial?

12 THE JUROR: No, sir.

13 THE COURT: Thank you, ma'am. You may be seated.

14 Does any member of the jury panel have any moral,  
15 religious, personal, or political belief that would prevent  
16 you from awarding money damages in a lawsuit, if so, please  
17 stand at this time.

18 (No response.)

19 THE COURT: Has any member of the jury panel or any  
20 member of their family or any close friends who, who -- do  
21 you have or has had been -- excuse me. Let me start over.

22 Has any member of the jury panel or any member of their  
23 family or any close friend who has ever suffered from what  
24 they consider to be a personal injury or a medical  
25 malpractice injury, if so, please stand at this time.

1 (Jurors respond.)

2 THE COURT: All right. Yes, ma'am, your juror number?

3 THE JUROR: Fifteen.

4 THE COURT: Ma'am, the fact that that has occurred,  
5 would that, in anyway, affect your ability to give both the  
6 Plaintiff and the Defendant a fair and impartial trial?

7 THE JUROR: No, sir.

8 THE COURT: Thank you, ma'am.

9 Yes, sir, your juror number?

10 THE JUROR: Nineteen.

11 THE COURT: And, sir, the fact that that has occurred,  
12 would that, in anyway, affect your ability to be -- give  
13 both the Plaintiff and the Defendant a fair and impartial  
14 trial, trial in the event you're selected as a member of  
15 this jury?

16 THE JUROR: No, sir.

17 THE COURT: Thank you, sir.

18 Does any member of the jury panel have a moral,  
19 religious, personal, or political belief opposed to the  
20 American Jury System, if so, please stand at this time.

21 (No response.)

22 THE COURT: Is any member of the jury panel or member  
23 of their immediate family ever served on a civil jury in a  
24 medical malpractice case before, if so, please stand at this  
25 time.

1 (No response.)

2 THE COURT: At the conclusion of this trial, after the  
3 jury has heard all the testimony and seen all the evidence,  
4 the judge will charge or tell you -- the jury the law that  
5 the jury is to apply to the facts and evidence of this case  
6 in deciding the outcome in reaching a verdict.

7 Does any member of the jury panel know of any reason  
8 why it might be difficult for you to follow, apply, and  
9 adhere to the law the judge will give you when deliberating  
10 and reaching a decision and verdict in this case, if so,  
11 please stand at this time.

12 (No response.)

13 THE COURT: Has any jury -- has any member of the jury  
14 panel formed or expressed an opinion about any issue or  
15 matter involved in this case, if so, please stand at this  
16 time.

17 (No response.)

18 THE COURT: Is any member of the jury panel aware of  
19 any bias or prejudice towards either the plaintiff or the  
20 defendant in this case, if so, please stand at this time.

21 (No response.)

22 THE COURT: Has any member of the jury panel or any  
23 member of their immediate family read anything in the  
24 newspaper or on the Internet, heard anything, or have any  
25 knowledge about any of the facts, allegations, or defenses

1 in this case, if so, please stand at this time.

2 (No response.)

3 THE COURT: Is there any member of the jury panel who  
4 is a member of or contributor to any group which has as its  
5 primary concern the promotion of law enforcement or victims'  
6 rights?

7 Now, these groups would include, but certainly not be  
8 limited to MADD, to SADD, or Cave, Citizens Against Violent  
9 Crime, if so, please stand at this time.

10 (No response.)

11 THE COURT: Does any member of the jury panel know of  
12 any reason whatsoever why he or she should not serve as a  
13 juror in this case with particular emphasis being placed on  
14 your ability to be fair and impartial to both the Plaintiffs  
15 and the Defendants in this case, if so, please stand at this  
16 time.

17 (No response.)

18 THE COURT: Does the Plaintiff have any additional  
19 questions?

20 MR. MCKINNON: Other than the ones already submitted to  
21 Your Honor---

22 THE COURT: All right.

23 MR. MCKINNON: ---no, Your Honor.

24 THE COURT: Does the defense have any additional  
25 questions?

1 MR. WILLIFORD: Yes, Your Honor.

2 THE COURT: You want to approach?

3 MR. WILLIFORD: Yes, Your Honor.

4 (WHEREUPON, a bench conference was held out of the  
5 hearing of the jury at this time.)

6 THE COURT: All right. Ladies and gentlemen, what  
7 we're going to do now, this is -- this lady down here is the  
8 Clerk of Court. She is going to bring up a -- into her  
9 computer system a -- some type of program that makes a  
10 random selection of all of your names and numbers, and  
11 they're gonna -- she's gonna print out a list. That list,  
12 from that list, we are then going to give to the lawyers --  
13 we're gonna go through what's called a striking process.

14 I tell you this because we actually, when I was a lot  
15 younger practicing law many many years ago, we actually  
16 brought in a, a person from the School for the Deaf and  
17 Blind that was visually impaired. We would actually have  
18 that person -- we've got the barrel, actual barrel right  
19 behind this door and that we would write everybody's names  
20 down and put those names in the capsule and we'd have the  
21 person -- we'd spin the barrel. We'd have that person reach  
22 in and pull out name by name. So jury selection, sometimes  
23 in a trial like this, could take oh, three quarters of a day  
24 if not the entire day.

25 So I only mention that to you that we have gotten a

1 little bit more efficient about jury striking because now  
2 she's got all that in her word processor and she can just do  
3 whatever it is she does and we bring up that list. Be  
4 patient with us for a moment because once she has gotten  
5 that random list of our names, the lawyers are gonna have a  
6 chance to go through that list and check their notes and  
7 then we're gonna do the striking of the jury.

8 Taking a look at that clock on the wall, I'm gonna ask  
9 you, if you would, there's restrooms across the hallway.  
10 You get up, stretch your legs. So I'm gonna ask you, if you  
11 would, please everyone be back in here, according to that  
12 clock, by 12:20 and then we will resume with the striking  
13 process. But we're gonna -- I'm gonna step down and we're  
14 gonna be at ease just for a few moments.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: Let me see the lawyers for a moment.

17 Mr. McKinnon.

18 (WHEREUPON, a bench conference was held out of the  
19 hearing of the jury at this time.)

20 THE COURT: Okay. All right. Ladies and gentlemen, we  
21 are now going to start with the striking process.

22 Clerk of Court -- gentlemen, be sure you use the  
23 numbers that are in the left-hand column.

24 Yes, ma'am.

25 (WHEREUPON, a jury panel was selected at this time.)

1 THE COURT: All right. Now, ladies and gentlemen, we  
2 have a small courtroom for the number of people we have. So  
3 she is now going to call the names of those who have been  
4 selected as members of the jury and we have to put them in  
5 the jury box.

6 So, if you wouldn't mind, if y'all could just line up  
7 along the wall. We won't keep you on your feet too very  
8 long. Thank you.

9 All right. Now, when the Clerk of Court calls your  
10 name and your number, I need for you to come forward and  
11 please bring any personal belongings that you have with you  
12 when your name is called.

13 (WHEREUPON, a jury panel was seated at this time.)

14 THE CLERK: Your Honor, the jury has been selected.

15 THE COURT: Thank you very much.

16 Anything concerning the manner and method of selection  
17 of the jury from the Plaintiff?

18 MR. MCKINNON: Nothing, Your Honor.

19 THE COURT: Any from the defense?

20 MR. WILLIFORD: No, Your Honor.

21 THE COURT: Thank you, gentlemen.

22 Ladies and gentlemen of the -- that got selected to be  
23 on our first jury, congratulations. Give me just a moment.  
24 I need to address the people that unfortunately did not get  
25 selected.



1 (Pause.)

2 THE COURT: Let me see the lawyers.

3 (WHEREUPON, a bench conference was held out of the  
4 hearing of the jury at this time.)

5 THE COURT: All right. Ladies and gentlemen, I need  
6 you to please listen to me for a few moments.

7 Congratulations on being selected our first jury for  
8 the week.

9 I need to --- in just a moment we're going to take a  
10 lunch break. But I need to give you some preliminary  
11 instructions. You have been selected to be the jury of this  
12 case and what you're gonna be called on to do, at the end of  
13 this case, is to engage in what's called deliberations. You  
14 will do that in the jury room outside of everyone's  
15 presence.

16 Until you begin your deliberations, that's at the close  
17 of all the evidence presented, the lawyers have presented  
18 closing arguments and I have instructed you on the law, you  
19 can not discuss anything about this case with anyone. That  
20 includes among yourselves. You can not make any comments  
21 about this case while this -- among yourselves while this  
22 case is going on.

23 You go -- you're gonna go home for lunch or go out to a  
24 restaurant in the evenings. You're gonna go home. You're  
25 gonna see friends. They're gonna want to know, friends and

1 family, well, you got selected on a jury, what's the case  
2 about, who are the parties, what's involved with it, who's  
3 the judge, who are the lawyers. Very politely tell them  
4 that you are under instructions from the judge that you can  
5 not discuss anything about the case until after the case is  
6 over. Just very know -- politely tell them that and just  
7 leave it at that.

8 So I want you to know that, number one, you can't have  
9 any discussions among yourselves or with anyone else until  
10 the case gets to you and you begin your deliberations.

11 Also want to let you know, up front, that you can not  
12 do any type of independent research or investigation into  
13 this case. You can not -- you now have been introduced to  
14 the lawyers. You've been introduced to the parties. I've  
15 introduced myself. You can not go out of this courtroom and  
16 just decide well, I'm gonna figure out who that lawyer is  
17 and pull him up on the Internet or you can not go to well, I  
18 think I read something in the newspaper about this case.  
19 I'm gonna go look up -- do a Herald-Journal search. You  
20 can't do any type of research or investigation into anything  
21 involving the case because, when you make your decisions in  
22 that deliberations, your deliberations have to be based  
23 solely on the information you receive in this courtroom.

24 So don't feel -- so you can't do any type of  
25 independent research, but also don't feel like you have an

1 obligation that if, by chance, I or one of the lawyers say a  
2 word that I'm not quite sure I understood what that word  
3 meant, you can not even go and pull Webster's Dictionary off  
4 the shelf and look that word up.

5 Allow us the opportunity to educate you as to what the  
6 facts are and the law that you will apply to those facts so  
7 that, when you do your deliberations, they are done properly  
8 according to the law of the State of South Carolina.

9 But, again, I want to thank you for your being selected  
10 to be on this first jury.

11 Taking a look at that clock on the wall, I'm gonna let  
12 you go to lunch and I'm gonna ask you, if you would, to  
13 please be back in the, in the jury deliberation room by two  
14 o'clock. But you may go with the bailiffs. They will show  
15 you how to exit and enter the courthouse and give you the  
16 instruction on how to get in. But, until two o'clock, I  
17 hope you have a good lunch and please go with the bailiff.

18 (WHEREUPON, the following takes place outside the  
19 presence of the jury.)

20 THE COURT: All right. Gentlemen, we'll get back  
21 together at about a quarter till 2:00 to take up the  
22 remaining motions in limine filed by the Plaintiff. If  
23 y'all got as many things with the court, to the court  
24 reporter that you could, go ahead and have them marked and  
25 all that will be of great assistance.

1 But we'll stand at ease.

2 (WHEREUPON, Court was in recess for the lunch hour.)

3 THE COURT: Now we have Plaintiff's motion in limine.

4 Yes, sir.

5 MR. CALLOWAY: Your Honor, may it please the Court.

6 We filed a, a written motion on Friday which I believe  
7 we e-mailed to the Court. But I do have an additional copy  
8 if the Court needs one.

9 THE COURT: I've got a copy. Thank you.

10 MR. CALLOWAY: Your Honor, at this time we would move  
11 to exclude any of Doctor, excuse me, Mr. Farr's treating  
12 physicians, specifically Doctor Vidito, Doctor Nguyen, and  
13 Doctor Lapham, from providing expert testimony in this  
14 matter.

15 Your Honor, specifically we're talking about any  
16 reference to the idea that the left lung cancer was a second  
17 primary or any testimony opining that this cancer was not  
18 meta, metastasis, and, Your Honor, the bottom line with this  
19 motion is none, none of these experts were properly  
20 identified as expert witnesses.

21 Last, last Thursday, we received a, an email from  
22 defense counsel purporting to be a supplemental expert  
23 disclosure, and this is the first time we had any indication  
24 there's discovery responses that these three doctors,  
25 treating physicians, would be set up to be experts in this

1 case.

2 Your Honor, what's important to understand, I guess,  
3 about a couple of these things is, first, the attempt to  
4 make these doctors experts happened just four days before  
5 trial and so the discovery is been basically established for  
6 a long time at this point, and a couple other things on  
7 that, Your Honor.

8 You know, the Defendants have an obligation, under Rule  
9 33, to, when they initially answer our interrogatories, and  
10 we sent them interrogatories asking for their experts a long  
11 time ago, and, you know, they've got an obligation to fully  
12 answer at that time. And they've also got an obligation,  
13 under the express language of Rule 33, to promptly  
14 supplement those responses, and, obviously, we don't believe  
15 that four days before trial is a prompt response to those  
16 things -- update to those responses.

17 The other thing I would mention, Your Honor, is the  
18 fact that the scheduling order in this case established a  
19 September 30<sup>th</sup>, 2014, deadline for the Defendants to name  
20 their experts in this case. Now, I will note, and defense  
21 counsel might bring up during their argument, that  
22 Plaintiffs did name an expert after Plaintiff's deadline  
23 was. But the, the reason for that is important to  
24 understand.

25 On the last day that the Defendants could name an

1 expert, they named a pathology expert, which was sort of  
2 unexpected from our prospective, and so, in response to  
3 that, we needed to name a pathology expert, which we did.  
4 But what's interesting about that is that defense counsel  
5 wouldn't consent to it. They essentially told us well, the  
6 deadline is the deadline. So we filed a motion and the  
7 Court, in February, entered an order allowing us to file a  
8 late response in response to their pathology expert  
9 designation.

10 And so, at one point earlier in this case, they took  
11 the position that the deadline is the deadline. But now,  
12 four days before trial, they're trying to turn these  
13 treating physicians into expert doctors, and what's  
14 important, we do think for our prospective, is the amount of  
15 prejudice we'd face from that. Quite honestly, we would of  
16 gone about their depositions very differently had we known  
17 that they intended to go beyond their treatment in this case  
18 to talk more broadly about the areas in which they practiced  
19 or to try to come to some conclusion about the nature or the  
20 cause of Mr. Farr's left lung cancer, and the reality is  
21 that, at this point, we can't undo that prejudice. We're,  
22 we're at trial. Here we are. And so, you know, four days  
23 is, is not enough notice to, to let us do anything about  
24 that.

25 And one last point I would make as well, there's no

1 prejudice to the Defendants if this motion is granted and  
2 they're not allowed to use these doctors as experts. The  
3 reality is they have experts who were properly identified on  
4 all expert areas that are gonna be discussed here this week.

5 They've got an oncologist and they've got a  
6 pathologist, and so it appears that what they're trying to  
7 do is to use these treating doctors to kind of bolster or  
8 add cumulative evidence of that -- for which they already  
9 have experts properly designated.

10 And so we're at a position now where we think there's a  
11 violation of, of the Rule 33 obligations. We cited in our  
12 memorandum some case law indicating, under Rule 37, in a  
13 situation like this where an expert has been designated as  
14 late as these experts have been designated, that the proper  
15 course of action is for the Court to exclude that expert  
16 testimony.

17 And so, Your Honor, we think, on that basis, that these  
18 doctors should be able to testify only to their course of  
19 treatment, and those specific two areas -- that's why I  
20 think that we can have a ruling now and not wait till the  
21 questions are asked because it really does go to those  
22 areas.

23 Are they gonna go beyond their treatment and the  
24 records that they have compiled, records, by the way, which  
25 none of which indicate that this was a second primary it

1 was. The records indicate it was a recurrence and go into  
2 other areas that they haven't been designated for in a, in a  
3 timely fashion under the rules.

4 And so, on that basis, Your Honor, we'd ask that these  
5 doctors be limited in their testimony.

6 THE COURT: Yes, sir.

7 MR. WILLIFORD: Thank you, Your Honor.

8 Last week when we supplemented our interrogatories, it  
9 was just a technicality to cover that base in a sense and it  
10 wasn't just e-mails. It's actually a formal one.

11 However, the issue the Court must decide upon is  
12 prejudice. You know, are the Plaintiffs prejudiced by, by  
13 the testimony of Doctor Lapham, the pathologist, Doctor  
14 Nguyen, a surgeon, and Doctor Vidito, an oncologist who  
15 treated Mr. Farr in this case.

16 Well, the answer to that is unequivocal was no, in that  
17 Mr. McKinnon, who was at their depositions, actually  
18 cross-examined them during the depositions and these  
19 depositions were taken back in January. One was early July  
20 after we try to find a date for that, and, and there's just  
21 no prejudice whatsoever in these physicians talking about  
22 what they're qualified to talk about.

23 They certainly were -- they were intimate parts of the  
24 cancer in trying to help determine whether or not was it a  
25 primary, was it a metastasis, the extent of the resection,



1 you know, from the tumor. They were intimately involved in  
2 that and they're qualified to talk about that. And if  
3 they're qualified to talk about those issues then, and  
4 there's no prejudice, there's plenty of notice and the  
5 opportunity to cross-examine them before trial.

6 Certainly they should -- their testimony on one or two  
7 or three questions each should not be excluded from trial  
8 and there's just clearly no prejudice at all. In fact, we  
9 did disclose, for example, Doctor Lapham we disclosed as a  
10 witness back in May, May 8<sup>th</sup>, early May cause, at that  
11 point, we were trying to set up her deposition and we named  
12 Doctor Lapham, and part of our discovery disclosures was,  
13 was this, and I'm just reading it, upon information and  
14 belief, Doctor Lapham has knowledge concerning the care and  
15 treatment provided to the Plaintiff's decedent, Mr. Farr.  
16 Doctor Lapham will be expected to testify to the pathology  
17 in this case as a treating pathologist and as an expert  
18 pathologist with the regard to any subject matter within her  
19 areas of expertise pertaining to this case.

20 That was back in early May, and, Your Honor, I would  
21 just like to address the prior scheduling order deadline  
22 passing of time in regards to the Plaintiff's expert.

23 At the hearing that we had in December I believe,  
24 Mr. McKinnon said we will lose this case if we don't have an  
25 expert. Part of which was the basis of, of allowing the

1 expert to be allowed because, at that point, we did timely  
2 name our initial experts. Mr. McKinnon did not. He named  
3 an expert not just a little bit late, months late, after our  
4 defense experts were deposed.

5 And so that was the circumstances surrounding that.  
6 The, the Court allowed it and now we have this aerogenous  
7 theory of metastasis.

8 Well, there's just absolutely no prejudice in this  
9 case. They're qualified in terms of Doctor Vidito, Doctor  
10 Nguyen, and Doctor Lapham to give what they have done and  
11 what they're qualified to do in terms of opining about a  
12 question or two or three that are related to this case.

13 MR. MCKINNON: Your Honor, I'm just gonna respond since  
14 I was at those depositions.

15 Your Honor, we disclosed in -- a rebuttal expert on  
16 pathology. We got the Court's permission. Mr. Williford  
17 strenuously opposed that expert, and, Your Honor, this, this  
18 was at seven months ago. In December of 2014 Mr. Williford  
19 told me it was too late, and then, Your Honor, their  
20 deadline is long expired. Mr. Williford now comes four days  
21 before trial and wants to add experts and, Your Honor, I  
22 took their depositions, but, Your Honor, these were half  
23 hour depositions of fact witnesses.

24 I'm not concerned about what's in the medical records,  
25 Your Honor. They are more than happy to talk about what's

1 in their medical records. That's perfectly fine.

2 Mr. Williford now wants to use them to give expert  
3 testimony in other issues in the case. In our opinion, Your  
4 Honor, it's grossly improper. It is way past the deadline.  
5 There's no justification for it. They have other experts on  
6 that issue. They're just trying to pile on experts four  
7 days before trial.

8 Your Honor, Mr. Williford is correct. One of the three  
9 experts he disclosed in May, still months after the  
10 scheduling order, but he buried that at the bottom of a 27  
11 page list of fact witnesses. And at the bottom of the 27  
12 pages, it says oh, and by the way, we also want to use  
13 Doctor Lapham as an expert witness months after the  
14 scheduling order is -- there's no prejudice at all to them.  
15 They have plenty of experts, Your Honor, and we deposed  
16 these folks as fact witnesses and we think that's what they  
17 should be limited to, Your Honor.

18 MR. DAVIS: Your Honor, since my friend, Mr. McKinnon,  
19 attended the deposition of Doctor Lapham and was free to  
20 address the Court, I'll join him since I was there taking  
21 the deposition of Doctor Lapham.

22 One of the first questions I asked her was do you  
23 consider yourself an expert in pathology, and do you feel  
24 qualified to render expert opinions in the area of  
25 pathology. He said I, I do. I said fine. So I asked her

1 all matter of questions about her pathology report and about  
2 issues directly related to her read of the pathology slides,  
3 which you'll learn later were done in 2012.

4 That, in her opinion, conclusively proved that this was  
5 not a metastasis from the right lung, but was a new primary  
6 in the left lung. That is her interpretation of her  
7 pathology report. She clearly spelled that out in her  
8 deposition.

9 She brought a microscope and the original slides to her  
10 deposition. I looked at them. She showed me both slides.  
11 She testified about them. She had reviewed them. It was  
12 part of her report. Mr. McKinnon was free to ask her  
13 anything he wanted to. He never asked her a thing about the  
14 slides. Didn't ask her much of anything other than this  
15 word is in your report as I recall and he asked her other  
16 things too. But he was free to ask her anything he wanted  
17 to.

18 There's no surprise. They don't like what she says,  
19 but, you know, we don't object unless we don't like it  
20 anyway, and I think the Court can take judicial notice of  
21 that and that's fine. But she was deposed as an expert in  
22 pathology. The fact that she is, if you want to call a  
23 pathologist a treating physician, I think that's probably  
24 appropriate. She's part of the treating team in diagnosing  
25 this gentleman's cancer. She did that.

1 As an expert witness, the Court can take judicial  
2 notice of her qualifications to allow her to be -- to render  
3 expert testimony regarding what she saw in those slides and  
4 her interpretation of them and as they directly affected the  
5 care and treatment of Mr. Farr following her diagnosis. I  
6 don't think there's -- that's anything improper about her  
7 testimony and rendering opinions about those slides that she  
8 reviewed on her own.

9 Thank you.

10 THE COURT: All right. Well, tell me who is going to  
11 testify as to what on behalf of the defense.

12 MR. WILLIFORD: Sure, Your Honor.

13 The plan is Doctor Wan, Doctor Feldman, Doctor Lapham,  
14 Doctor Vidito, Doctor Nguyen, Doctor O'Rourke, and Doctor  
15 Latham.

16 THE COURT: All right. Feldman, Plaintiff argued was  
17 your --?

18 MR. MCKINNON: Standard of care expert.

19 THE COURT: -- standard of care expert?  
20 What's Doctor Vidito?

21 MR. WILLIFORD: She is a treating oncologist and  
22 hematologist.

23 THE COURT: And Nguyen?

24 MR. WILLIFORD: He is a surgeon, surgeon in oncology,  
25 oncological surgery.

1 THE COURT: Lapham?

2 MR. WILLIFORD: Treating surgeon.

3 Doctor Lapham is, if you want to call her, a treating  
4 pathologist who diagnosed this man's cancer.

5 THE COURT: O'Rourke?

6 MR. WILLIFORD: He is an oncologist. He's an expert.

7 THE COURT: Doctor Latham.

8 MR. WILLIFORD: And Doctor Latham, L-A-T-H-A-M, he's a  
9 pathologist. He's an expert.

10 THE COURT: He's an expert?

11 MR. WILLIFORD: Yes, sir.

12 MR. MCKINNON: Your Honor, it's very confusing.

13 They're two pathologists. There's Doctor Latham who is  
14 their expert, and then there's Doctor Lapham, who's one of  
15 the treating doctors we're discussing the motion about.  
16 It's very confusing.

17 THE COURT: Thomas is the hired expert?

18 MR. MCKINNON: Yes, sir.

19 THE COURT: Rosanna is the treating?

20 MR. WILLIFORD: Correct.

21 THE COURT: Okay. All right.

22 All right. If the witnesses have not been disclosed as  
23 "experts", at this late date, I would be inclined not to  
24 allow them to testify beyond just what factual information  
25 that they have. The inherent prejudice of naming an expert

1 four days prior to trial I think is obvious in the way that  
2 you prepare. I think it's also obvious in that you also  
3 have hired experts that will be able to give any opinion  
4 that your treating experts that were not disclosed as being  
5 expert witnesses.

6 So you are going to have the ability to present that  
7 testimony anyway, and I do agree that if your testifying  
8 experts are basing it on the factual information that your  
9 treating doctors have, then I think there's a strong  
10 likelihood that the testimony of the expert treating doctor  
11 would be redundant of your hired experts and I would  
12 probably want you to choose between one or the other and not  
13 have two to testify to the same thing. Especially since, in  
14 November 21, 2014, a representation was made to the  
15 administrative judge at that time that the defense would  
16 have four witnesses.

17 Okay. So we need to get this trial done in a timely  
18 fashion.

19 Okay. Any questions?

20 MR. WILLIFORD: No, Your Honor.

21 THE COURT: Okay.

22 MR. CALLOWAY: Thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. CALLOWAY: Nothing from the Plaintiff at this time,  
25 Your Honor.

1 THE COURT: What about your other issues?

2 MR. CALLOWAY: Your Honor, we did cite those and, you  
3 know, I think both sides did cite several of these things.  
4 I -- they, they wanted to put the Court on notice of these  
5 general ideas of anything else, but we don't have any  
6 further argument on that.

7 THE COURT: So you think these are going to come up  
8 during the course of this trial?

9 MR. CALLOWAY: They, they are sort of boilerplate  
10 things, Your Honor, but I, I do, you know, we don't have  
11 anything additional with them. If the Court just wants to  
12 be disposed of them, we're fine with that and we're ready to  
13 go to openings.

14 THE COURT: Well, I don't think I'd be in a position to  
15 make any ruling about any of these things. I mean -- so  
16 you're using this as an advertisement to me to let me know  
17 that you might be objecting to these things?

18 MR. CALLOWAY: Well, Your Honor, you know, we can even  
19 withdraw them if necessary.

20 THE COURT: No, I mean they're here. I mean do  
21 whatever you want to do.

22 MR. CALLOWAY: Well -- and I -- and excuse me. I  
23 didn't mean to interrupt you.

24 But -- and I think it is sort of that and the Court's  
25 perhaps indicating, in response to the defendant's motion,



1 there are certain things that the Court wouldn't be able to  
2 be in a position to rule on until they come up. These may  
3 be -- fall into that category.

4 THE COURT: All right. Well I, I've read them. I  
5 haven't memorized them. So --.

6 MR. CALLOWAY: Sure. Sure.

7 THE COURT: I'll be on the look out for making a  
8 ruling.

9 MR. CALLOWAY: ~~Thank you, Your Honor.~~

10 THE COURT: ~~All right. How long y'all think the~~  
11 ~~openings will be?~~

12 MR. MCKINNON: Depending on how quickly I talk, Your  
13 Honor, thirty to forty minutes I believe for that. I tend  
14 to talk fast and I try to stop myself, but thirty minutes is  
15 probably good, Your Honor.

16 THE COURT: Okay.

17 MR. WILLIFORD: I'd say probably 20 to 25 minutes.

18 THE COURT: And then you're -- and then the Plaintiff  
19 will be ready to move into their first witness?

20 MR. MCKINNON: That's correct, Your Honor.

21 THE COURT: All right. And if you're taking notes,  
22 we've gone through the background information as best we  
23 have on the jurors. We're going to ask Mr. Ernest Jones,  
24 Juror Number 71, to serve as foreperson.

25 You want to make a note of that so that when y'all

1 bring the jury in you have Mr. Jones sit in the foreman's  
2 seat?

3 THE BAILIFF: All right.

4 THE COURT: All right. Anybody need the restroom or  
5 anything before we get started?

6 MR. MCKINNON: Your Honor, we just have some exhibits I  
7 think we can jointly mark if the Court -- if you---

8 THE COURT: Okay.

9 MR. MCKINNON: ---if Your Honor---

10 THE COURT: I tell you what. Y'all get them marked.  
11 I'll step down. Anybody needs to use the restroom, do any  
12 of that stuff, go ahead and do it now and that way we can  
13 just move straight through.

14 MR. MCKINNON: Thank you, Your Honor.

15 THE COURT: We'll come right back.

16 (WHEREUPON, a short recess was taken at this time.)

17 (WHEREUPON, the medical records were marked as Joint  
18 Exhibit No. 1. The medical billing was marked as  
19 Plaintiff's Exhibit No. 1. The death certificate was marked  
20 as Plaintiff's Exhibit No. 2. The Probate Court records  
21 were marked as Plaintiff's Exhibit No. 3. The bills were  
22 marked as Plaintiff's Exhibit No. 4. The x-rays were marked  
23 as Plaintiff's Exhibit No. 5. All of the above exhibits  
24 were for identification purposes only at this time.)

25 THE COURT: The x-ray box that -- y'all are gonna show

1 two x-rays?

2 MR. MCKINNON: Yes, sir, and, Your Honor, we apologize.  
3 We meant to have a protector, but we have the wrong cable.  
4 So we'll have that so Your Honor's okay to use the actual  
5 x-rays.

6 THE COURT: Okay. How are you gonna use it during the  
7 presentation of your case?

8 Only reason I ask, this obstructs my view of the jury.  
9 So I can't see it.

10 MR. MCKINNON: Yes, sir.

11 THE COURT: So I don't mind if I move down there.

12 But are you gonna use it with every witness or just a  
13 particular witness?

14 MR. MCKINNON: No, just, in the opening, Your Honor,  
15 just say you will hear evidence that this is the tumor and  
16 I'll point it out on the x-ray and our radiology expert,  
17 Doctor Woodruff, who will go tomorrow will use it.

18 THE COURT: Okay. Well, what I usually do is when  
19 lawyers have big charts or something like that that they  
20 need to present to the jury, I will leave the bench and will  
21 sit down in that corner beside the alternate juror on the  
22 other side. So if I get up and move, that's what I'm doing.

23 MR. MCKINNON: I'm sorry to inconvenience Your Honor.  
24 It will be very brief today.

25 THE COURT: That's all right.

1 MR. MCKINNON: Your Honor, the only other -- if we have  
2 time, can we set up our projector for one document in  
3 opening, the ELMO gizmo?

4 THE COURT: Sure.

5 MR. MCKINNON: Is that okay on the table here, Your  
6 Honor?

7 THE COURT: Sure.

8 Do we need to bring down the screen?

9 MR. MCKINNON: We will, Your Honor, if -- whenever  
10 you--

11 THE COURT: Can you bring down the screen?

12 I don't, I don't know how to do that.

13 Do y'all?

14 I see how you do that.

15 (Pause.)

16 THE COURT: Okay.

17 MR. WILLIFORD: Your Honor, may it please the Court.

18 I certainly don't want to go against your ruling on  
19 Plaintiff's motion in limine, but I just want to add one  
20 thing for the record if I may?

21 THE COURT: After I make a ruling then you want to put  
22 something on the record?

23 MR. WILLIFORD: That's, that's what I'm asking, but  
24 I'll certainly respect your ruling.

25 THE COURT: well, you don't think that that's not how

1 it goes?

2 MR. WILLIFORD: Well, it's an oversight on my part on  
3 some interrogatories early last year where we named all  
4 treating physicians as offering expert opinions.

5 THE COURT: You want to approach?

6 Lawyers want to approach?

7 MR. WILLIFORD: Yes, sir.

8 (WHEREUPON, a bench conference was held at this time.)

9 THE COURT: So are you gonna use it?

10 MR. MCKINNON: Apparently something's wrong. We don't  
11 want to take any more of Your Honor's time. We'll go  
12 without it, Your Honor.

13 THE COURT: Okay.

14 MR. MCKINNON: We'll figure it out for tomorrow.

15 THE COURT: Okay. Are we ready to bring the jury?

16 MR. MCKINNON: We are, yes, Your Honor.

17 THE COURT: All right. Let's bring the jury in.

18 (WHEREUPON, the following takes place within the  
19 presence of the jury.)

20 THE COURT: All right. I'm gonna need for y'all to lay  
21 that down.

22 MR. MCKINNON: Yes, sir.

23 THE COURT: Thank you.

24 MR. MCKINNON: Yes, sir.

25 THE COURT: All right. Ladies and gentlemen, thank you

1 for your patience while we handled a few matters that needed  
2 to be handled outside of your presence. But we are now in a  
3 position where we're actually gonna start the trial of this  
4 case.

5 Before we can actually start the trial of the case I  
6 need for you to be sworn. So, if you will, please stand,  
7 raise your right-hand, and answer out loud when the Clerk of  
8 Court asks you to do so.

9 (WHEREUPON, the jury was placed under oath at this  
10 time.)

11 THE COURT: Thank you.

12 You may be seated, ladies and gentlemen.

13 (Jurors comply.)

14 THE COURT: Ladies and gentlemen, before we begin the  
15 trial -- before we begin this trial I want to tell you that  
16 this trial probably will be different from what you might  
17 expect. Many people do not have the chance to attend an  
18 actual Court session as you are doing now and may think,  
19 from watching television or movies or reading books, that  
20 trials are always full of high drama, intense action, and  
21 rivetting circumstances.

22 while all of these things may be true at times, this  
23 trial is not for entertainment. It is a fundamental part of  
24 our democracy, a search for the truth, and an effort to make  
25 sure that justice is done between the parties before this

1 Court. Searching for the truth and making sure that justice  
2 is done is often slow, deliberate, and repetitive. Just the  
3 opposite of what you may have seen on television or in  
4 movies or read in books.

5 This courtroom is a place of honor dedicated to the  
6 protection, preservation of citizen's rights through what  
7 many have called the greatest justice system ever created.

8 The attorneys appearing before you are advocates for  
9 the parties that they represent, and first and foremost,  
10 they are officers of the Court sworn to uphold the integrity  
11 and fairness of our judicial system and to help you in the  
12 search for the truth. You should expect them to be  
13 professional, competent, and ethical in the, in the  
14 representation of their client's interest. But remember  
15 that you have taken an oath to try this case and reach a  
16 fair and just verdict, and you are also expected to be  
17 professional, reasonable, and ethical. But I thank you for  
18 accepting the important responsibility of jury service and  
19 for your contribution today to our justice system.

20 Now, ladies and gentlemen, what I will now say is meant  
21 to serve as an introduction to the trial of this case.  
22 These remarks are not a charge on the law in the case. I  
23 will instruct you on the law at the end of the trial before  
24 you retire to decide the case.

25 Before the trial begins I want to explain to you the

1 procedures that we will follow so that you will better  
2 understand what is happening. You have been selected as  
3 fair and impartial jurors whose purpose is to find and  
4 determine the facts of this case. You are the sole judges  
5 of the facts. If at anytime I make any comment regarding  
6 the facts, you must disregard my comments. You are to  
7 determine the facts from the testimony you hear and any  
8 other evidence that is presented.

9 You should not be influenced by any opinions or  
10 statements that you have heard outside of this courtroom.  
11 It is especially important that you perform your duty of  
12 determining the facts diligently and conscientiously because  
13 ordinarily there is no way to correct an erroneous  
14 determination of facts that is made by a jury. When you  
15 comply with your oath to impartially determine the facts of  
16 this case, you will have fulfilled your duty as jurors and  
17 no one will have the right to criticize your verdict.

18 On the other hand and with equal emphasis, the same law  
19 that makes you the judge of the facts makes me the judge of  
20 the law. The law, as given by the Court, is the only law  
21 you may consider. You must accept it and follow it even  
22 though you may disagree with it. I can not tell you what  
23 the facts are and you can disagree with me about what the  
24 law is or should be.

25 Your job is to take the law as I give it to you and



1 apply it to the facts as you find them from the testimony of  
2 the witnesses and any other evidence that is presented.  
3 After doing that, you will render your verdict, a true and  
4 just verdict, under the solemn oath that you have just taken  
5 as jurors.

6 Now, as I've told you before, until I advise you to  
7 begin jury deliberations you must not discuss the case with  
8 anyone including your fellow jurors, friends, family  
9 members, and anyone involved in this case. This includes  
10 discussions face-to-face and those by telephone, email,  
11 texts, blogs, or any other method of communication.

12 Now, you may not use a computer, cell phone, or other  
13 electronic device with communication capabilities at anytime  
14 while in this courtroom or during your deliberations.  
15 During your breaks for meals or overnight, if necessary, you  
16 may use these devices. However at -- however, you may not,  
17 at anytime, use these devices to get or send information  
18 about the case.

19 During this trial, do not read, listen to, or watch any  
20 news reports about this case. Now, this includes anything  
21 that may have been written in the newspapers or on the  
22 Internet, radio, or television. You must not consider  
23 anything you may have read or heard about the case outside  
24 of this courtroom whether before or during the trial.

25 Now, after the case is submitted to you, you must

1 discuss it only in the jury room with your fellow jurors.  
2 Now, the attorneys and the parties in this case have been  
3 advised that you are not to talk to them at all. So, if you  
4 see anyone involved in the case and they do not even say  
5 hello, they are not being unfriendly. They are just  
6 following my instructions. It is important that you keep an  
7 open mind and not decide any issue in the case until all of  
8 the evidence has been presented, the parties have made their  
9 closing arguments, and I have instructed you on the law  
10 applicable to the case.

11 Now, in just a moment the attorney for the Plaintiff  
12 will make what is called an opening statement. The, the  
13 attorney will explain to you the issues in this case or at  
14 least what the attorney thinks the issues are in this case.  
15 The attorney for the Defendant will also make an opening  
16 statement.

17 Now, what the attorneys tell you during their opening  
18 statement is not evidence in the case. It is only their  
19 contention as to what the issues are. The evidence in the  
20 case will be presented to you by testimony of sworn  
21 witnesses from this witness stand and from any exhibits that  
22 may be introduced during the course of this trial.

23 Now, from time to time you may hear one of the lawyers  
24 say something like Your Honor, I believe we have a question  
25 of law or a matter of law to discuss with you or they may

1 say Your Honor, may we approach the bench or sometime I  
2 myself may find it necessary to excuse you from the  
3 courtroom for a short while so that the attorneys and I can  
4 discuss what is called matters of law.

5 The reason for this is because you are the judges of  
6 the facts and sometimes, when I am discussing matters of law  
7 with the attorneys, it may be necessary for me to comment on  
8 the facts in connection with the ruling on whether or not a  
9 particular law applies or not. So I will excuse you from  
10 the courtroom while these discussions take place so that you  
11 will not be influenced by anything that I may say in rulings  
12 on matters of law.

13 Now, ladies and gentlemen, in determining what the true  
14 facts are, you must decide whether or not the witness --  
15 whether the testimony of a witness is believable. It will  
16 be my responsibility to rule, as a matter a law, as to  
17 whether certain testimony is admissible at all or not. But  
18 once the testimony is admitted, whether or not you believe  
19 it is solely for you to determine.

20 In deciding whether to believe a witness, you have the  
21 right to consider whether the witness has an interest in the  
22 result of the trial, whether the witness is prejudiced  
23 towards either the Plaintiff or the Defendant, the  
24 opportunity for the witness to have seen the matters and  
25 things about which the witness may testify, and the way the

1 witness acts on the witness stand. You have the right to  
2 consider anything that is in the record that will help you  
3 evaluate the testimony of the witness. That means that it  
4 is your duty to pay close attention to these witnesses, to  
5 observe the witnesses, to listen to the witnesses, and to  
6 pay close attention to the attorneys and to the Court.

7 Do not let your thoughts wonder, but pay attention to  
8 the testimony so that, at the end of the trial, you will be  
9 able to determine what the true facts are, apply the law to  
10 those facts, and render a true and just verdict.

11 Mr. Foreman, it is your added duty to serve as  
12 foreperson and to preside in the jury room and it will be  
13 your responsibility to serve as the spokesperson here in the  
14 Court, if necessary. But I will give you further  
15 instructions about the -- those types of issues towards the  
16 end of the trial.

17 Now, in order to preserve everyone's right I will give  
18 the parties an opportunity to object to anything that I have  
19 said.

20 Any exceptions to what I've said to the jury from the  
21 Plaintiff?

22 MR. MCKINNON: None, Your Honor.

23 THE COURT: Any from the Defendant?

24 MR. WILLIFORD: No, Your Honor.

25 THE COURT: At this time we will receive the opening

1 statements.

2 MR. MCKINNON: Thank you, Your Honor.

3 Good afternoon, ladies and gentlemen. I appreciate you  
4 being here on this hot day.

5 This case is a medical malpractice case. It's about  
6 healthcare. Whether we want to admit it or not healthcare  
7 has become a big business. Specialists, doctors are a large  
8 part of that business and some will become less like a place  
9 of healing and more like a processing plant or a factory  
10 trying to see as many patients as possible.

11 Like any factory, safety of the patients relies upon  
12 the doctors doing their jobs carefully, not cutting corners,  
13 not rushing, not missing important things. The overriding  
14 duty of a doctor is to do the safest thing for the patient.  
15 Not rush. Not cut corners.

16 We call the -- what we expect of a doctor in South  
17 Carolina the reasonable doctor standard basically. What a  
18 reasonable doctor should of done. If the doctor doesn't do  
19 that, and if the patient is harmed, then the doctor is  
20 responsible and that is what happened here. That is why I'm  
21 here today. That's why you're here today.

22 This case involves a doctor called a pulmonologist and  
23 that's a fancy word that means a lung specialist, a doctor  
24 who specializes in breathing and diseases of the lung.

25 A man came to see her for a check-up, and during that

1 check-up he got a lung x-ray taken, chest x-ray. Probably  
2 many of you in the jury have had chest x-rays done. It's  
3 pretty routine.

4 Now, a pulmonologist does have some training in x-rays.  
5 They have some training in how to read x-rays of the lung  
6 because they're a lung specialist, but they are not  
7 radiologist. A radiologist is a doctor whose speciality is,  
8 is reading x-rays and CT Scans and things like that.

9 This doctor could have sent the x-rays out to be read  
10 by an x-ray specialist, but she didn't. She read it  
11 herself, charged the patient for it, and, and we, and we  
12 believe she missed a tumor. She missed something on the  
13 x-ray that was a small cancer tumor. It wasn't caught until  
14 nine months later and the patient died as a result.

15 My name is Bill McKinnon. My partner, Jordan Calloway,  
16 and I are here on behalf of William Farr. Unfortunately Mr.  
17 Farr can not be here because he is dead. He died as a  
18 result of the events in this case. His doctor -- his  
19 daughter, Lisa McKaughan, is sitting here with us and the  
20 gentleman behind her is her husband Kurt and that's who we  
21 are.

22 I'm gonna get to the details of what happened in a  
23 couple of minutes, but before I do I'd like to give you  
24 three things to think about as you hear the evidence in this  
25 case in the opening argument.

1       The first is boxes. You may think that's kind of a  
2 weird thing for a lawyer to talk about. We're not talking  
3 moving boxes. I'm talking about the famous quote that  
4 America is built on two boxes, the ballot box and the jury  
5 box. Those are the two ways in America that the common  
6 people have a say, you and I, have a say in what goes on in  
7 this country.

8       If we don't like what our leaders do, we go to ballot  
9 box and we vote them out and disputes like this are heard by  
10 juries. That's you folks sitting in that box. In old  
11 times, you know, people would fight, would settle their  
12 disputes by duels or they'd round up their families and  
13 they'd come burn somebody's house down or whatever. We  
14 don't do anything like that. We now -- we settle our  
15 disputes through the Court.

16       Our system is built on the belief that 12 regular folks  
17 from different backgrounds generally get it right. We trust  
18 12 regular Americans and that's you folks. We don't choose  
19 12 lawyers to sit in the box. We don't use 12 judges or 12  
20 PhDs or whatever. Twelve regular folks and that's our  
21 system and we trust you.

22       At the end of this case you'll be asked to render a  
23 verdict and a verdict goes back to the Roman Empire and  
24 Latin. It means speak the truth. We're gonna ask you to  
25 speak the truth. That's what Mrs. McKaughan, whose dad

1 died, that's what we ask of you.

2 That brings you to my second point. My second point  
3 after boxes is the truth. I'm gonna ask you, during this  
4 trial, to use your common sense, your background to decide  
5 who is telling the truth in this trial and who is not. That  
6 is one of your most important jobs and I want you to think  
7 that each witness -- is this person telling the truth. Hate  
8 to say it, but I think you're gonna hear from some doctors  
9 in this case who will not tell the truth. That may shock  
10 you. But I believe you're gonna be able to tell the truth  
11 from lies.

12 Finally I'd like to talk to you about closure. That  
13 means putting a proper end to things. That means making a  
14 decision in this case that let's Lisa put this case behind  
15 her.

16 We're gonna ask you for justice for Mr. Farr and for  
17 closure for Lisa and the rest of her family. So before I go  
18 on to what happened in this case in detail, I'll encourage  
19 you to think about your role as jurors in the box, about the  
20 truth, about who's telling it, and about closure.

21 Now let's talk about what happened. On January 11<sup>th</sup>,  
22 2010, Mr. Farr, Lisa's father, went to see his lung doctor  
23 and that is Doctor Sau-Yin Wan who's sitting there at the  
24 table here. He went to see her on January 11<sup>th</sup>. As part  
25 of that exam she took two x-rays of the chest.



1 Jordan, do you mind setting up the box there?

2 When she read these x-rays she correctly noted that he  
3 had -- well, I'll let, let Jordan finish. I don't want to  
4 distract you.

5 Jordan, the power plug is right on the other side  
6 there. Right -- just on the -- no, on the other side where  
7 the microphone -- where the person sits.

8 All right. Let me help you.

9 There we go.

10 Jordan, if you'd put both those x-rays up?  
11 Will they both fit at the same time?

12 That one's backwards. Flip it around.

13 Okay. Here are the two x-rays and you're gonna hear  
14 testimony in this case that Doctor Wan correctly diagnosed  
15 that her dad -- that Mr. Farr had COPD. That is a disease  
16 kind of like asthma. There's breathing trouble. But  
17 there's something else on these x-rays.

18 You're gonna hear, hear testimony that this spot right  
19 here where I'm pointing -- this is a front view where the  
20 person's laying on their back. This spot right here, you're  
21 gonna hear our radiologist say, that is a tumor. That's  
22 cancer. And this is a side-view where the person's on their  
23 side here and this is what it looks like on the other side  
24 right where my finger is here. This funny looking rainbow  
25 shaped thing, you're gonna hear Doctor Woodruff say that is

1 cancer on that. You're gonna hear Doctor Woodruff, our  
2 radiologist, our x-ray specialist, say that on that x-ray  
3 that is about a two and a half centimeter tumor.

4 Now I think in the English system. You probably do  
5 too. So that's about a 1-inch tumor. There's a 1-inch  
6 tumor on that x-ray. Nothing was done.

7 So all through the rest of January that tumor keeps  
8 growing. Through February, that tumor keeps growing.  
9 March, that tumor keeps growing, and April, that tumor keeps  
10 growing. In June, that tumor keeps growing. In July, that  
11 tumor keeps growing. In August, tumor keeps growing. In  
12 September, it keeps growing and, in October, it still keeps  
13 growing.

14 And now, on October 6<sup>th</sup>, Mrs. McKaughan took her dad  
15 to see his primary care doctor, his regular doctor, and as  
16 part of that check-up his regular doctor said I'm gonna take  
17 a chest x-ray, and the regular doctor, Doctor Littlefield,  
18 sent it out to a radiologist, and, on October 7<sup>th</sup>, 2010,  
19 he said that is an abnormal x-ray. Something is seriously  
20 wrong in that x-ray and that was January, the first month,  
21 to October, the tenth month. Nine months went by from when  
22 Doctor Wan did that x-ray to when the cancer was first  
23 caught in October -- on October 7<sup>th</sup>.

24 Now, of course, on October 7<sup>th</sup>, they want to be sure  
25 and -- if something's wrong on the x-ray, they send it out

1 for a CT Scan, which is a more complicated scan where they  
2 take lots and lots of pictures. That comes back. That's  
3 abnormal too. Mr. Farr sees a cancer specialist, and, on  
4 November 21<sup>st</sup>, 2010, he has his final diagnosis and you  
5 have lung cancer. November 1<sup>st</sup>.

6 Less than a month later, on December 2<sup>nd</sup>, he has  
7 surgery. A surgeon named Doctor Nguyen cuts out two huge  
8 pieces of his right lung, the top piece and middle piece.  
9 That tumor, when Doctor Nguyen pulls it out, is a  
10 9-centimeter tumor. That means that's three and a half  
11 inches. Like the size of a baseball. So it's gone from a  
12 1-inch tumor on that x-ray, to when it's finally cut, it's a  
13 three and a half inch tumor. It's more than tripled in size  
14 because, unfortunately, the cancer spread.

15 You know, as you guys probably know, you're not  
16 doctors, but the bigger a cancer gets the worse it is for a  
17 patient. A 1-centimeter tumor is much better than a  
18 9-centimeter tumor. 1-inch is better than three and a half  
19 inches.

20 Mr. Farr endured chemotherapy. He endured radiation  
21 therapy. He had surgery. It was an awful experience. But  
22 one more thing happened that was bad and you will hear  
23 evidence in this case that even though the cancer was cut  
24 out of the right lung it had spread. It had spread to the  
25 left lung. And the fancy word for that, which you may have

1 heard if you ever had a relative with cancer, is metastasis  
2 and that's just a fancy word -- metastasis is a fancy word  
3 for a cancer that's spread.

4 And even though Mr. Farr got his little tumor cut out  
5 of his lung when it was three and a half inches, even though  
6 he did radiation and chemotherapy, the cancer had been in  
7 this body too long, it had gotten too big, and it spread to  
8 his left lung. They -- the left lung cancer was confirmed  
9 in April of 2012 and Mr. Farr died on June 26<sup>th</sup>, 2012.

10 His death certificate says very simply metastatic lung  
11 cancer. That's what's on the death certificate. That's  
12 what he died from.

13 Now, ladies and gentlemen, some medical malpractice  
14 cases are very very difficult. This is not one of them.  
15 Doctor Wan chose not to send that x-ray out to a radiologist  
16 and to read it herself and she messed it up. She missed  
17 cancer, and as a result, Lisa's father died.

18 The main rule for anyone in business, whether a lawyer  
19 or electrician or chef or doctor, is to take reasonable care  
20 and do the job right. We're here today cause Doctor Farr --  
21 Doctor Wan did not take reasonable care. She missed a  
22 tumor, and nine months, nine months where Mr. Farr could  
23 have been going to cancer treatment, where he could have  
24 that small tumor cut out, he missed nine months and let that  
25 tumor more than triple in size.

1        So let me explain why we brought this lawsuit, who  
2 we're suing, and why.

3        First, we are suing Dock Sau-Yin Wan sitting at the  
4 table there. We're suing Doctor Wan because she is the  
5 doctor who took that x-ray and who read it. She took it  
6 upon herself to read it and not send it out to a specialist  
7 and now the law allows her to do that. But if she reads  
8 that x-rays herself, she's got to read it as good as a  
9 specialist. She's got to read it as good as a radiologist  
10 and she didn't do that. She missed lung cancer.

11        When we get a case like this, obviously I'm not a  
12 doctor. So I don't read an x-ray, and if someone comes in  
13 and says I think, I think there's malpractice, we send it  
14 out to an expert and we send it out to an expert, and when  
15 we do that, we don't tell them what we think it is. We  
16 don't send it out and say oh, you know, we think this is  
17 lung cancer. We just send the x-ray out to a radiologist.  
18 He reads it blind. In this case you'll hear Doctor Woodruff  
19 said that, as soon as he opened that x-ray, he said  
20 immediately that's lung cancer. Took him no time at all.  
21 It was obvious and that's why we're suing Doctor Wan.

22        We're also suing the place Doctor Wan works. That's an  
23 office called Upstate Lung and Critical Care. That's where  
24 she worked when she took this x-ray. When an employee does  
25 something in the course of their job, their company is

1 sleep in the middle of the night not waking up. It's slowly  
2 drowning and you can't breathe. It is bad.

3 You'll hear Lisa, you'll hear Lisa talk about the store  
4 that he ran, L&B Convenience Store on Highway 9. Some of  
5 you guys may have known that store. It's a convenience  
6 store. But you'll hear what it's like growing up with him.

7 You'll also hear tomorrow from Doctor Woodruff. Doctor  
8 Woodruff is a radiologist expert that we brought in. His  
9 job is reading x-rays and CAT scans and all those sort of  
10 things, and he's gonna show you, on that x-ray, that that  
11 tumor's obvious. He's gonna point to what I pointed out and  
12 say that's cancer.

13 You're also gonna hear from another guy named Barry  
14 Singer. Doctor Singer is a cancer doctor, what we call an  
15 oncologist. Doctor Singer is gonna explain that this cancer  
16 was treatable when it was 1-inch. Back in January, if that,  
17 if that cancer had been treated, Mr. Farr, more than likely,  
18 would have lived. But once she let that cancer get to three  
19 and a half inches, a big old cancer, the chances of him  
20 living are very very small and he did not live in this case.  
21 He'll tell about the cancer spread to the left lung.

22 You'll also hear from Doctor Milby. Doctor Milby is a  
23 pathologist. Doctor Milby will talk to you about how he  
24 knows for sure the cancer in the left lung was a spread from  
25 the right lung.

1 I'm gonna talk to you now a little bit about what I  
2 think you're gonna hear from the other side. I have the  
3 greatest respect for the lawyers on the other side, Mr.  
4 Williford and Mr. Davis. But I have some problems with some  
5 of their witnesses.

6 I, I am afraid that some of their witnesses may say  
7 things that aren't true and I want you to think about that  
8 when they testify. Our expert, Doctor Woodruff, is gonna  
9 put that x-ray up for you probably tomorrow and walk you  
10 through step-by-step where's the heart on the x-ray, where  
11 is the lungs, how do you read an x-ray, and he's gonna show  
12 you the cancer. You saw it with your own eyes just right  
13 there when I pointed it out, and I believe Doctor Wan's  
14 probably still gonna say tomorrow that there is no cancer on  
15 that x-ray, and you will have to decide whether that is the  
16 truth or not.

17 You may be thinking is there anyone in this case who is  
18 gonna agree with Doctor Wan that there's no cancer on that  
19 x-ray and there is one person. It's a doctor named Doctor  
20 Feldman they're gonna bring it and Doctor Feldman is gonna  
21 testify that Doctor Wan didn't miss anything. There wasn't  
22 any cancer.

23 There's a funny thing about Doctor Feldman. Doctor  
24 Feldman is Doctor Wan's boss. He owns the practice that she  
25 works at. You will hear, in evidence, that he makes more

1 than \$400,000 a year at that practice and the only person  
2 that's gonna come in and testify that she read that x-ray  
3 correctly is Doctor Feldman, her boss who owns the practice  
4 who's being sued in this case.

5 So I want you to think about that.

6 Is he gonna be biased?

7 You think making all that money from a medical practice  
8 is gonna make him biased in this case?

9 Why would he be the only person who can testify to  
10 that?

11 I want you to think about that.

12 I also think you're gonna hear some excuses, what I'll  
13 term excuses, from the witnesses. I think the first one  
14 you're gonna hear is that Mr. Farr was a smoker, and there  
15 is no doubt Mr. Farr, Lisa's dad, he was a smoker his whole  
16 life. He just was not able to quit. A lot of us have folks  
17 in our family like that.

18 I mean we all know, nowadays, that smoking is bad for  
19 you and that it causes lung cancer. But Mr. Farr, back when  
20 he was born in the 40's, see people didn't know that back  
21 then, and it is a hard, hard habit to quit, and I have a  
22 feeling that you're gonna hear a lot of this case about Mr.  
23 Farr's smoking.

24 I think Doctor Wan and the other witnesses are gonna  
25 bring up an awful lot. I think they're not gonna say this



1 out loud, but I think what they're gonna want you to think  
2 is he had it coming. He was a smoker. He got lung cancer.  
3 His life was not worth anything. His life or his life is --  
4 his life is worth very little.

5 But you know what?

6 Smokers deserve good doctors too.

7 when people make decisions, whether accidents, you  
8 know, if you get -- if you make a bad decision and climb on  
9 the roof of your house and you shouldn't have done it and  
10 you fall off and it's your fault, you still deserve a good  
11 doctor. If someone makes a bad choice like continuing to  
12 smoke cigarettes, they still deserve a good doctor.  
13 Basically -- and he, he did the right thing.

14 He was going to see a lung specialist. He was  
15 concerned about his health even though he wasn't able to  
16 quit smoking, and when he goes to see that lung specialist  
17 he deserves someone who's gonna read that x-ray right.

18 There's another excuse you're gonna hear and this is  
19 what I'll call the second cancer defense. They're gonna say  
20 there's no, there's no tumor on that x-ray. But if there is  
21 a tumor on that x-ray it didn't kill him. They're gonna  
22 tell you is, unlike our experts who are gonna explain how  
23 the cancer metastasizes, how it started in the right lung  
24 and how it spread to the left lung and ended up killing him,  
25 they're gonna say it's two unrelated cancers. They're gonna

1 say we might of missed the tumor in this lung, but he got  
2 another tumor in here and they're totally unrelated.

3 Mr. Farr is just really unlucky. He got lung cancer  
4 twice. That's what they're gonna say. They're gonna say,  
5 even if she missed a tumor, it was just over here, the one  
6 that killed him was over here, and it wasn't a spread. He  
7 was very unlucky and got lung cancer twice.

8 That's just not true. You'll hear from our experts.  
9 You'll hear our experts explain, Doctor Milby, how he knows  
10 for sure the cancer was spread, spread from the right lung  
11 from the first tumor. But that's -- I think that's one of  
12 the excuses you're gonna hear.

13 The final one, you may -- whether you hear this or not,  
14 one of their experts may even say Mr. Farr didn't die of  
15 cancer. Death certificate says metastatic lung cancer.  
16 That's the cause of death. He had a lung tumor in his left  
17 lung when he died, but you may even hear one expert on their  
18 side say he didn't really die of cancer. He died of COPD or  
19 something else.

20 But when you hear these things, I would just like you  
21 to ask yourself are these -- is this the truth or are these  
22 excuses to try to get out of responsibility for killing this  
23 man.

24 Nothing can bring Mr. Farr back. He's dead. I wish  
25 you had the power to bring him back. But you don't. I

1 don't. Nobody does because he died.

2       What you have in your power is awarding money damages.  
3 That is the way the American justice system works, you know.  
4 It will be great if you could heal people or fix things or  
5 make things right, but the way we do justice in America is  
6 money damages. That's, that's the power you have.

7       In this case, after the first surgery, not counting the  
8 first surgery, because he wouldn't have had to have cancer,  
9 cancer surgery regardless, he had the lung tumor, but after  
10 the first surgery where all the, the later stuff was more  
11 than \$500,000 in medical bills that this family had to  
12 endure. Cancer treatment is expensive. Chemotherapy is  
13 expensive. You will hear our doctors say that he would not  
14 have had to have chemotherapy if the tumor had been cut out  
15 when it was only 1-inch.

16       And so we're gonna ask for you to pay for Mr. Farr's  
17 medical bills, but that alone is not justice. It's not  
18 justice to hurt someone and say I'm gonna pay your medical  
19 bills and that's it. That does not compensate for Mr.  
20 Farr's life, for Lisa losing her father, for the pain and  
21 suffering of Mr. Farr laying in the hospital bed gurgling  
22 and choking and died of lung cancer. That's not compensated  
23 in the medical bills. So you're gonna have to put a number  
24 on these things. I am confident, when you speak the truth,  
25 that you will be just.

1       Ultimately you're gonna have to make the decision to  
2 hold Doctor Wan and her office, Upstate Lung, accountable  
3 for this or let it go. Your decision, whatever it is, will  
4 either encourage or discourage future conduct. So your  
5 decision, at the end of this trial, will have a huge impact  
6 on Doctor Wan and her patients in the future.

7       The bottom line is doctors, like everyone else, have to  
8 do their jobs to a reasonable care. Doctor Wan did not do  
9 that in this case. She missed a tumor on an x-ray and Mr.  
10 Farr died as a result of that.

11       By the end of this case I think you'll see the  
12 evidence, the facts, the truths makes this kind of case that  
13 will come back at the very end and ask for a large verdict,  
14 a verdict that may right now seem high, but, at the end, I  
15 think you'll note, for this kind of case, I'm gonna ask you  
16 for 1.1 million dollars.

17       This is, this is a man's life, and, as I said, this is  
18 not a good way to go and I ask you for a million and -- 1.1  
19 million dollars at that point.

20       Thank you, ladies and gentlemen.

21       Thank you, Your Honor.

22       THE COURT: Yes, sir.

23       MR. WILLIFORD: May it please the Court.

24       (The Court nods affirmatively.)

25       MR. WILLIFORD: Thank you.

1 Ladies and gentlemen of, of the jury, we expect the  
2 evidence to show that doctor Wan was not negligent in her  
3 care and treatment of Mr. Farr. She had a clinical  
4 evaluation of this patient. She had x-rays that she looked  
5 at. She will explain to you what she's looking at on the  
6 x-rays correlating that with her clinical picture of this  
7 patient and she was not negligent in this case.

8 We also expect the evidence to show that Doctor Wan did  
9 not cause the death of Mr. Farr. We expect the evidence to  
10 show that Mr. Farr did not die of lung cancer. We will show  
11 you the medical records in that regard.

12 Yes, there is a death certificate, but it doesn't  
13 encompass all the other medical records in the case. We  
14 will show those to you.

15 If Mr. Farr did die of lung cancer, as, as part of the  
16 process, it certainly was not the lung cancer allegedly  
17 missed by Doctor Wan. He developed a second new primary  
18 cancer and it's not something that I am telling you. It's  
19 something that the physicians, the multiple physicians who  
20 treated this patient, determined and we will show you the  
21 pathology, the slides, the cells. We will explain to you  
22 how that is.

23 He did not die of the cancer that allegedly Doctor Wan  
24 missed. The Plaintiff's theory is this. That in January of  
25 2010 the patient came to see Doctor Wan and allegedly missed

1 a lung cancer on a film even though, in October, multiple  
2 x-rays, multiple CT Scans, and PET Scans, and a  
3 bronchoscopy, which actually goes down in your lung and  
4 looks at your lung in -- from the inside, none of those  
5 could diagnose lung cancer in October.

6 In December, that same year, 2010, Doctor Christophe  
7 Nguyen, an oncological surgeon, did a surgery cause they  
8 weren't sure what it was there, but let's do an exploratory  
9 surgery to determine what might be there and so he did that,  
10 and he removed all of the cancer.

11 He will come testify to that. He will say I removed  
12 all of the cancer. In his report and in his testimony he  
13 will say there's no evidence of metastatic disease. He  
14 removed all the lymph nodes and they were negative. He got  
15 clean margins, which means that he got all of the cancer.

16 The pathologist, the doctor who looks at the tissues,  
17 they look at the -- under the microscope, they look at the  
18 cellular structure of what, what was removed, and he will  
19 say, through his record, that all the margins were clear,  
20 that all the lymph nodes were negative, and that this was  
21 what, what is called an adenocarcinoma papillary predominant  
22 type.

23 Those slides, the actual slides of tissues, were also  
24 read by two pathologists at the Medical University of South  
25 Carolina in February of 2011, and they confirmed that the

1 pathologist, in December of 2010 who looked at the slides  
2 from Doctor Nguyen's surgery, was also papillary predominate  
3 adenocarcinoma and there was no spread. No positive lymph  
4 nodes. No, no margin -- no cancer beyond the margins of  
5 what they cut and they got all of the cancer.

6 We will bring you those medical records and we will  
7 bring you the physicians to testify about that. There was  
8 no spread of this cancer that allegedly Doctor Wan has  
9 missed.

10 So what is the Plaintiff's theory?

11 The Plaintiff's theory is that even though there were,  
12 there was no spread by lymphatics, by lymph nodes, that  
13 there was no spread, spread by blood, which is called a  
14 hematogenous way of spreading, and then there was no spread  
15 by direct extension into other tissues. They didn't grow  
16 beyond the confines of that tumor and go into the other  
17 tissues. So the three known ways of spread, lymphatics,  
18 blood, or direct extension, did not occur in this case.

19 It's also a different kind of cancer that was in the  
20 left lung. It was determined, ultimately, that, on the left  
21 side, it was adenocarcinoma lepidic predominate with an  
22 acinar pattern and we will show you those records, and that  
23 is a completely distinct and different cancer that was on  
24 the right.

25 So even though that's no evidence of spread, even

1 though the cancer was on the left side and it was a  
2 different cancer, then the Plaintiff's theory is that --  
3 you, you will hear the aerogenous theory of metastasis or  
4 what is termed the breathing theory of metastasis. The  
5 Plaintiff's theory is that Doctor -- Mr. Farr had cancer on  
6 his right side, even though it was fully taken out, did not  
7 spread by the three known mechanisms of spreading. It  
8 actually airlifted through Mr. Farr's lungs and basically  
9 through his breathing and landed on his left side even  
10 though it's a different kind of cancer.

11 That is the theory in the case. That's the Plaintiff's  
12 theory. We will bring you experts to talk about that and,  
13 and explain how that's just not the case in their years of  
14 experience.

15 I want to introduce you to Doctor Wan real quick.

16 Doctor Wan, if you wouldn't mind standing up?

17 (Doctor Wan complies.)

18 MR. WILLIFORD: This is Doctor Sau-Yin Wan. She's a  
19 pulmonologist here. She originally is from Malaysia. She  
20 speaks four different languages. She has a husband named  
21 Jason, a son, I think he's 18-months old, his name is Aaron,  
22 and she's a practicing pulmonologist, a lung doctor, who  
23 does this day in and day out here in Spartanburg.

24 Currently now she's in the ICU treating critically ill  
25 patients and she's board certified in three different areas,



1 internal medicine, pulmonology, and critical care.

2 Thank you, doctor.

3 (The Defendant sits down.)

4 MR. WILLIFORD: So what are the facts of the case  
5 beyond what I've described?

6 well, Mr. Farr was a 67-year old man who did smoke,  
7 and, and I understand that smoking is very difficult for  
8 people to stop. We're not blaming him other than the fact  
9 that it's just in the medical records and physicians went  
10 over and over and told him he needs to stop. He may get  
11 lung cancer again if you don't stop. And that's just part  
12 of the truth. It's part of the medical records and you'll  
13 see it over and over.

14 So he, he had a condition called secondary  
15 erythrocytosis.

16 well, what is that?

17 Basically your hemoglobin in your blood, the red blood  
18 cells, are increased cause you have lower oxygen in your  
19 blood because of smoking, and so, as part of that workup, he  
20 was seeing an oncologist named Doctor Vidito and, and other  
21 physicians at their practice, and thought, you know, it's,  
22 it's time to get your lung checked.

23 So Doctor Vidito referred Mr. Farr to Doctor Wan and  
24 her practice to get his lung checked and she did that. She  
25 will walk you through the details of what she did. We'll go

1 through her notes and we'll look at the x-rays. We will  
2 have her tell you what she's looking at on -- in the x-rays,  
3 and she came up with a diagnosis of COPD, hyperinflation.  
4 There's no nodule on these x-rays. It does reflect some  
5 abnormalities and she will, she will talk about those. She  
6 will be very candid about explaining what her workup was and  
7 encouraged him to come back in six months.

8 Well, he never came back in six months. He did,  
9 however, see his oncologist again, Doctor Vidito, in July  
10 and, at that point, he had no clinical signs or symptoms of  
11 anything going on at that point and he was at his cancer  
12 doctor at that point.

13 You know, he, he came back in October, as Mr. McKinnon  
14 mentioned, October 6<sup>th</sup>, 2010. He went to see his primary  
15 care physician, his family physician, Doctor Littlefield,  
16 and he primarily came in for chest pain and they were  
17 thinking that might be a heart attack or something along  
18 those lines. And so they did an EKG. They ordered other  
19 heart tests. They also ordered an x-ray and this is what  
20 Mr. McKinnon referred to.

21 The x-ray was read by Doctor Sobolous, the next day, on  
22 October the 7<sup>th</sup> and that x-ray could not call it cancer. In  
23 fact, they thought it was pneumonitis. The radiologist  
24 called that pneumonitis and threw in there and I can't  
25 exclude the possibility of an occult mass.

1 well, what is occult?

2 Occult means hidden.

3 You will have physicians come in and say it's hidden.

4 The October x-ray called it not cancer, but  
5 pneumonitis, and if there's something that's hidden. This  
6 is October.

7 A CT Scan was done as well, the same thing. Now, a CT  
8 Scan is a little bit more of a -- it's a, it's a bigger  
9 study, more slices, if you will, you know, that you can see  
10 and, and arguably, in a general sense, it's better than an  
11 x-ray.

12 well, the CT Scan could not diagnose cancer. The  
13 radiologist who read that report -- and we will show you all  
14 of these reports. The radiologist could not call it cancer  
15 either at that point.

16 Now, could there be some underlying process?

17 Maybe.

18 But they could not even call it cancer and they, again,  
19 they thought it was pneumonia, pneumonitis, or some other  
20 inflammatory process going on. A PET Scan a week later was  
21 done. The PET Scan is a Positron Admission Technology Test,  
22 even a, a stronger test, if you will, than a CT Scan. It's  
23 a combination between a CT Scan and what they do is they,  
24 they have -- they look at the metabolic activity of the  
25 tissues, and so the PET Scan also could not call it -- the

1 radiologist who read the PET Scan could not call it cancer  
2 and, again, this is October.

3 So now you have a chest x-ray that talked about maybe,  
4 maybe something hidden, you got a CT Scan, and you got a PET  
5 Scan, and could not call it cancer.

6 Then a bronchoscopy was done on October 19<sup>th</sup>, 2010.  
7 Bronchoscopy is, like I mentioned earlier, it's a, it's a  
8 scope, you know, a -- something you can see through that  
9 goes down into your lungs and you actually visualize inside  
10 the lung. That was negative. There was no mass. There was  
11 nothing in the lungs that that could tell you.

12 So now you have three radiology images and you have an  
13 invasive test saying we can't see the cancer if, if there's  
14 anything there. We don't know what's there, but, but we  
15 can't -- there's no cancer based on what we see.

16 During that bronchoscopy -- and, by the way, we're  
17 gonna show you a video of the bronchoscopy. We will show  
18 you what that looks like. During that bronchoscopy, they  
19 did a biopsy. They thought well, let's just check some  
20 tissues and let's look at them to see if it's a cancer and  
21 it was negative. It was negative.

22 They were still not sure. So, a week later, they did  
23 it again and did a little biopsy and there was some reactive  
24 cells. So this is October 26<sup>th</sup>. So a little bit later.  
25 They took four studies all in increasing ability to, to try

1 to detect something. In October, he still couldn't find it.  
2 And then they thought okay, based on this, this abnormal  
3 cellular biopsy, just a small and fine-needle aspiration  
4 biopsy, they thought okay, let -- we don't know what's  
5 there. Let's go ahead in surgery and do an exploratory. We  
6 thought that it might be cancer.

7 And so, Doctor Nguyen, Christophe Nguyen here in  
8 Spartanburg, who will come testify in this case, he, he went  
9 in and resected the, the tumor and it turns out it was  
10 adenocarcinoma of the lung. Again, it was papillary  
11 adenocarcinoma. Fully resected. Lymph nodes taken out.  
12 All negative. Not only were they taken out, but they were  
13 all negative. So it hadn't been breached there yet. So  
14 it's taken out.

15 Like I mentioned earlier, at the Medical University of  
16 South Carolina, they looked at the slides. They concurred  
17 what happened in Spartanburg where all the tumor was  
18 resected, all the lymph nodes were negative, it didn't go  
19 into other tissues, and they confirmed the type of cancer,  
20 papillary adenocarcinoma type.

21 Well, Mr. Farr started getting treatment, did get some  
22 chemotherapy, and there was a thought, and you will see this  
23 in the records, there was a thought that, that, at some  
24 point later in 2011, he may of had a recurrence. You will  
25 see that in the records. From a clinical standpoint, if

1 someone responds a certain way, he got better and then he  
2 started, you know, having some issues with the breathing,  
3 all the while continuing to smoke against advice, in fact,  
4 the records, the records say it was smoking abuse, over and  
5 over, and that's just what the records say, and he continued  
6 to smoke during this time and they -- and his physicians, in  
7 multiple records, said your greatest risk of cancer coming  
8 back and developing a new primary is, is continuing to smoke  
9 and he refused to stop that, and, and they thought it might  
10 of been a recurrence.

11 They did some follow-up scans, PET Scans. They did  
12 some cytology. You will understand what that is by the end  
13 of the case, some, some kind of brushings of the lung, and  
14 they were negative on the right side. But, at some point,  
15 it was positive on the left side. And so, in April of 2010,  
16 they did a resection of his left lung. Doctor Nguyen, the  
17 same surgeon did a, did a wedge resection of his left lung  
18 because they determined that well, it's cancer and it was  
19 read by Pathologist Doctor Rosanna Lapham who looked at it  
20 and said -- and in her report she said this is  
21 adenocarcinoma lepidic predominate with an acinar pattern.  
22 She staged it, which means it's a different cancer.

23 You will hear pathologists talk about that. You will  
24 hear the criteria for diagnosis whether something's a  
25 metastasis or whether it's a separate primary unrelated to

1 the other one. We will bring you that testimony. We will  
2 bring the records in that case.

3 Mr. Farr died -- I think Mr. McKinnon said June 26<sup>th</sup>.  
4 I think he died on June 19<sup>th</sup>. But, but the records will  
5 show that and he died and we will show you notes from the  
6 hospital and leading up to that. And, in fact, he did  
7 another cytology test on the right side just to see, and  
8 this is in May of 2012, in-between the left lung cancer  
9 being diagnosed, it's a different cancer, and, on the right  
10 side, they did a, with a little cellular brushing test, and  
11 that was negative, negative for cancer.

12 He died, according to the records, the medical records  
13 of his hospitalizations and stuff, a confusing picture of  
14 COPD, End-Stage Lung Disease, acute on-chronic lung problems  
15 all while continuing to smoke even up to the month of his  
16 death, which certainly didn't help him, and it's not even  
17 clear he died of lung cancer, and certainly he didn't die of  
18 the lung cancer that was allegedly missed by Doctor Wan.  
19 That was a completely separate cancer. The records will  
20 show that.

21 So what is the law?

22 What, what are you here to decide?

23 You are here to decide whether Doctor Wan was negligent  
24 and caused his death in this case. You must weigh the facts  
25 as you know and put it to the law that is given to you by

1 Judge Hayes.

2 The law is this. The law requires of, of a physician  
3 to do that which is reasonable under the circumstances. A  
4 few questions will pop up in trial.

5 Was it unreasonable, if Doctor Wan did not diagnose  
6 cancer on a January x-ray, when, in October, an x-ray, the  
7 CT Scan, a PET Scan, a bronchoscopy, and a biopsy could not  
8 do it?

9 Was it unreasonable for Doctor Wan to not diagnose it  
10 at that point?

11 The law does not require perfection. The law requires  
12 that which is reasonable. No one can expect perfection from  
13 anyone, even doctors, and the law will be given to you in  
14 that regard I'm sure.

15 Doctor Wan did her best to treat him and the one thing  
16 she clearly told him is, and you'll see in all caps with an  
17 exclamation mark, smoking cessation. Stop smoking. It's  
18 not good for you. I know it's difficult. It's difficult  
19 for people to not smoke. It's not easy. But she wanted him  
20 to do that. She wanted him to follow-up and he didn't do  
21 that. He didn't follow-up in six months. But it was  
22 ultimately diagnosed and he was treated and it was a  
23 different cancer.

24 I expect Judge Hayes to charge you on other aspects of  
25 the law in terms of sympathy. Sympathy is not a basis for



1 the verdict in a malpractice case. Certainly there's always  
2 sympathy with a difficult circumstance, someone passing  
3 away, and I think everyone will be sympathetic to, to the  
4 Farris, to the McKaughans. But it's not a basis for a  
5 verdict.

6 You must look at the evidence in the case. You must  
7 look at the medical records, listen to the testimony, and,  
8 and weigh it all. It's certainly not sympathy.

9 A bad or an unfortunate outcome is not a basis for a  
10 verdict. Just because something negative happens doesn't  
11 mean you can decide that someone was negligent because  
12 there's an outcome. You must look at the evidence along the  
13 way, and in the evidence, again, is that this was not a  
14 spread and it was not even the same type of cancer on the  
15 left side.

16 Hindsight. This is a classic case of hindsight in  
17 that. You can not base a verdict on hindsight. No matter  
18 what we do in life, it's always easy to look back and try  
19 to, try to put the pieces together and, and try to see  
20 something that, that couldn't be seen or trying to look back  
21 and play Monday morning quarterback. It's, it's -- life is  
22 not done that way and neither is medicine and the law  
23 acknowledges that and the law is that you can not base a  
24 verdict on hindsight. You must look at things as they  
25 progress along the way.

1       Causation. Causation is certainly something that the  
2       Plaintiff has to prove.

3       Did Doctor Wan's alleged misdiagnosis of the right lung  
4       cancer cause his death?

5       A few more questions to consider throughout the trial.

6       If the right lung cancer was fully removed, and did not  
7       spread, how could Doctor Wan have caused this death?

8       If the left lung cancer that did develop about a year  
9       and a half later is a completely different cancer from a  
10      microscopic level by a pathologist who'd looked at this and  
11      do this all the time, a very high qualified pathologist with  
12      good training, how could Doctor Wan have caused his death?

13      The truth is we expect the evidence to show that Doctor  
14      Wan did not cause his death and it was unfortunate  
15      nonetheless.

16      The witnesses in the case, you will hear from Doctor  
17      Wan. She will explain what she did. You will have all  
18      opportunity to hear what she has to say. I'll try to do my  
19      best to ask her questions that will elucidate whatever  
20      questions you may have and she will tell you what she looked  
21      at and what her clinical approach was.

22      We plan to call other physicians in the case, treating  
23      physicians such as Doctor Nguyen who did the surgery, both  
24      surgeries really on both lungs.

25      Doctor Rosanna Lapham, the pathologist who did the

1 review and microscopic analysis of the left lung, left lung  
2 cancer, we will bring her in and get her to explain  
3 everything she did.

4 We will call an oncologist, Doctor O'Rourke, who will  
5 say that she was not negligent in reading these x-rays, and  
6 this was a different cancer, and it's not even clear he died  
7 of cancer, and likely it was something else, his chronic  
8 conditions, even though he did have some cancer and some of  
9 that was resected, it may of played a small part, but it was  
10 his chronic condition getting worse, and, again, he smoked  
11 along the way, which did not help, did not contribute to his  
12 health at that point certainly.

13 We'll bring in Doctor Latham, Doctor Thomas Latham, the  
14 pathologist, who will tell you he's looked at both slides,  
15 the slides from December of the right lung, and the slides  
16 from April of 2012 of the left lung, and he tell you these  
17 are not the same cancers and he'll explain that to you. And  
18 we plan to bring him in the trial of this case and offer  
19 that testimony.

20 So you will hear a lot about the pathology, and whether  
21 you think, and I know more than you probably want to, and I  
22 know Mr. McKinnon says this is simple, but it's really not  
23 as simple when you get into medicine because it can be more  
24 complicated. I'll try to simplify it, but it can get pretty  
25 complicated, and we'll do our best to try to get them to

1 explain what they're meaning when they get into difficult  
2 medical terms.

3 At the end of the trial you will have to weigh the  
4 evidence. You determine the credibility of the witnesses.  
5 Listen to them. Listen to what they say. Look at their  
6 background.

7 Are they an expert who, you know, testifies in 47 out  
8 of 50 states, you know?

9 But have they made millions of dollars in expert  
10 witness fees?

11 Consider that when you, when you weigh the evidence.  
12 Think about credibility. Look at the medical records and  
13 pay attention to the witnesses, I'm sure you will, and, and  
14 listen to what they have to say.

15 The Plaintiff goes first. They have the burden of  
16 proof. They have to prove their case and they have to prove  
17 it basically by a preponderance of the evidence.

18 what is that?

19 well, when you weigh the scales of justice at the end  
20 of the case. You have to weigh, you know, what is the  
21 Plaintiff. You know, put up what kind of evidence, okay, we  
22 heard that, and then there's cross-examination, and hmm,  
23 maybe it's not quite so much. Then you hear the Defendants  
24 and you weigh it all, and you put all the records, the  
25 testimony, the credibility of the witnesses, and you, you

1 weigh all that. And, at the end of your -- end of the case,  
2 you must make a decision.

3 Is it in favor of the Plaintiff?

4 Then your verdict should be for the Plaintiff if it is.

5 Is it in favor of the Defendants?

6 Then your verdict should be for the Defendant in the  
7 case.

8 If it's even, then your verdict should be for the  
9 Defendant by law because the Plaintiff has not proved their  
10 case.

11 At the end of this trial, my partner, Ashby Davis, will  
12 do closing arguments. It's a summation of the case. It's  
13 after you heard the evidence he will put everything together  
14 and it's a time to, to talk about what the witnesses said  
15 and, and points that are made at trial, to sum it up for  
16 your deliberations. At the end of the case we expect the  
17 evidence to show you that Doctor Wan was not negligent and  
18 that she did not cause Mr. Farr's death, and, in that  
19 regard, we would ask that you would weigh the evidence and  
20 find in favor of Doctor Wan that she did not cause his death  
21 and was not negligent and cause medical malpractice.

22 Thank you.

23 THE COURT: All right. Ladies and gentlemen, if you  
24 please stand and stretch your legs while the Plaintiff calls  
25 their first witness.

1 All right. Ladies and gentlemen, we're gonna need to  
2 take a short break. I'm gonna need to remind you not to  
3 have any discussions among yourselves about anything  
4 involving the case, but you may retire to the jury  
5 deliberation room. We'll get you back just shortly.

6 (WHEREUPON, the following takes place outside the  
7 presence of the jury.)

8 THE COURT: All right. We're going to step down for  
9 just a moment or two. We'll stand at ease.

10 (WHEREUPON, a short recess was taken at this time.)

11 THE COURT: Do you feel the need to want me to reopen  
12 an issue that I've already ruled on?

13 MR. MCKINNON: We certainly don't, Your Honor, but if  
14 you were more inclined to do so---

15 THE COURT: I mean both of you have asked. I mean it  
16 is -- the way it goes is that once a judge makes a ruling on  
17 something, you don't continue to argue with him.

18 MR. WILLIFORD: I understand.

19 MR. MCKINNON: I just wanted to clarify. Certainly no  
20 reopening it, Your Honor.

21 THE COURT: Okay.

22 MR. WILLIFORD: And, Your Honor, if I may be heard for  
23 a brief second?

24 THE COURT: (Nods affirmatively.)

25 MR. WILLIFORD: It really was an oversight on my part

1 to make that point of something that we had in our  
2 interrogatories. It certainly wasn't trying to argue other  
3 than to provide you with that additional information I had  
4 not at that time and I certainly respect your admonition.

5 THE COURT: I don't want to get into the habit of, once  
6 I make rulings during the course of this trial, that if you  
7 forgot to tell me something that you want to go back and  
8 revisit or if you think you can continue to argue with me  
9 when I've already made a ruling.

10 MR. WILLIFORD: I understand.

11 THE COURT: This judge tries to do the best he can  
12 based on what the lawyers give me when he makes rulings.

13 MR. WILLIFORD: Yes, sir.

14 THE COURT: Consider it an admonition because, if it  
15 continues, then I'm gonna have to draw a different  
16 conclusion that you're actually trying to be purposeful in  
17 it.

18 MR. WILLIFORD: Yes, sir.

19 THE COURT: I don't believe that you are that kind of a  
20 lawyer.

21 MR. WILLIFORD: Yes, sir.

22 THE COURT: You have too good of a reputation to do  
23 that.

24 MR. WILLIFORD: Well, thank you, Your Honor, and I  
25 appreciate it. Appreciate the Court's instruction.

1 THE COURT: All right.

2 All right. We have all the technical equipment  
3 working?

4 MR. MCKINNON: Beg your pardon?

5 THE COURT: All the technical stuff is working?

6 MR. WILLIFORD: I believe so. I'll defer to my  
7 paralegal.

8 THE COURT: Thank you.

9 MR. MCKINNON: That's yours actually, Ashby, but we're  
10 gonna---

11 MR. DAVIS: Yeah, I know.

12 MR. MCKINNON: I don't think we're gonna use it, are  
13 we, Jordan?

14 MR. CALLOWAY: No.

15 MR. WILLIFORD: Okay.

16 MR. MCKINNON: But thank you, yeah, I appreciate it.

17 MR. DAVIS: You're not gonna use it with your next  
18 witness?

19 MR. MCKINNON: No, sir. We will definitely tomorrow,  
20 but not at this point.

21 MR. DAVIS: Absolutely.

22 THE COURT: Okay. So y'all are gonna use it with the,  
23 the Plaintiff?

24 MR. CALLOWAY: The Plaintiff will not -- well, not on  
25 direct exam.



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1 THE COURT: Okay. But y'all are gonna use it with her  
2 on, on cross?

3 MR. DAVIS: No, sir.

4 THE COURT: Okay. Y'all are just testing it?

5 MR. MCKINNON: I think, Your Honor, they're---

6 MR. DAVIS: We're trying to figure out how to turn it  
7 off.

8 MR. MCKINNON: I think they were trying to help us,  
9 Your Honor, thinking we would want to use it and we're  
10 not -- you know, we don't need it today.

11 MR. DAVIS: Okay.

12 THE COURT: Okay. Well, let's bring the jury in.

13 (WHEREUPON, the following takes place within the  
14 presence of the jury.)

15 THE COURT: Plaintiff ready to call their first  
16 witness?

17 MR. CALLOWAY: We are, Your Honor.

18 Your Honor, at this time the Plaintiffs call Lisa  
19 McKaughan.

20 THE COURT: Ma'am, just come right up here and allow  
21 the Clerk of Court the opportunity to swear you in.

22 LISA MCKAUGHAN, being first duly  
23 sworn, testified as follows:

24 THE COURT: All right, ma'am. If you would, just have  
25 a seat in the red chair. Be careful when you're stepping up

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1 there.

2 THE WITNESS: This one?

3 THE COURT: Yes, ma'am, that one. And then, if you  
4 will, slide the chair up to the microphone and speak up loud  
5 enough so that court reporter behind you as well as that  
6 very last juror way over there can hear you.

7 THE WITNESS: All right.

8 DIRECT EXAMINATION

9 BY MR. CALLOWAY:

10 Q Good afternoon, Lisa. Just to ask you a few questions.

11 If you would first please state your full name for the  
12 record.

13 A I'm Lisa Farr McKaughan.

14 Q And where do you live, Lisa?

15 A West Columbia, South Carolina.

16 Q How long have you lived there?

17 A Been there about 13 years.

18 Q And who do you live with there?

19 A My husband, Kurt, my daughter, Victoria, and my mom  
20 now, Delores.

21 Q And how old is your daughter?

22 A My daughter?

23 Q Yes, ma'am.

24 A Five.

25 Q And how long has your mother lived with you?

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1 A She's been with us since my dad's death.

2 Q We're here today about a man, a man named William Farr.

3 Do you recognize that name?

4 A I'm sorry?

5 Q We're here today about a Mr. William Farr.

6 Do you recognize that name?

7 A That's my dad.

8 Q That's your dad.

9 Okay. I want to ask you just a few questions about  
10 your father just to learn a little bit more about him.

11 Could you tell us, was he married?

12 A Yes, to my mom, 51 years.

13 Q Okay. And her name is?

14 A I'm sorry?

15 Q And her name is?

16 A Delores.

17 Q Okay. Let me ask this.

18 Where did they live together?

19 A Union, South Carolina.

20 Q How long they lived there?

21 A Forty-five years in the home that he passed away in,  
22 forty-five years.

23 Q Was that your childhood home?

24 A But they lived their all their lives, yes, sir.

25 Q That was your childhood home?

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1 A Yes.

2 Q Did he -- did Mr. Farr -- do you have any brothers or  
3 sister?

4 Mr. Farr---

5 A I have a brother, Brian.

6 Q Okay. And where does he live?

7 A He lives in Boiling Springs, South Carolina.

8 Q Lisa, I want you just to tell me a little bit, if you  
9 could, about your father.

10 what did he do for a living?

11 A The last -- he had a little mama and papa convenience  
12 store. It was -- he named it L&B after me and my brother.

13 Q L&B for Lisa and Brian?

14 A (Witness nods affirmatively.)

15 Q Okay. And where was this store located?

16 A It was on Number 9 just not even a half a mile from our  
17 home.

18 Q How long did he have that store?

19 A How long did he have the store?

20 Q Yes, ma'am.

21 A He -- we built that in 1997.

22 Q And -- okay. What did he do before that?

23 A He had ABC Stores throughout mine and my brother's life  
24 that we could remember.

25 Q Were these his, his stores or did he just work there?

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1 A His, his stores, his and his, his brother.

2 Q And before that, what did he do for a living?

3 A He worked for Conso in Union.

4 Q what did he do for them?

5 A Before that?

6 Q No.

7 what did he do before -- at the mill?

8 A He just fixed on like a lot of the, the looms, you  
9 know, the machines when they'd break down. He would fix  
10 those. He'd even went to Texas before to fix them. He was  
11 just good at that. He --

12 Q And, and the store that you mentioned a few minutes  
13 ago, is that store still around?

14 A It is, but it was sold --

15 Q Okay.

16 A -- not long after his death.

17 Q Outside of work, what did Mr. Farr like to do for his  
18 hobbies?

19 what did he like to do?

20 A He fished. He was a big fisherman and he loved to cook  
21 hash and barbecues, and he, he was an advocate (sic)  
22 gardener. He gave -- raised his -- everything we ate we  
23 raised, and he, you know, would share it with everybody and  
24 he'd -- he loved to cook fish stews and vegetable soups and  
25 he was just plain. You know, just a simple, simple man.

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1 Q what did he and your mother like to do together in  
2 their free time?

3 A what did they do together?

4 Q Yes, ma'am.

5 A She worked in the garden with him and, you know, we  
6 all, you know, sort of worked together, you know, in our, in  
7 our store and she helped and even cooking, everything, you  
8 know, we would buy an extra freezer and put up our  
9 vegetables and canned and freeze and, you know, we just all  
10 done that as a, as a family.

11 Q what about in-between you and your father, how -- what  
12 was your relationship like with him?

13 A well, I was his only daughter and I married my husband  
14 later in life. So all I had for many years was him. My mom  
15 got disabled, got sick. It's been about 15 years ago now,  
16 and, you know, my brother, he was doing his thing and I  
17 lived, at the time, near them and, you know, I worked in the  
18 store a good bit. So I was just, you know, right, right  
19 there with them, just, just living day-to-day. You know, it  
20 was a, a good life. I mean it was simple, but it was a good  
21 life.

22 Q Did your father attend church anywhere?

23 A He was a Methodist at Foster Chapel in the country town  
24 where we come from. Then I was raised Baptist. Sometimes  
25 we'd go there and then, you know, mostly up at my church

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1 because I taught Sunday School there for many years.

2 Q Did -- was he active in the church?

3 A Yes.

4 Q Okay. What kind of activities did he do with the  
5 church?

6 A I'm, I'm sorry?

7 Q What kind of activities would he do with the church?

8 A He just -- I mean other than just going with us  
9 randomly, you know, he didn't -- like if, if any -- if they  
10 ever needed anything like from our stores, he would send  
11 like tea or drinks or, you know, if they would have hot  
12 dogs. You know, he would supply things like that, you know,  
13 but --.

14 Q Do you remember or did he ever talk to you about or  
15 do -- would you ever learn of what maybe his plans were for  
16 his retirement years, what he planned to do during the last  
17 years of his life?

18 A What he had planned for for retirement?

19 Q Yes.

20 A Well, he always wanted a grandchild, but with me  
21 marrying later in life, I finally, you know, I'm -- Kurt and  
22 I were expecting, you know, our first child and he was just,  
23 you know, ecstatic by that and he was just looking forward  
24 to, you know, just spending time with Victoria and then, you  
25 know, he got sick.

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1 Q Well, how would you describe, from what you observed,  
2 how would you describe your relationship between your father  
3 and your daughter?

4 A And my daughter?

5 Q Yes.

6 A He -- his nickname for her was Miss America and he  
7 adored her so much. I tell my child about her -- about him  
8 every single day of my life because I'm so afraid, when he  
9 passed away two, two and a half -- I just want her to  
10 remember him because he honestly adored her.

11 Q Now, Lisa, I'm gonna start to ask you a few questions  
12 about your father's health. Now, if, at any point, you need  
13 a break just let me know and we can ask the judge and  
14 perhaps might be able to take a second, but just take your  
15 time. I'll ask you some of these questions.

16 During your time with your father, did you have an  
17 opportunity to sort of be with him during the doctor's  
18 appointments and when he went to see the doctors and that  
19 sort of thing?

20 A Yes, sir, I basically, with my mom being disabled, I, I  
21 basically went, you know, went to all of them. I was  
22 driving -- you know, working and driving back and forth,  
23 coming up here staying. I followed it up, you know, till he  
24 passed away pretty much.

25 Q Based on what -- the events and your observations and



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1 your time with your father, how would you describe his  
2 health and we're talking about before all the things taking  
3 place in this case.

4 Before January of 2010, how would you describe, in  
5 general, your father's health?

6 A It was, it was fine. I mean, you know, he, he just --  
7 you know, like I said, he worked hard in his garden and the  
8 store and, you know, you know, cooking and things. He -- it  
9 would -- it, it seemed, you know, fine to me.

10 Q Did he have any chronic conditions or had he had any  
11 sort of cancers or anything in the past?

12 A About 16, 17 years ago he had colon cancer.

13 Q Okay. Was he treated for that?

14 A Oh, yes, uh-huh. (Affirmative).

15 Q Okay. Did he recover from that?

16 A Oh yes.

17 Q Okay.

18 A Very well.

19 Q Did he have any other conditions at that time, and,  
20 again, I'm talking before January 2010?

21 Any, any difficulties?

22 Was it hard getting around or anything like that or was  
23 it -- or anything like that?

24 A No, none. He, he was doing, you know, perfectly fine.

25 Q Was -- did a point arise when he started to have some

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1 difficulty breathing?

2 A When he started having difficulties?

3 Q Did it -- was there ever a time when he started having  
4 difficulty breathing?

5 A It was. It was more, you know, we noticed I guess  
6 around -- you know, I guess around, you know, the, the  
7 holidays or, you know, the fall through the holidays and  
8 that was when they had made the appointment in January for  
9 the, the pulmonologist. That was the lung specialist.

10 Q What did you notice about -- were there, were there  
11 complaints?

12 What did you notice about the issues he was having with  
13 his breathing at that time?

14 A He was just having more shortness of breath and it  
15 wasn't like he'd been out in the garden and was working and  
16 it was real hot cause that was more like, you know, you  
17 know, your, your deep -- you know, your November, December,  
18 January it wasn't as hot and he was just, you know, more  
19 shortness. That's why I had him to go.

20 Q All right. Are you saying that you suggested he go see  
21 a doctor?

22 A I had, had him to make the appointment. I did not go  
23 to that one cause I just had a few weeks in delivering  
24 Victoria. That was -- I did not go to that one.

25 Q So you were pregnant at the time?

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1 A Yes.

2 Q Okay. So you weren't able to make that appointment?

3 A I had, I had her just like about three, three weeks or  
4 so after that, after that appointment.

5 Q Okay. What did you observe or what did you learn about  
6 what had happened at that appointment and we're talking  
7 about the appointment with Doctor Wan?

8 A Well, I just know, when I come home, I remember, you  
9 know, sitting at the desk and calling him because, you know,  
10 anytime I had spare time or on my break if I was working or  
11 whatever I always called and he just proceeded to say that,  
12 you know, of course, he went to the appointment and there  
13 was an x-ray and that it was COPD.

14 Q And, after that appointment, did you notice or did you  
15 observe anything about your father or any, any continuing  
16 symptoms he may of had?

17 A Well, the, the breathing never did, you know, get any  
18 better, but they had put him on a different kind of these  
19 things that you could breathe, you know, you could squirt  
20 like, like -- say like Symbicort or just different. I'm  
21 just trying to think of the names of all the breathing  
22 things that he had and different machines and then that was  
23 when, you know, the next appointment, appointment when we  
24 went to the, you know, oncologist.

25 Q Okay. And so now we're in -- after January 2010 and

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1 so -- for the next few months, what were your observations  
2 of your father's health and -- at that time?

3 A Well, it just seemed like to me that, you know, the --  
4 I just didn't really think the breathing was, was getting  
5 any better, but I'm not a doctor. You just have to, you  
6 know, pray and trust that, that, you know, they're giving  
7 you the right information and that, you know, they say you  
8 have COPD and use these inhalers and, and breathing and what  
9 else can you do.

10 Q So that takes us into sort of the summer months at that  
11 time. So let's, let's get to that point.

12 Are you -- what are you observing in your father as far  
13 as his symptoms go at that point?

14 A Well, just shortness, more shortness of breath. You  
15 know, just shortness of breath. I mean, you know, it was  
16 just --.

17 Q Personally, were you concerned for his health at that  
18 time?

19 A Yes, I most definitely was. I, I did everything known  
20 to man. That was why, you know, we went on, you know, to  
21 Doctor Vidito because she was the oncologist, but I wanted  
22 him to take x-rays, you know, that day after that, and they  
23 just said it wasn't one needed, you know. She just pretty  
24 much said like the COPD and that was when it just kept  
25 worsening and worsening and I just finally told daddy, I

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1 said, daddy, I know, you know, you get tired of going to all  
2 these appointments, but you just gonna have to go to Doctor  
3 Littlefield. I trust him. I had, you know, been around him  
4 many years. I knew his reputation and --.

5 Q Let's talk for a second about the time -- what you  
6 remember about his appointment or his visits to Doctor  
7 Littlefield.

8 Tell us what you remember about that.

9 A Well, when he went to Doctor Littlefield when Doctor  
10 Littlefield looked at him he automatically---

11 MR. DAVIS: Objection, Your Honor, as hearsay, what  
12 Doctor Littlefield may say. He's not listed as a witness.  
13 He's not gonna be testifying. It's hearsay.

14 THE COURT: Well, I, I mean if -- she can't testify as  
15 to hearsay, but she has not said what he was gonna say yet.

16 You want to rephrase the question?

17 MR. CALLOWAY: Yes, Your Honor.

18 Tell us what you remember and what you observed about  
19 your father's treatment with Doctor Littlefield during 2010  
20 at that point in time.

21 A Well, all that, you know, I think all that, you know,  
22 his health pretty much, you know, with Doctor Littlefield  
23 was fine. But the breathing, you know, he, he did  
24 automatically -- he made x, x -- you know, for x-ray.

25 Q Okay. And, and what were you observing in your father

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1 at that time?

2 still struggling or was he having symptoms?

3 A Yes, it was even, you know, it was even worsening, you  
4 know, even more.

5 Q Okay. How so?

6 A Enough to where I was starting to panic --

7 Q Okay.

8 A -- you know. I just was, you know, I was running  
9 around, you know. I had to get to him -- to some doctor  
10 that was, you know, gonna tell us what was going on.

11 Q All right. Okay. So that takes us sort of towards  
12 the, towards the Fall of 2010, and, at that point in time,  
13 who was he going to see or what was, what was going on to  
14 continue to treat his condition?

15 A In October?

16 Q Yes, ma'am.

17 A When October -- after -- when we saw Doctor  
18 Littlefield, he had him to go do the x-ray, and then like  
19 a -- it was like a day or two, it was just a short while  
20 after that, we got a call to come back up there and I knew  
21 cause I even called Doctor Littlefield myself and I was, you  
22 know, saying please just help me. You know, I just didn't  
23 even want to wait. You know, I was just -- I -- you know,  
24 you, you just know.

25 Q You were present at the -- were you present at that

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1 appointment?

2 A (Witness nods affirmatively.)

3 Q Could you describe for the jury what that appointment  
4 was like with you and your father there?

5 A Well, when we went that day and they said that---

6 MR. DAVIS: Objection, Your Honor. They said, that's  
7 hearsay.

8 THE COURT: I would sustain the objection.

9 MR. DAVIS: Thank you, Your Honor.

10 Q Just, Lisa, if you would, just tell us what you  
11 remember about the appointment while you were there.

12 Not telling us specifically what someone said, but your  
13 observations of your father and the treatment he was  
14 receiving at that appointment.

15 A Well, his breathing was still worsening and we had to,  
16 from that, go to a lung specialist because what was on the  
17 x-ray was big.

18 Q And did -- were -- did he receive a diagnosis at that  
19 point?

20 A When we went to the lung doctor, yes.

21 Q What was the diagnosis?

22 A That it, it was, it was lung cancer and it was a  
23 9-centimeter.

24 Q Okay. Tell us if, from what you observed, how that  
25 news affected your father.

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1 A I just remember him, you know, just sitting there, you  
2 know, listening. I had asked for a comparison from January  
3 till then, but there, there wasn't one to compare it to.

4 Q Now let's explain -- let's talk about that for a first  
5 second.

6 when you say you asked for a comparison, what do you  
7 mean?

8 A That's correct, and I -- and we knew that, but they  
9 said there was nothing to compare it to.

10 Q Are you talking about the x-rays?

11 A (Witness nods affirmatively.)

12 Q So you asked for what exactly?

13 A I wanted to compare the one that Doctor Wan did in  
14 January to the one in October.

15 Q Okay.

16 A But we were told there was nothing to compare---

17 MR. DAVIS: Objection, Your Honor.

18 A ---it to.

19 THE COURT: Sustain---

20 MR. DAVIS: Hearsay. I---

21 THE COURT: Sustain the objection.

22 MR. DAVIS: Thank you, Your Honor.

23 Q Were they able to compare the January 2010 x-ray to the  
24 x-ray taken later in the year?

25 A You can't compare something if you don't have it there



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1 to compare it with.

2 Q Okay. Lisa, did you ever have an opportunity to, to go  
3 to Upstate Lung, the place where Doctor Wan works?

4 A After my dad passed away.

5 Q Okay. For what purpose?

6 A Because after, you know, I, I knew that something  
7 wasn't right and I went there. I was the executor and I  
8 went there for the x-ray and they said there wasn't one  
9 there.

10 Q Okay. You went to find it and they told you there was  
11 no x-ray?

12 MR. DAVIS: Objection.

13 A They said there wasn't one.

14 MR. DAVIS: Now he's eliciting hearsay.

15 THE COURT: All right. I, I will allow that one cause  
16 that's a party.

17 MR. DAVIS: All right. Thank you, Your Honor.

18 THE COURT: Uh-huh. (Affirmative).

19 Q Going back to, to 2010 after his diagnosis -- well, let  
20 me just ask you this.

21 How does the diagnosis affect you when you heard that  
22 he'd been diagnosed with cancer?

23 A How did it affect me after the nine---

24 Q Yes, just to, just to hear the news.

25 A Well, you just start grasping for any straw that you

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1 can. You know, just, just, you know, you just want to hear  
2 anything positive. You just, you just grasping and you just  
3 researching and you just calling. You just, you just doing  
4 everything you can. It was -- you know, I -- thank God for  
5 Victoria and for Kurt. It was all I had for many years.

6 That's your mama and your daddy. You just get one.

7 Q And then you -- do you remember a surgery that he had  
8 in December of 2010?

9 A (Witness nods affirmatively.)

10 Q What do you remember about his demeanor and his  
11 experience through that surgical procedure and his recovery?

12 A Well, I, you know, I had met with, you know, Doctor  
13 Nguyen personally. With them -- without my dad. And I  
14 just, you know, just wanted just to -- I guess I just wanted  
15 him to say everything was gonna be all right, you know, and  
16 we'll have the surgery and your life will go back to normal.  
17 But no lung cancer in a 9-centimeter is good. I don't care  
18 who you are.

19 Q Did your father receive any care after the surgery for  
20 the cancer in his right lung?

21 A He did. We went through, you know, the chemotherapy  
22 and radiation. I took him down to Charleston. You know,  
23 again, like I said, I was just, I was just grabbing at any,  
24 you know, anything I could do, and, you know, he, he went  
25 through the chemotherapy. But the radiation, I even called

Lisa McKaughan - Direct examination  
by Mr. Calloway

1 the radiation place myself and like if, if a day I couldn't  
2 go, if he had somebody to drive him, because I was coming  
3 back and forth to Columbia and I was up here all the time.  
4 Don't, don't get me wrong, it was, it was everyday. But it  
5 just burnt him up so bad it went all the way through him and  
6 all the way through his back, out his back just like he was  
7 shot.

8 Q Do you -- did you have an opportunity to observe your  
9 father on those chemotherapy days when he was going through  
10 the treatments?

11 A Yeah, I went with the -- I went to all the  
12 chemotherapy, sit right with him. Sit right with him the  
13 whole time.

14 Q And what did you, what did you observe when you saw him  
15 going through those therapy---

16 A Well, I mean, you know, it's a sad situation. You have  
17 other people there and, you know, that you can sort of, you  
18 know, talk to and sympathize with. But, you know, what it  
19 is is what it is.

20 Q Going forward from December 2010, did he continue to  
21 have or did he have any additional issues with his lungs  
22 after that?

23 A Did I have any history --?

24 Q Did he have any additional issues with his lungs after  
25 that surgery in December 2010?

Lisa Mckaughan - Direct examination  
by Mr. Calloway

1 A I mean, after the surgery, my, my dad never -- I mean  
2 he just -- he, he was just not the same person. He just  
3 never -- I mean, you know, it just, it just went downhill  
4 and it just went downhill fast.

5 Q How so?

6 what was different about him?

7 A Well, I mean, you know, you just weak and I'm -- you  
8 know, you just -- you know his breathing, he'd have to, you  
9 know, sit up in a recliner. You know, he would have such  
10 bad -- they'd call them labor pains so bad, you know, we  
11 would just have to call, you know, nine -- 9-1-1 for the  
12 ambulance to come, you know, to take him, you know, to the  
13 hospital. You know, it just, it just, it just -- it's a,  
14 it's a sad terrible, terrible death. There's no two ways  
15 about it. It's, it's awful.

16 Q And in those last or after the December 2010 surgery  
17 and up till the time of his death, was he still able to do  
18 the things that he was able to do before, before the surgery  
19 and like we talked earlier like the, the fishing and those  
20 hobbies that he use to do?

21 A No, because see he had -- you know, we was having an  
22 oxygen tank. So he was on oxygen and no, he couldn't, you  
23 know, drive anymore and, you know, he was -- like I said, he  
24 was use to going to his garden. I mean he, he just -- he  
25 didn't have, he didn't have the energy to. He just didn't.

Lisa McKaughan - Direct examination  
by Mr. Calloway

1 Q Was he still able to do the work at the store and the  
2 things like that?

3 A No, sir.

4 Q Why not?

5 A Well, I mean he wasn't able. He was just, he was just  
6 real, real, you know, just limp. Just -- I mean he didn't  
7 have any weight on him. I remember, you know, just sitting  
8 there watching him trying to peel like a little, you know, a  
9 little tangelo or clementine. I remember we would come back  
10 on Sundays and, you know, my mother would cook a Sunday  
11 dinner, and I'm -- you know, him trying to still fix people  
12 dinner around our home that didn't have before he ate  
13 hisself. He wasn't able to do it.

14 Q Did it affect -- his illness, did it affect his  
15 relationship with your mother?

16 A I'm sorry?

17 Q Did his illness affect his relationship with your  
18 mother at that time?

19 A Well, yes, because she was disabled and, you know, I  
20 mean I went to all the appointments. She really couldn't,  
21 you know, go. I had to go. But I mean he -- my mother was  
22 dependent on him. But now that he's gone, I told him not to  
23 worry. Not that I was expecting him to go anywhere, you  
24 know, cause you don't want to talk like that. But I told  
25 him not to worry about mama, that she would go with us and

Lisa McKaughan - Direct examination  
by Mr. Calloway

1 she's been with us ever since.

2 Q Now, Lisa, was there a time that came where he began to  
3 have problems with his left lung?

4 A The cancer was always there. They done biopsies. I  
5 remember talking to the lung doctor and, you know, was just  
6 trying to understand what in the world, you know, was going  
7 on. I'm gonna be honest with you. I fussed at my dad for  
8 smoking, but they got onto me for getting onto him because  
9 they said it was the way that you cope in his, in his stage.  
10 It was just a way to cope with it. It didn't -- it wasn't  
11 gonna matter if he stopped then or not.

12 I, I was doing everything known to man. But then they  
13 started getting onto me at the hospital. So --.

14 Q And this may be difficult, but I want to talk about, if  
15 we can for just a moment, sort of the last few months of his  
16 life.

17 Can you tell me what his general health or what his  
18 experiences were during that period of time?

19 A At the last couple months?

20 Q Yes, ma'am.

21 A Jesus. I mean it was, it was just sad. It was  
22 pitiful. It was -- I mean it was, it was tragic because,  
23 you know, him, you know, him just grasping, you know, for,  
24 you know, for the breath and it just, you know, it just --  
25 it -- just the spells that he would have cause it's -- you

Lisa McKaughan - Direct examination  
by Mr. Calloway

1 know, you just think if you're holding your breath or  
2 whatever and you're fighting, you know, you're just fighting  
3 for your breath, and I just remember, you know, going  
4 outside on the driveway just wanting to crawl up somewhere.  
5 You just want to go hide, you know, cause there's nothing  
6 you can do.

7 That's one time there's no policeman, you know, no, no  
8 politician. There's nobody, nobody, not even your best  
9 friend, and people that was good to him that I could even go  
10 on and say help us now. I mean there was nothing you could  
11 do and he wound up, you know, at the last, they had took him  
12 so many times that they, you know, finally put him in  
13 Hospice.

14 Q From your observations, did he appear to be in pain?

15 A Was he in pain?

16 Q Yes, ma'am.

17 A Yes, sir, he was. He was fighting for his life, but,  
18 you know, that's why, when, when you go, they, they give  
19 you -- and you go to Hospice, they give you the Morphine  
20 because the -- they're suppose to, you know, help you, I  
21 guess, tell your brain that, you know, you can breathe.  
22 They suppose to put you at ease a little bit just like I  
23 guess if you break a bone or whatever and it tells you, you  
24 know, if you take pain medicine and that your bone's not  
25 broke. But --.

Lisa Mckaughan - Direct examination  
by Mr. Calloway

1           Has your family sustained any, any losses, any monetary  
2 losses as a result of your father's death?

3   A     I think the medical bills after the surgery was about  
4 583,000 of the total of them. There---

5   Q     Well, we'll get into those and specifically in just a  
6 second.

7           What about his funeral?

8           Was there a funeral for your father?

9   A     Oh, my God. It was, you know, about -- I guess just  
10 for the funeral home alone, about 10,000, and then, you  
11 know, you have another like four or so in the marker and --.

12   Q     And we'll get to the medical bills in just a second.  
13 But let me ask you about just from this prospective.

14           What has been the effect of your father's death on you?

15   A     What has it affected me?

16   Q     Yes, ma'am.

17   A     Well, your life is never the same. If you, if you, if  
18 you've lost a mama or dad, you know. If, if you hadn't,  
19 just enjoy them while you can cause, you know, none of us  
20 ever -- when we born, we, we get to -- we know everyday  
21 we're born to die. That's one thing that's gonna happen to  
22 all of us.

23           But, you know, I just, you know, married later in life,  
24 and I was always right there with them, you know, taking him  
25 to his appointments, doing whatever, and then, when I moved,



Lisa Mckaughan - Direct examination  
by Mr. Calloway

1 I met Kurt and I had Victoria and I thought well, gosh, we  
2 really gonna start living now. You know, I'll start seeing  
3 what all my, you know, my friends had and, and, you know,  
4 have Christmases and, and all of that happened.

5 But, you know, when the Lord takes something from you  
6 he'll give you something back and I do have Victoria and I  
7 have Kurt. I have a lot to be thankful for. I don't want  
8 y'all to, you know, just think I'm here wanting to -- you to  
9 feel sorry for me. It's not that. It's just right is right  
10 and wrong is wrong. That's why I'm here.

11 Q You mentioned your daughter.

12 Does, does your daughter remember her grandfather?

13 A I'm sorry?

14 Q Does your daughter remember her grandfather?

15 A She says she does. I had, you know, some principals  
16 that I'm close to said now, if you keep, you know, showing  
17 her pictures and talking about him she'll remember him and I  
18 have, you know, some pictures of them together in, in her  
19 room at home and, of course, you know, we're staying in our  
20 hometown, you know, this week in my home and I'll try to  
21 tell her things you know. I got pictures out last night,  
22 you know, of her first and second Christmas and just  
23 reminiscing and --.

24 Q Let's both ask or talk for just a moment about the, the  
25 medical bills.

Lisa McKaughan - Direct examination  
by Mr. Calloway

1 Are you claiming that there are medical bills that are  
2 damages that you're claiming in this lawsuit against the  
3 defendant?

4 A Yes, sir, I think it's like 583 or something, something  
5 like that.

6 MR. CALLOWAY: And, Your Honor, the, the -- if I could,  
7 we've got the documents which have been premarked.

8 I'm looking -- and I'll show -- excuse me for a second.

9 (Pause.)

10 Q This is what's been marked as Plaintiff's Exhibit 1,  
11 and, Lisa, I'm gonna hand you this document and ask you if  
12 you recognize that document.

13 A Yes, sir.

14 Q What is that document?

15 A It says Upstate Lung and Critical Care medical bills.

16 Q I'm gonna hand you another document. This is what's  
17 been marked as Plaintiff's Exhibit 4. Take that if you  
18 don't mind. I'll take what you've got in your hand.

19 A Oh, yeah, take that one.

20 Q Yes, ma'am. Thank you.

21 Do you recognize those documents, ma'am?

22 A Yes, sir, all these are his I mean.

23 Q What are those just in general?

24 A They're just, you know, bills through, through the lung  
25 cancer.

Lisa McKaughan - Direct examination  
by Mr. Calloway

1 Q Are those medical bills for the treatment your father  
2 received for his lung cancer?

3 A Uh-huh. (Affirmative).

4 Q Okay.

5 A Yes, sir.

6 Q Okay. If you'd look at the last tab there, Tab 6 of  
7 Document 4, the last tab in the document you have, the  
8 largest group of documents.

9 Do you see that?

10 A Uh-huh. (Affirmative).

11 Q Okay. Are those the medical bills for your father from  
12 Spartanburg Regional Medical Center?

13 A That's Upstate Lung.

14 Q Last tab. Right here, that big long document.

15 Are those documents from Spartanburg Regional Medical  
16 Center?

17 A Oh, yeah, cause it says Doctor Nguyen, yes, sir.

18 Q Okay. And we've done the calculations.

19 Have you had an opportunity before to review those  
20 documents?

21 A Uh-huh. (Affirmative).

22 Q Okay. And we've done the calculations and would you  
23 agree that it appears the total calculations of the, the  
24 medical bills from Spartanburg Regional Medical Center for  
25 after the first surgery till the time of your father's death

Lisa McKaughan - Direct examination  
by Mr. Calloway

1 totaled five thousand -- \$553,882.93?

2 A Yes, sir.

3 Q Okay. If you would go to the tab immediately preceding  
4 that, Doctor Littlefield's bills. It will be marked with  
5 Littlefield in the bottom right-hand corner, but it's the  
6 tab immediately preceding the Spartanburg Regional tab.

7 Do you see those?

8 A I see. There's so many here.

9 what tab did you say?

10 Q It's the one immediately preceding the---

11 A Cause it's---

12 Q ---Spartanburg Regional.

13 A Doctor Mehta after.

14 Q Okay. Immediately preceding. Before that. Before all  
15 the Spartanburg ones.

16 A My goodness. There's so many.

17 Q Do you see those documents?

18 A Yes, sir.

19 Q Do those appear to be your father's medical bills from  
20 his treatment with Doctor Littlefield?

21 A Yes, sir.

22 Q And, again, for the sake of the math, would you agree  
23 that the amount of the bills for Doctor Littlefield's  
24 treatment for, for your father, after this first surgery, is  
25 \$8,400?

Lisa McKaughan - Direct examination  
by Mr. Calloway

1           would you agree with that?

2   A       Uh-huh. (Affirmative).

3   Q       Okay. If you would look at the tab before that?

4   A       (Witness complies.)

5   Q       Okay. Do those appear to be the, the records from  
6   Palmetto, Palmetto Hematoma, excuse me, Hematology and  
7   Oncology?

8           Do you see those documents?

9   A       Yes.

10   Q       And, again, for the math sake, would you agree that the  
11   amount of those medical bills for your father's treatment is  
12   \$10,417.37?

13   A       Yes, sir.

14   Q       Okay. And one final one in a previous tab there. It's  
15   the bill for Carolina Medical Affiliates.

16           Do you see that document?

17   A       Yes, sir.

18   Q       Okay. Would you agree, for math's sake, that the  
19   amount of the bills for your father's treatment from  
20   Carolina Medical Affiliates is \$10,846?

21   A       Yes, sir.

22   Q       Okay. And, again, for the total for those four bills  
23   would be \$583,546.30?

24           Is that your understanding?

25   A       Yes, sir.

Lisa Mckaughan - Direct examination  
by Mr. Calloway

1 MR. CALLOWAY: Your Honor, if you -- I'd beg the  
2 Court's indulgence for just one second.

3 (Pause.)

4 Q One thing I want to clarify at this point is as it  
5 relates to -- I think you had mentioned earlier a time when  
6 you visited Upstate Lung.

7 Is that correct?

8 A (Witness nods affirmatively.)

9 Q Let me just clarify and make sure I understand.  
10 What was your purpose of going to Upstate Lung at that  
11 point?

12 A I was going there to get the x-ray.

13 Q Why?

14 A Because I just knew in my heart that one had been taken  
15 in January.

16 Q Okay. And what you -- once you got there, what were  
17 you told by the Defendants?

18 A That they didn't have one.

19 Q Did they look for it?

20 A (Witness nods affirmatively.)

21 They just said there just wasn't one there.

22 Q That one had not been taken?

23 A There was no record whatsoever of any x-ray been taken  
24 there.

25 MR. CALLOWAY: Okay. Your Honor, at this time the

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Plaintiff has no further questions.

2 THE COURT: Yes, sir.

3 MR. DAVIS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. DAVIS:

6 Q You have those x-rays today?

7 A I'm sorry?

8 Q You have those x-rays, the original x-rays taken by  
9 Doctor Wan on January 11<sup>th</sup>, 2010?

10 You've got those, don't you?

11 A I do.

12 Q You've had them for sometime, haven't you?

13 A Yes, sir.

14 Q No question they're the original x-rays?

15 A Yes, sir, I went and picked them up myself.

16 Q And these are, these are the ones that Mr. McKinnon  
17 showed the jury right here, Exhibit 5?

18 A Right.

19 Q Okay. So you're not suggesting that they, they somehow  
20 didn't exist at some time, are you?

21 A Correct. They did say that, yes, sir.

22 Q But they're right there?

23 A But that---

24 Q You have them?

25 A They wasn't from the start.

Lisa McKaughan - Cross-examination  
by Mr. Davis

- 1 Q You have them?
- 2 You got them?
- 3 A I do now.
- 4 Q You got them and turned them over to your lawyer?
- 5 A I do now.
- 6 Q Right?
- 7 A Yes, sir, I do now.
- 8 Q Okay. Okay. What is COPD?
- 9 A It's something commonary (phonetic) pulmonary. It's --
- 10 I mean I know what it is. It's like emphysema. It's, you
- 11 know, with the breathing.
- 12 Q Constructive -- excuse me.
- 13 Chronic Obstructive Pulmonary disease.
- 14 Does that sound right?
- 15 A Uh-huh. (Affirmative).
- 16 Q And your father had been diagnosed with COPD for
- 17 sometime prior to his death?
- 18 Yes?
- 19 A I did not hear of him having COPD until he went to
- 20 Doctor Wan.
- 21 Q Okay. So Doctor Wan diagnosed your father---
- 22 A Correct.
- 23 Q ---as having COPD as far as you knew?
- 24 A Correct.
- 25 Q Because you had a conversation with your father



Lisa McKaughan - Cross-examination  
by Mr. Davis

1   sometime after his visit to Doctor Wan and, and he told you,  
2   your father did, that Doctor Wan took an x-ray and, a chest  
3   x-ray, and told me I had COPD?

4   A     Correct. Yes.

5   Q     Did your father also tell you that Doctor Wan had  
6   recommended that he stop smoking?

7         Did, did he tell you that?

8   A     He -- I mean it -- he told her -- he knew that -- I  
9   mean everybody, you know, wanted him to quit smoking.

10   Q     Yes, ma'am.

11         Did your father tell you, when he told you of the visit  
12   with Doctor Wan, that Doctor Wan had strongly advised,  
13   encouraged your father to stop smoking, that -- the lung  
14   doctor that told him?

15         Did he tell you that?

16   A     No, he did not. He told me that she did an x-ray and  
17   he said it was COPD.

18   Q     Did, did your father tell you that Doctor Wan, on  
19   January 11<sup>th</sup>, 2010, first time -- the only time he's --  
20   she's ever seen him, did your father, in talking to you  
21   about that visit with Doctor Wan, tell you that Doctor Wan  
22   had given him a prescription for Chantix to help him, a  
23   prescription to help him stop smoking?

24         Did, did your father tell you that?

25   A     He did take Chantix. He did.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q So did your father tell you that Doctor Wan gave him  
2 that prescription?

3 A I knew that he had Chantix, but I didn't know if it was  
4 from the oncology doctor or if it was from her. I'm sorry.  
5 I didn't know which one.

6 Q Okay. Did your father also tell you that Doctor Wan  
7 had said I want to see you again in six months?

8 January -- I want to see you in six months?

9 Did he tell you that?

10 A He did, but I made that decision not to go back there.

11 Q I see.

12 You were not present with your father at the visit to  
13 Doctor Wan on January 11<sup>th</sup>?

14 You didn't go to, to---

15 A No, I did not go to that one.

16 Q You didn't go.

17 You, you didn't -- you never met Doctor Wan?

18 A No.

19 Q You didn't go to the visit with your dad on that day?

20 A Did I go visit him?

21 Q No, you didn't go to that office visit.

22 A No, I did not, no, sir.

23 Q Nobody went with your father but your dad alone to  
24 Doctor Wan?

25 A Yes, he went to that alone.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q And he'd been sent to Doctor Wan by Doctor Vidito---

2 A Uh-huh. (Affirmative).

3 Q ---an oncologist who practices with Doctor Bearden who  
4 treated your father for the colon cancer?

5 A Correct.

6 Q Is that right?

7 A That's right.

8 Q Okay. Before your father was diagnosed with his right

9 lung cancer in November of 2010 he had another chest x-ray

10 done by some Doctor, Littlefield or somebody.

11 Correct?

12 A Doctor Littlefield sent him to have a x-ray.

13 Q All right. So he had, he had another chest x-ray done?

14 A Correct.

15 Q The next thing he had done was a CT Scan, right?

16 A Right.

17 Q The next thing he had done was a PET Scan, a kind of  
18 more sophisticated imaging, right?

19 A Uh-huh. (Affirmative).

20 Q The next thing he had done was a bronchoscopy where  
21 they, they stick a lighted scope down into his lungs and  
22 look around directly into his lungs?

23 A Uh-huh. (Affirmative).

24 Q He had that too, didn't he?

25 A Correct.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q And after all those things -- and, and they did some  
2 brushings in that bronchoscopy where they took some, I guess  
3 a brush or something, and they, they sort of swept up some  
4 cells from inside his lung and they put those on a slide and  
5 they gave him to a pathologist to read those cells under a  
6 microscope?

7 Do you remember that?

8 A I remember looking at the PET Scan at the hospital  
9 myself and seeing the light that went off right there at his  
10 lung.

11 Q Right.

12 And so that's where they took some cells in the  
13 bronchoscopy later?

14 Do you remember that?

15 Do you remember being told about that or hearing about  
16 that or anything?

17 A I was right there when they did that biopsy.

18 Q Were you there when the cytologist looked at the cells  
19 that they took out from inside your father's right lung?

20 Were you there when the pathologist spread those cells  
21 out on a, on a microscope on a slide and looked at them  
22 under a microscope?

23 Were you present when that happened?

24 A I sure was and I was there when they said it was a  
25 9-centimeter tumor.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q Right.

2 Will you agree with me, ma'am, that, after the chest  
3 x-ray, the CT Scan, the PET Scan, the bronchoscopy, and the  
4 cytology, he still did not have a diagnosis?

5 A No, sir, I do not agree with you at all---

6 Q All right. Tell me---

7 A ---and I am under oath.

8 Q I know you are.

9 A No, sir, I do not.

10 Q I know.

11 Tell me your best recollection who was it that first  
12 told your father you have lung cancer?

13 A Doctor Cruz, the lung specialist.

14 Q And, and when was that if you, if you remember?

15 A It was in the Fall after we had -- because it's, it's  
16 steps. It order. It's steps that you have to go through --

17 Q Right?

18 A -- for them to, to say, you know, exactly what it is  
19 and what centimeter. But I was with him and it was in the  
20 latter part of the Fall of that.

21 Q November?

22 A I mean it was getting cool weather. It was cool  
23 weather.

24 Q November?

25 If the medical records show it was sometime in November

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 would that be -- sound about right to you?

2 A Well, that -- well, October. Then by the time -- and  
3 then November. That's probably true, yes, sir.

4 Q All right. And so you're not telling this jury that,  
5 that, that the chest x-rays that was performed in the Fall  
6 diagnosed cancer and somebody said oh, you -- your dad's got  
7 lung cancer based on that chest x-ray?

8 You're not telling the jury that, are you?

9 A They told me that whatever was there was big. That was  
10 their exact words.

11 Q Did anybody diagnose and tell you or your father, that  
12 you're aware of, that based on x-ray, chest x-ray done in  
13 the Fall of 2010, that your father has lung cancer?

14 A Yes, Doctor Cruz did. He told us plainly. We were  
15 called there. He told us there that he had lung cancer.

16 Q Okay. And, and we'll look at his medical records with  
17 the jury later.

18 Okay?

19 A Okay.

20 Q And are you telling me that after the CT Scan somebody  
21 told you or your father that he has lung cancer?

22 A When we -- after he -- after we went to Doctor  
23 Littlefield Doctor Littlefield sent him to the x-ray and  
24 they called us in and they said whatever is there is big.

25 Q Right.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 A There's steps that you have to take before you get to  
2 that point.

3 Q Right.

4 A That was why they were doing the CT Scan and they were  
5 doing the PET Scan. When you take the PET Scan you drink  
6 the, the -- like the water with the sugar and that detects  
7 if there's cancer. That's what makes the light go off. And  
8 then, after that, they do the biopsy and then, after that,

9 that was when we were called into Doctor Cruz and that was  
10 when he told us that it was lung cancer and it was a  
11 9-centimeter.

12 Q Sometime in November best you recall?

13 A Sir, if -- I mean I know that it was cool weather cause  
14 I remember coming.

15 Q Do you remember your father having two bronchoscopies  
16 by Doctor Cruz, a pulmonologist, in the Fall of 2010?

17 A He -- they did a couple of -- they called it like going  
18 down in there to get a -- trying to get a piece of it to see  
19 what it is.

20 Q Yes, ma'am.

21 A And they were very thorough.

22 Q Right.

23 A But we were told plainly by him that it was a  
24 9-centimeter, and before that, whatever was on the x-ray,  
25 they not just gonna go say what it is, you know, but it was

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 big. But it was a 9-centimeter tumor.

2 Q Is it your understanding that Doctor Cruz was the first  
3 doctor that informed you and your father that he had lung  
4 cancer after his second bronchoscopy by Doctor Cruz?

5 Is that your understanding?

6 A Yes, he told us that it was lung cancer, correct.

7 Q And did you go to your -- with your father to the  
8 Medical University of South Carolina in February of 2011  
9 after his surgery by Doctor Nguyen on December 2, 2010?

10 Did you go with him down there to Charleston?

11 A After the surgery?

12 Q Yeah.

13 A After Doctor Nguyen's surgery?

14 Q Right.

15 A Did I go where?

16 Q To the Medical University of South Carolina in  
17 Charleston.

18 A Oh, yes, we -- I took him. Yes, sir, I was the one  
19 that made that appointment, got all the records myself.  
20 Doctor George Simon.

21 Q Why did you go to MUSC?

22 A Because I thought I could go down there and get Tarceva  
23 and it save his life---

24 Q Excuse me?

25 A ---and that wasn't the case.



Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q I'm sorry. I apologize.

2 To get what?

3 I didn't catch that.

4 A I wanted to go down there and just get Tarceva. Like I  
5 was telling the jury, you're just running and grasping at  
6 every straw that you can, and, for some reason, I had put in  
7 my head that Tarceva was this, you know, magic, you know,  
8 drug that you could take, and, you know, I was just hoping  
9 that he could be like a candidate or something for that.  
10 But, you know, he wasn't and they just said that the, the  
11 treatments that they were doing, you know, you know, were  
12 fine treatments and then we went back and proceeded to  
13 chemotherapy and the radiation.

14 Q Where did you learn about Tarceva?

15 Am I pronouncing that correctly, Tarceva, whatever that  
16 is?

17 I don't know.

18 A Tarceva. Tarceva.

19 Q Is that what it is?

20 I'm sorry.

21 A Uh-huh. (Affirmative).

22 Q Where did you, where did you learn about that?

23 A It's a very expensive cancer drug and it's just  
24 basically, you know, it's just according on, you know, who  
25 was a good candidate or, or who, or who's not or, you know,

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 if they're doing these studies, you know, or, or if they,  
2 you know, feel that you're a good, good candidate and I  
3 just -- that was just, you know, what I had in my head.

4 And, like I said, I had, you know, asked different  
5 doctors what makes one university better than the other,  
6 what makes one doctor better than the other, what makes one  
7 better than the other or, in my case, what makes one  
8 esthetician better than the other.

9 Q What, what -- what's an, what's an --

10 A And --

11 Q What's an esthetician?

12 I'm sorry.

13 A I'm sorry?

14 Q What's an esthetician?

15 A A skin care specialist.

16 Q Is that, is that what you do?

17 A Uh-huh. (Affirmative).

18 Q Okay. All right. I'm sorry.

19 A And I just had, you know, read about that myself and I  
20 wanted to go for a, you know, a second opinion, and there  
21 were other doctors that I respected too to the utmost to  
22 this day that, you know, talked with me about taking him,  
23 you know, down there and what it was is what it was.

24 You know, again, when you've got lung cancer, it's not  
25 good, especially a 9-centimeter. That is one time -- cancer

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 don't discriminate. It doesn't and it's, it's not good.  
2 But, again, you just still grasping at any straw you can  
3 get.

4 Q So you, you -- you're the one that got your father  
5 lined up for a second opinion at the Medical University of  
6 South Carolina in Charleston?

7 A I did the research myself and did that. I did.

8 Q All right. And as a part of that second opinion and  
9 the whoever doctors that spoke to you or your father when  
10 you went down there, do, do you understand that, that MUSC  
11 had requested that the original pathology slides from your  
12 father's surgery by Doctor Nguyen when he took out the right  
13 lung cancer that they -- the pathologist from MUSC said we  
14 want to, we want to send us those original slides under --  
15 so we can look at them?

16 You know -- you understand that that's what's happened?

17 A Well, we -- they wanted more than that. I mean---

18 Q Right.

19 A ---I had to get all of his---

20 Q Right.

21 A ---records sent.

22 Q Including those original slides. I think it was Doctor  
23 David Wren here in Spartanburg looked at it under the  
24 microscope following your father's right lung cancer surgery  
25 by Doctor Nguyen that he did in December, December 2, 2010.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Is that right?

2 A Uh-huh. (Affirmative).

3 Q And are you aware of the report of the two pathologists  
4 at MUSC where they said they agreed basically with whatever  
5 Doctor Wren found, they found the same things on those  
6 slides?

7 You aware of that?

8 A I was there, sir---

9 Q That they didn't have a difference of opinion?

10 A ---and I, you know, they looked at the, the tests and I  
11 was there to see if there was a different type of treatment  
12 for my dad. That's what I was there for and there was  
13 really nothing any -- when you go and you get chemotherapy  
14 and you go and get radiation, a lot of people want to go to  
15 Texas to MD Anderson. But the protocol is really the same  
16 here as it is in Texas or Charleston or anywhere else.

17 But when you've got a loved one that is that critical,  
18 again, you're just grasping for anything. But what they  
19 were doing was the same if they did that in Charleston, in  
20 Spartanburg. But I mean as far as the surgery or them --  
21 nothing was really even talked about the surgery that day.

22 Q Did your father receive any treatment at MUSC as a  
23 result of that second opinion?

24 A No, he did not have treatment there at all. We just  
25 went that day and that was it.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q Okay. And then did you and your father come back and,  
2 and were -- was he treated by a cancer doctor here in  
3 Spartanburg?

4 A Yes, that was Doctor Mehta.

5 Q Mehta?

6 A Yes.

7 Q All right. And is he with Bearden's group and Doctor  
8 Vidito?

9 ~~Is he in that same group or is he in a different~~  
10 ~~oncology?~~

11 A Doctor Bearden was my dad's cancer doctor through the  
12 colon. But Doctor Bearden actually went to the Josey  
13 Bearden and he built that.

14 Q Okay.

15 A And he had more of, more of the breast, you know,  
16 patients than he did, and that was when my dad was assigned  
17 to Doctor Vidito.

18 Q Okay.

19 A But Doctor Bearden did follow along with me through  
20 this. He gave me his personal cell phone and he followed  
21 this because I had a lot of questions and I needed answers  
22 and I needed it -- them fast.

23 Q Doctor Mehta, am I pronouncing that right?

24 A Mehta.

25 Q Mehta?

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 A Mehta, yes.

2 Q Is Doctor Mehta in the same group as Doctor Vidito?

3 A Yes.

4 Q Okay. But you wanted a -- you wanted to change your  
5 father's care from Doctor Vidito to, to somebody else or to  
6 Doctor Mehta?

7 Isn't that right?

8 A Well, the reason why I did that was because when we  
9 went back in July I was wanting her to take a x-ray and she  
10 did not.

11 Q Her is Doctor Vidito?

12 A Doctor Vidito.

13 Q Vidito?

14 A Exactly.

15 Q Okay.

16 A And she did not do that. She was saying well, there's  
17 no reason to take one where there was, and I -- when you're  
18 use to having good doctors like Doctor Bearden, and you're  
19 use to the care that they, they give their patients, I knew  
20 that what they were doing wasn't right. I knew the care  
21 that -- what they do and that's why I was hollering out like  
22 I was doing because I mean he wasn't getting the care at the  
23 time.

24 Q I mean that was back in the summer, months before his  
25 diagnosis of lung cancer was made, is that right, that you,

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 you wanted him switched from Doctor Vidito to Doctor Mehta?

2 A Doctor Mehta was, I think, after he even -- he done  
3 been diagnosed and had his surgery.

4 Q Okay. Well, I'm sorry.

5 When -- in the summer of 2010 you've told us just now  
6 that you didn't like the way Doctor Vidito wouldn't do a  
7 chest x-ray.

8 A He wasn't saying anything.

9 Q Let me finish my question.

10 A That was me.

11 Q Let me finish my question.

12 All right. You told me just a moment ago that, in the  
13 summer of 2010, you, you didn't like the fact that Doctor  
14 Vidito was, was not taking a chest x-ray or something like  
15 that if I understood you correctly, and you requested or got  
16 your dad changed from Doctor Vidito to another doctor in her  
17 group.

18 Is that right?

19 Did I---

20 A Doctor Vidito said the reason why she wasn't going to  
21 do a---

22 Q Well, well, can you just answer my question cause is,  
23 is that correct what we're talking about?

24 A I switched, I switched him from Doctor Vidito to Doctor  
25 Mehta---

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q Okay.

2 A ---because I did that personally. I wanted to do that.

3 Q Okay. And that was the summer of 2010, is that right,  
4 sometime in the Summer or you tell me when it was?

5 A Well, no, if the surgery was December of 2010, it would  
6 have to be over in '11, wouldn't it?

7 I mean---

8 Q I don't know, ma'am. I'm just asking.

9 A I mean it would have to be.

10 Q I mean---

11 A The surgery was at the end of '10. There's just so  
12 many days in December.

13 Q Well okay. I, I apologize if I'm confused. I probably  
14 am.

15 So you're telling me now that you wanted to switch from  
16 Doctor Vidito to Doctor Mehta after the December 2010  
17 surgery by Doctor Nguyen.

18 Is that, is that right?

19 A That's correct.

20 Q Okay. All right. Doctor Nguyen, he did your dad's  
21 cancer -- colon cancer surgery?

22 A Doctor Orr did.

23 Q I'm sorry.

24 A Rick Orr.

25 Q Who?



Lisa McKaughan - Cross-examination  
by Mr. Davis

1 A Rick Orr.

2 Q Okay. I apologize. I may of misread that in the  
3 records.

4 You met Doctor Nguyen at what time?

5 About what timeframe did you meet Doctor Nguyen?

6 A I guess -- I mean it was -- it had to be between, you  
7 know, Doctor Littlefield doing the x-ray and us going to the  
8 lung because I had asked for Doctor Orr, but Doctor Orr said  
9 Lisa, he said I've got somebody that's better than me and I  
10 said well, who, who could that be cause I like Doctor Orr a  
11 lot and that was when he introduced me to Doctor Nguyen.

12 Q Okay. And you were introduced to Doctor Nguyen after  
13 his cancer, after, excuse me, after his right lung cancer  
14 diagnosis?

15 A Uh-huh. (Affirmative).

16 Q And I think it was Doctor Cruz that recommended or  
17 Doctor Orr or whoever it was that got you to Doctor Nguyen?

18 A Well---

19 Q Correct?

20 A ---I liked that group.

21 Q Okay. And, and Doctor Orr said here's a guy that's  
22 better than me?

23 A Uh-huh. (Affirmative).

24 Q Is that right?

25 A Well, he just did more of the, the lung---

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q okay.

2 A ---you know, for that---

3 Q Doctor Nguyen did?

4 A Uh-huh. (Affirmative).

5 For that.

6 Q Okay. And so you met Doctor Nguyen and he met with you  
7 and your father and explained this is what I recommend, this  
8 is the kind of surgery I think we probably need to do, this  
9 is what I -- whatever and he'll testify and he'll tell us  
10 what he did.

11 But that's when you first met him, right?

12 A We -- I've had several, you know, times I've, you know,  
13 we've met with him.

14 Q Sure.

15 A I mean---

16 Q Sure you have.

17 And, and so Doctor Nguyen explained the surgery that he  
18 proposed---

19 A Uh-huh. (Affirmative).

20 Q ---for the right lung cancer, correct?

21 A Yes, they did some tests. They have to go in there to  
22 see if -- because it was so big, because Doctor Cruz really  
23 did not think that my dad could even survive, you know,  
24 after surgery because your, your right lung has three lobes  
25 where the left has two, and then taking out most of your,

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 you know, your right lung they had to -- they didn't think  
2 he was gonna really be able to have the surgery. But with  
3 that, you know, being my dad, I wanted them to, you know,  
4 try everything that they could and they had to go in there  
5 and, you know, see, with all of that blocked off, that taken  
6 out, how much breathing, you know, he would have --

7 Q Okay. And they---

8 A -- before they did the surgery.

9 Q We're talking about the right lung?

10 A Yes.

11 Q Okay. So Doctor Nguyen did the surgery on December 2,  
12 2010, on your father's right lung cancer in his right lung  
13 --

14 A Uh-huh. (Affirmative).

15 Q -- correct?

16 And do you understand that he found the cancer  
17 in-between the upper lobe and the middle lobe?

18 A He said he was removing the whole---

19 Q well, you keep pointing to your left. I'm, I'm---

20 A ---middle portion.

21 Q It was on his right side, wasn't it?

22 A Yes.

23 Q Right side.

24 A Cause it's three, three lobes to the right and two to  
25 the left.

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 Q Okay. The cancer was found on the right side?

2 A Correct.

3 Q All right. And that's where Doctor Nguyen operated?  
4 Yes?

5 A Right. Correct.

6 Q And did Doctor Nguyen tell you that, based on his  
7 surgery and based on the pathology part of the tissue  
8 specimens he removed during the surgery, that they got all  
9 his right lung cancer?

10 Did he tell you that?

11 A No, he did not.

12 Q He never told you that?

13 A No, sir, he did not.

14 Q All right. Doctor Nguyen, to use your word, is a  
15 fabulous doctor.

16 You said that in your deposition---

17 A I'll---

18 Q ---he's fabulous?

19 A I'll agree with you.

20 Q Well, that's---

21 A One hundred percent.

22 Q Well, that was your word, right?

23 A I think he's a fabulous doctor, but he -- I mean he's  
24 not God and he did the best he could do.

25 Q I'm sure he did.

Lisa Mckaughan - Cross-examination  
by Mr. Davis

1 And Doctor Nguyen did the biopsy a couple years later  
2 on the left lung in 2012, didn't he, the Spring of 2012?

3 A They did---

4 Q He did that?

5 A After my dad's surgery they did several biopsies.

6 Q Okay. And eventually he did what's called a wedge  
7 resection and took a little piece of the left lung out  
8 during a biopsy and gave it to a pathologist to look at the  
9 slides under a microscope.

10 You remember that in the Spring of -- April of 2012?

11 A Yes, that was the -- one of the last biopsies.

12 Q And did Doctor Nguyen let you know what the results of  
13 the pathologist looking -- Doctor Lapham?

14 Doctor Lapham looked at the tissue slides, the slides  
15 of the tissue from the left lung in April of 2012, and she  
16 looked at those under a microscope and gave a report in  
17 writing and had a conversation with Doctor Nguyen?

18 Were you aware of that, about what she found, the  
19 pathologist, this is what this shows?

20 Are you aware of that?

21 A Sir---

22 Q Well, just, just---

23 A ---after my dad had the cancer---

24 Q Just -- excuse me. Excuse me.

25 A No, I'm not gonna sit there and say that I knew that---

Lisa Mckaughan - Cross-examination  
by Mr. Davis

1 MR. DAVIS: Your Honor?

2 A ---because I would be telling a story and I'm under  
3 oath.

4 Q Right.

5 A But I do know that they did numerous of surgeries  
6 because they knew, without a doubt, that cancer was there  
7 and they claimed that it was sort of hanging in midair and  
8 that's -- we couldn't figure out why they wasn't getting  
9 something or, or what was, you know, what was going on. Why  
10 was my dad sitting here getting feeble, you know, dying and,  
11 you know, and me fighting trying to figure out what was  
12 going on. They were doing the best they could.

13 I talked to Doctor Cruz I don't know how many times.  
14 That was the lung doctor. They were doing everything that  
15 they could known to man, but just because they go in there  
16 and do a biopsy doesn't mean every single time they gonna  
17 get exactly what they want. That's why they have to keep  
18 doing that to, to they come up with, you know, with what's  
19 going on or, or whatever. But the cancer was already there.  
20 I know you want me to tell you something different, but I'm,  
21 I'm not. I can't.

22 Q All right. All I want you to do is just---

23 A Is tell the truth and that's what I'm doing and that's  
24 what y'all need to do.

25 Q If you could just listen. I'll listen to you. I won't

Lisa McKaughan - Cross-examination  
by Mr. Davis

1 interrupt you. If you could please listen to my question.

2 If you don't understand---

3 A This was a sad thing that my family went through.

4 Q Yes, ma'am.

5 A Very sad thing.

6 Q I'm sure it was tragic. I don't -- nobody's  
7 questioning that here.

8 Ma'am, did Doctor Nguyen, after he did the biopsy of  
9 your father's left lung and sent those lung -- left lung  
10 tissues, in April of 2012, to a pathologist, did Doctor  
11 Nguyen tell you, at that time, based on what's found on the  
12 pathology slides, your father has a new primary left lung  
13 cancer?

14 Did he tell you that?

15 A No, they said it metastasized, metastasized. Doctor  
16 Mehta, metastasized. They said metastasize. It spread,  
17 it's spread, it's spread. That's what they keeping saying  
18 over and over and over that it -- I mean it spread. The,  
19 the, the death certificate says metastasized.

20 MR. DAVIS: Nothing further, Your Honor.

21 THE COURT: Any redirect limited to what he went into?

22 MR. CALLOWAY: Your Honor, nothing.

23 THE COURT: Thank you, ma'am. You may step down.

24 Lawyers approach a moment.

25 (WHEREUPON, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: All right. Ladies and gentlemen, after  
3 conferencing with the lawyers, I think this is probably a  
4 logical time for us to break for the day.

5 I need to remind you of my instructions to you  
6 previously about you can't have any discussions among  
7 yourselves or with anyone else about anything involving the  
8 case. Well, the -- those instructions get more important as  
9 this case goes along.

10 So, again, just very politely tell your family and your  
11 friends, when they ask well, what kind of case is it, who  
12 does it involve, you tell them that the judge has instructed  
13 me that I can not talk to you about anything involving the  
14 case.

15 You've also heard some testimony now. You've probably  
16 heard some words that maybe you don't understand. You know,  
17 again, I want to remind you, don't go pull out a dictionary  
18 and try to look up definitions for words. Allow the lawyers  
19 to educate you on, on the different aspects of the case  
20 because I would hate for you to actually pull out a  
21 dictionary, look up a word, and it not be the correct  
22 meaning and then we have no way of knowing that when you  
23 come back in here.

24 So, again, thank you for your time and your patience  
25 today while we went through this process of jury selection



1 as well as starting with the trial of the case. I'm gonna  
2 ask, if you would, to please be back in the jury  
3 deliberation room by 9:30 in the morning and we will resume  
4 with the taking of the testimony in the case.

5 But, again, thank you very much. Go with the bailiff.

6 (WHEREUPON, the following takes place outside the  
7 presence of the jury.)

8 THE COURT: Anything I need to address before we step  
9 down?

10 MR. MCKINNON: Not from the Plaintiff, Your Honor.

11 MR. DAVIS: No, sir.

12 THE COURT: All right. We'll step down. Thank you  
13 very much. We'll be at ease.

14

15 (WHEREUPON, Court was in recess for the evening.)

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25

1 Tuesday, July 28<sup>th</sup>, 2011

2  
3 THE COURT: Do -- say, say that y'all needed to put  
4 something on the record about the Joint Exhibits or  
5 something?

6 MR. MCKINNON: Yes, sir, Your Honor.

7 Yesterday we marked one Joint Exhibit, which is a set  
8 of medical records, and some Plaintiff's Exhibits were  
9 entered without objection, Your Honor. We just wanted to  
10 make sure those were on the record. I think it's Joint  
11 Exhibit 1 and Plaintiff's Nos. 1 through what?

12 THE COURT REPORTER: Five.

13 MR. MCKINNON: One through five?

14 THE COURT REPORTER: Yes, sir.

15 MR. WILLIFORD: No objection, Your Honor. We concur.

16 THE COURT: All right. So those are like labeled with  
17 Joint Exhibits?

18 THE COURT REPORTER: One of them and the ones are---

19 MR. MCKINNON: We apologize, Your Honor. We spoke with  
20 the court reporter yesterday and just forgot to mention it  
21 to Your Honor.

22 (WHEREUPON, Joint Exhibit No. 1 and Plaintiff's Exhibit  
23 Nos. 1 through 5 were received into evidence at this time.)

24 THE COURT: Okay. All right. Is the Plaintiff ready  
25 to call their next witness?

1 MR. MCKINNON: We are ready to proceed, Your Honor.

2 THE COURT: I believe the jury is here.

3 will you have them bring the jury in?

4 THE BAILIFF: Yes, sir.

5 (WHEREUPON, the following takes place within the  
6 presence of the jury.)

7 THE COURT: Is the Plaintiff ready to call your next  
8 witness?

9 MR. CALLOWAY: We are, Your Honor.

10 Your Honor, at this time the Plaintiffs call Doctor  
11 Barry Singer.

12 THE COURT: Sir, just come right up here and let the  
13 Clerk of Court swear you in.

14 DOCTOR BARRY SINGER, being first  
15 duly sworn, testified as follows:

16 THE COURT: Thank you, sir. Just have a seat in the  
17 red chair and pull the red chair up to the microphone.

18 (Witness complies.)

19 DIRECT EXAMINATION

20 BY MR. CALLOWAY:

21 Q Good morning, Doctor Singer.

22 A Good morning.

23 Q Would you please state your full name for the Court?

24 A Barry L. Singer, M.D.

25 Q What do you do for a living, Doctor Singer?

Barry Singer - Direct examination  
by Mr. Calloway

1 A I'm a physician.

2 Q Okay. Do you have a specialty?

3 A Medical oncology and, and hematology.

4 Q And how long have you been working as an oncologist?

5 A Over 40 years.

6 Q Okay. I want to ask you a little bit about your  
7 educational background.

8 If you would, sort of starting with, with college, tell  
9 us a little bit about your education.

10 A I attended Harvard College. I graduated with honors,  
11 1963. I attended John Hopkins Medical School. I graduated  
12 with an M.D. Degree in 1967, completed an internship in  
13 medicine at Bellevue Hospital, New York City, and then a  
14 residency in internal medicine at the Graduate Hospital,  
15 University of Pennsylvania in Philadelphia. I completed a  
16 fellowship in the same institution in hematology and medical  
17 oncology. I spent two years in the U.S. Army Medical Corp  
18 at Valley Forge Army Hospital and Walter Reed Army Hospital  
19 as a hematologist/oncologist. I went into private practice  
20 in 1973 and I've been since.

21 Q Okay. And do you currently treat cancer patients?

22 A Yes, sir.

23 Q And what type of cancers do you currently treat?

24 A I treat all types of cancers. The main three I see in  
25 most are lung, breast, and colon, but I treat all cancers.

Barry Singer - Direct examination  
by Mr. Calloway

1 Q Are you -- do you have any board certifications?

2 A Yes, I'm board certified in internal medicine,  
3 hematology, and medical oncology.

4 Q And just for our understanding, tell us just basically  
5 what it means to be board certified.

6 A It means that one is completed training in that area  
7 and passed an examination in that area to be board qualified  
8 and then board certified.

9 MR. CALLOWAY: Your Honor, at this time the Plaintiffs  
10 would move to have Doctor Singer qualified as an expert in  
11 medical oncology.

12 MR. WILLIFORD: No objections, Your Honor.

13 THE COURT: Medical oncology?

14 MR. CALLOWAY: Yes, sir.

15 THE COURT: All right. Ladies and gentlemen, normally  
16 a person can not give opinion testimony. Normally, when a  
17 person testifies, they must testify as to what they either  
18 saw, heard, or sensed by smell or something of that nature.  
19 However, there is an exception when someone is qualified  
20 because of education or experience. They are permitted to  
21 give their opinion in certain areas if the Court qualifies  
22 them that way.

23 This witness will be qualified in the area of medical  
24 oncology to give opinion testimony in that area. That does  
25 not mean that you must accept the opinion, but it is

Barry Singer - Direct examination  
by Mr. Calloway

1 evidence for you to use in anyway that you see fit.

2 Yes, sir.

3 MR. CALLOWAY: Thank you, Your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. CALLOWAY:

6 Q Doctor Singer, could you tell us basically what an  
7 oncologist is, what his job is?

8 A An oncologist basically oversees the treatment of  
9 cancer patients. He or she often is the one to administer  
10 or order chemotherapy for them, but, in addition, generally  
11 they're sort of like the primary cancer care doctor. They  
12 may refer the patient for other treatments such as radiation  
13 therapy or further surgery and they generally follow them  
14 medically because most are trained as internists.

15 Q Doctor Singer, have you had an opportunity to review  
16 the medical records for Mr. William Farr?

17 A Yes, sir.

18 Q Have you reviewed anything else regarding, regarding  
19 his case other than just the medical records?

20 A Depositions of various doctors who cared for him as  
21 well as some experts.

22 Q All right. Doctor Singer, what we want to do first  
23 here is take a look at some of the medical records. I'm  
24 gonna just put the Joint Exhibit No. 1 -- I'll make  
25 reference to the Bates cites numbers for ease of reference.

Barry Singer - Direct examination  
by Mr. Calloway

1 First, Doctor Singer, I'm gonna show you what is  
2 labeled as Bates Number LCMA0040 and 0041.

3 Doctor Singer, do you recognize this document?

4 A Yes, sir, this is Doctor Cruz's evaluation of the  
5 patient.

6 Q I'm gonna turn to Page LCMA0041 and ask you to direct  
7 your attention to the number one there at the top, and, if  
8 you would just -- well, I'll read it to you. It says lung  
9 cancer, radiologic T3NOMO2B-bronchoalveolar type, and, and  
10 if you could, if you could just explain to us and we'll  
11 start with that first part.

12 what are those numbers and letters mean?

13 what does T3NOMO refer to?

14 A TNM is the way we classify or stage cancer. All  
15 cancers are staged that way using those three letters. T  
16 stands for the size of the primary tumor, N whether they're  
17 nodal met -- metastases or the nodes are involved, and M  
18 whether they're a distant metastasis meaning away from the  
19 cancer. In this case, T3 stands for the size of the tumor.  
20 It's a larger tumor. It's greater than 7-centimeters.

21 Q Okay. Okay. And the, the next thing there is 2B.

22 what does that refer to?

23 A Oh, the staging is 2B. That's because of the size of  
24 the tumor.

25 Q Okay. And tell us---

Barry Singer - Direct examination  
by Mr. Calloway

1 A T2---

2 Q I'm sorry.

3 A T3N0M0 is a Stage 2B lung cancer.

4 Q Tell us, if you could, and explain to the jury what  
5 cancer staging is.

6 A Yes.

7 Q What does that mean?

8 A We use it to describe the extent of the cancer because,  
9 by staging, we describe the size of the primary, whether --  
10 with a T. N, as I said earlier, whether they're nodes  
11 involved, and M, whether there's distant metastasis so any  
12 other doctor who sees the patient knows exactly how large  
13 and how extensive the cancer was, and, from the stage, we  
14 can decide on treatment, which is very important because  
15 lung cancer, unless you remove the cancer surgically,  
16 generally the patient does not do well, and with the T3N0M0,  
17 you hope that you're removing the entire tumor because there  
18 are no nodes or distant metastases at least seen at that  
19 time.

20 Q All right. And this is referenced to the -- to Mr.  
21 Farr's tumor at what point in time?

22 A This is the right lung tumor that was treated in 2010.

23 Q And the last thing on this, Doctor Singer, that next  
24 word there after the 2B, what is that word and what does it  
25 refer to?



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by Mr. Calloway

1 A Oh, bronchoalveolar type is a type of adenocarcinoma.

2 Q All right.

3 A We don't use it now. It was an -- it's an older  
4 expression for adenocarcinoma.

5 Q And you use the term adenocarcinoma.

6 What does that refer to?

7 A Adenocarcinoma means a tumor that develops in the  
8 glands. Tumor can develop in various areas of tissues in  
9 the body. If it develops in the skin or epidermis it's  
10 called epidermoid. If it develops in glandular structure  
11 it's called adenocarcinoma. If it's -- develops from  
12 connective tissue, a sarcoma. So, I mean it depends where  
13 the tumor develops.

14 Q And as an oncologist, based on that description, what  
15 does that tell you about this tumor?

16 A This tumor was a certain size. It was greater than  
17 7-centimeters. But it clinically or pathologically did not  
18 have evidence of spread of the cancer to the nodes or  
19 distally.

20 Q Next, doctor, I want to show you, Doctor Singer, is a  
21 pathology report that says SRHS0056.

22 Just for our understanding, and I'll zoom in on this,  
23 what, what is, in general, what's a pathology report or a  
24 surgical pathology report?

25 A Well, when tissue is removed from the body it's

Barry Singer - Direct examination  
by Mr. Calloway

1 examined under the microscope after appropriate fixing and  
2 staining and the pathologist is the specialist who does  
3 that.

4 Q And I want you to look sort of towards the middle of  
5 this first paragraph and I will mark or point to it here  
6 where it's got this listing of a -- of size and centimeters.  
7 It looks like it says 9-centimeters by eight and a half by  
8 five.

9 Is that what you see there?

10 A Yes, that's the size of the tumor. Nine by 8.5 by  
11 5-centimeters.

12 Q In your experience and training as an oncologist, how  
13 would you describe that tumor -- a tumor of that size?

14 A It's very large. I mean, lung cancer, is anything over  
15 three or four centimeters is quite large. This was  
16 9-centimeters.

17 Q Now, you may be aware that it's Plaintiff's allegation  
18 in this case that Mr. Farr had a much smaller cancer back in  
19 January of 2010.

20 Do you have an opinion on that?

21 A Yes, sir.

22 Q What is your opinion on that?

23 A My opinion, from review of the records and various  
24 depositions, that there was a mass there back in January or  
25 February of 2010, but it was much smaller. I would expect

Barry Singer - Direct examination  
by Mr. Calloway

1 that because you wouldn't expect a 9-centimeter tumor to  
2 just appear overnight. It had to be present for at least a  
3 few years, but growing. So -- especially adeno --  
4 adenocarcinomas.

5 So I would suspect that it was present, but description  
6 of being two to three centimeters in size makes sense  
7 clinically.

8 Q Okay. And, in your practice as an oncologist, do you  
9 often or would or do you consider reliable what a  
10 radiologist, a radiologist says about the size of the tumor?

11 A Yes, sir.

12 Q Okay. And so what do you base your opinion today in  
13 saying that you believe the opinion -- the tumor was two and  
14 a half centimeters in January of 2010?

15 A From review of the records and radiologic description  
16 of the size.

17 Q Okay. I want to ask you a little bit about the  
18 difference between tumors based on their size. In general,  
19 let me ask it this way.

20 Is a bigger tumor more serious than a smaller tumor?

21 A Generally the larger the tumor the more likely it's  
22 have to spread. I mean it's not a hundred percent because  
23 the surface area -- if you think of a tumor as a sphere, and  
24 obviously no tumor is a perfect sphere, but if you imagine  
25 it's a sphere, a three and -- a 3-centimeter sphere will be

Barry Singer - Direct examination  
by Mr. Calloway

1 just a little over an inch. 2.54 centimeters is an a inch.

2 You have a sphere that's just a little over an inch in  
3 size. Then you have a 9-centimeter mass, which is probably  
4 over four inches. You have a much greater surface area and  
5 a much greater volume. So the likelihood of cells to escape  
6 is much greater. So by just -- by the nature of the size of  
7 the tumor, you would be more likely to have spread of it.

8 Q Okay. And could you explain a little of the mechanism  
9 of that?

10 why is it that a larger tumor is more likely to spread  
11 than a smaller one?

12 A Because, as cancers grows, cells break off all the  
13 time. The body's immune system is able to generally prevent  
14 them taking hold and growing as when we call metastasis, but  
15 the more surface area, the more area cells to break off. It  
16 just makes common sense that you have a larger area that's  
17 maybe 20 or 30 times as large that more cells are gonna  
18 break off, and, therefore, there's a greater risk of  
19 developing metastasis.

20 Q Again, along the same line, the difference between a  
21 big tumor and a small tumor, is there a difference in  
22 treatment options for a smaller tumor relative to a big  
23 tumor?

24 A well, certainly you have to take out more lung volume  
25 when you take out a bigger tumor obviously. But you usually

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by Mr. Calloway

1 take out a lobe that the tumor is in. That's generally  
2 accepted surgery for a lung cancer and the likelihood that  
3 you would take out less lung volume with a smaller tumor  
4 than a larger tumor.

5 Q All right. What about in terms of patient prognosis.

6 Is there a difference in patient prognosis based on a  
7 small tumor versus a large tumor?

8 A Not definitely prognosis because unless you have the  
9 metastases, the patient is greater risk for the metastases  
10 if the metastasis is more likely to develop. But if the  
11 stage is still the same, the prognosis doesn't change until  
12 the actual metastasis occurred. When a recurrence occurs,  
13 then the patient, in lung cancer, generally is going to die,  
14 succumb to it.

15 Q Okay. And we've already used this term a lot, but just  
16 to explain to us, what is a metastasis just in general?

17 A Metastasis is spread of the primary tumor to another  
18 site and growing in that area. I mean you have cells that  
19 break off all the time from cancers and fortunately our  
20 body's can -- immune system can destroy it, but if enough  
21 cells break off, some do take hold and grow in a different  
22 area, a different organ. In this case, in my opinion, it  
23 was left lung. But it could go to any organ, brain, lung,  
24 liver. Those are common sites for lung cancer to spread in  
25 adrenal gland.

Barry Singer - Direct examination  
by Mr. Calloway

1 Q So let's talk more in the specifics about Mr. Farr's  
2 cancer.

3 It was told, as if you told us, that your opinion that  
4 he had a two and a half centimeter tumor in January of 2010.

5 Is that correct?

6 A Correct.

7 Q And, in December or November/December, it was a  
8 9-centimeter tumor.

9 A Yes.

10 Q Is that right?

11 A Yes, sir.

12 Q Okay. Do you have an opinion as to what, what the  
13 recommended course of treatment would of been for Mr. Farr  
14 had his cancer been diagnosed in January of 2011?

15 A Yes.

16 Q '10. Excuse me.

17 A Yes, the -- my opinion would be that he would have  
18 surgery cause that's the treatment of choice for lung cancer  
19 is to resect the, the lobe that the cancer is in, and  
20 generally, for a Stage 1 or Stage 2 lung cancer, that's all  
21 that's recommended, adjutant therapy. what we mean by  
22 adjutant therapy is that we give further treatment just in  
23 case there's cancer cells that are still present. Adjutant  
24 therapy would not be recommended. So he would not get  
25 radiation or chemotherapy like he did in -- later.

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by Mr. Calloway

1 Q So is your, is your opinion more likely than not that,  
2 had this cancer been diagnosed in January of 2010, chemo and  
3 radiation therapy would not have been necessary?

4 A That's correct.

5 Q Okay. Doctor Singer, in Mr. Farr's case, do you have  
6 an opinion as to, if the cancer had been diagnosed in  
7 January of 2010, do you have an opinion as to whether Mr.  
8 Farr would have survived the cancer?

9 A I -- yes, I do have an opinion.

10 Q What is your opinion on that?

11 A My opinion is that the small --- a tumor that's ---  
12 completely resected, the probability of cure is very high.  
13 It's in the range of 70, 75 percent. There's still some who  
14 succumb to it, but, by far, the majority are cured.

15 Q Okay. And so it is your opinion, more likely than not,  
16 that, had this cancer been diagnosed in January of 2010,  
17 that Mr. Farr would have survived the cancer?

18 A Yes, sir, it's my opinion that he would.

19 Q Was Mr. Farr's prognosis different because the lung  
20 cancer was discovered in October or November as opposed to  
21 January?

22 A Yes, because his -- he was at greater risk for  
23 metastasis for the reasons I said previously, and I believe  
24 that was one of the reasons why he got postoperative  
25 radiation and chemotherapy because of two reasons.

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1 One, because of the size of the cancer. The  
2 9-centimeter tumor, as I said, is a very large tumor and  
3 also because one of the margins they felt that was very  
4 close, and when you have close margins, meaning that the  
5 tumor cells are within one millimeter of the resection,  
6 there's a great risk that cells may have been left after the  
7 surgery. And if cells were left, eventually they'll grow  
8 back in most cases. And because of that, he received  
9 radiation therapy and I believe they gave him chemotherapy  
10 because of the large size of the tumor.

11 Q Okay. And just let me make sure and clarify that.  
12 You talked about adjuvant therapy, the chemo and the  
13 radiation.

14 Even after---

15 A Yes, sir.

16 Q ---a cancer tumor has been removed, additional therapy  
17 may be necessary?

18 A Absolutely. Especially if the tumor is very large and  
19 particularly if there is close margins.

20 Q All right. Doctor Singer, based on your review of the  
21 records and what you've learned about this case, is it your  
22 understanding that Mr. Farr, at some point, in addition to  
23 his, his right lung cancer, developed cancer on his left  
24 side?

25 A Yes, sir.



Barry Singer - Direct examination  
by Mr. Calloway

1 Q Okay. Let's take a look at a couple additional  
2 documents there.

3 Doctor Singer, this is SR50058. It's another portion  
4 of that path report from December of 2010 that we discussed  
5 a moment ago or a few minutes ago, and I want to point to a  
6 portion of it here. That line that starts with the word  
7 adenocarcinoma.

8 If you wouldn't mind reading that for us.

9 A Sure. Adenocarcinoma with papillary features.

10 Q Okay. And what is that basically -- just, in general,  
11 what does that describe?

12 A Papillares are little expressions that grow out of the  
13 cancer like little -- if you're looking at a field, you see  
14 a little tree pop up, that would be like a papillary. I  
15 mean coming up out of the glandular tissue.

16 Q Okay. And this was telling us -- the adenocarcinoma  
17 tells us what?

18 A That's gland. It's a gland derivation. In other  
19 words, it develops from the bronchial glands.

20 Q Okay. Doctor Singer, I'll show you an additional  
21 document. This is GS000214. This is an additional path  
22 report. Let me see if I can find the date for you.

23 The date reported, do you see the date reported there?

24 A Yes, sir, April 7<sup>th</sup>, 20 -- April 17<sup>th</sup>, 2012.

25 Q Okay. So is this the right tumor or the left---

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by Mr. Calloway

1 A This---

2 Q ---the left---

3 A This will be the left---

4 Q Okay.

5 A ---the left cancer which was found.

6 Q Okay. And, again, sort of the similar thing of the  
7 two, what -- excuse me.

8 The similar designation that's there for the, the type  
9 of cancer we have here, would you read sort of that line?

10 A Again, it's an adenocarcinoma, but now -- now with  
11 lepidic and acinar pattern. That's a predominate pattern.  
12 because it's a glandular tumor again.

13 Q And so, from these path reports, do we see that the  
14 first tumor was an adenocarcinoma and the second tumor was  
15 an adenocarcinoma?

16 A Yes, sir.

17 Q What does that tell you, if anything, as an oncologist,  
18 about the nature of those two tumors?

19 A Well, just as an adenocarcinoma, knowing they can have  
20 a multitude of variance in terms of appearance, that it's,  
21 to me, it would, 95 percent of the time, be the same cancer.

22 Q Okay. Is -- okay. So does this tell you anything  
23 about whether one cancer came from the other?

24 A No, it doesn't. It just says -- to me, it indicates,  
25 since the right one was found before the left, that the

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by Mr. Calloway

1 right one came first and the left one, and since there were  
2 several x-rays done, PET Scans in-between that show nothing  
3 in the left lung, this timing, about a year and a half, two  
4 years after is when you expect to see metastasis for a  
5 primary lung cancer. Usually you see them within one to two  
6 years. The fact that it's in the left lung less than two  
7 years later would strongly indicate, to me, it's the same  
8 cancer.

9 Q — Do you hold that opinion to a reasonable degree of  
10 medical certainty more likely than not?

11 A Yes, sir.

12 Q Doctor Singer, if you recall the two documents we've  
13 just examined, does the fact that one of these path reports  
14 refers to lepidic patterns and the other refers to a  
15 papillary patterns, does that influence your opinion that  
16 one -- the previous opinion just stated?

17 A No, we see this in colon, breast cancer where they're  
18 both glandular patterns where the cell that actually  
19 metastasizes, the more aggressive cell, generally cancers  
20 are not uniform. If they're made of well differentiated,  
21 poorly differentiated, moderately differentiates, it's  
22 always the poorly differentiates that spreads. So it's a  
23 more aggressive form of the cancer or it's logically that  
24 that spreads.

25 So metastases in primaries don't often have the exact

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by Mr. Calloway

1 same histology. They may be predominance of one type and  
2 then metastasis because that's the most aggressive form of  
3 the tumor versus the primary. So we know that occurs and  
4 we -- it's a, it's a regular finding.

5 Q Okay. And just to -- let's talk about that, again,  
6 this sort of more generally, in your experience in treating  
7 lung cancer, what is the general effect on the patient?

8 what are the symptoms?

9 what is going to be how they feel and how they  
10 experience that disease?

11 A Well, in early stages, they're asymptomatic generally.  
12 Stage 1 and 2, they, they don't have any symptoms, and they  
13 may not even have symptoms into Stage 3. Generally, by  
14 Stage 4, they have symptoms.

15 The most significant symptom in advanced lung cancer is  
16 weakness and anorexia, not eating, and weight loss. The  
17 cancer just eats, eats away at them and that's usually by  
18 Stage 4. But early stage lung cancer, the patient may be  
19 entirely asymptomatic.

20 Q Based on your review of the records and your  
21 understanding of, of Mr. Farr's situation, in sort of the  
22 last couple months of his life, April, May, June of 2012,  
23 what was the experience and what was his condition at that  
24 point?

25 A He was going downhill very rapidly, which is typical of

Barry Singer - Direct examination  
by Mr. Calloway

1 someone with Stage 4 lung cancer.

2 Q Doctor Singer, do you have an opinion as to the cause  
3 of Mr. Farr's death?

4 A Yes, sir.

5 Q What is your opinion?

6 A Metastatic lung cancer.

7 Q And why did you or what led you to that conclusion?

8 A The fact that he developed the metastasis in the left  
9 lung in my opinion. The fact that the doctors who treated  
10 him treated him for metastatic lung cancer and the fact that  
11 the death certificate is signed as metastatic lung cancer.  
12 I believe everything is correct.

13 Q During the same time period that I'm talking about in  
14 April to June of 2012, in addition to the symptoms you  
15 described, if there's some indications of pneumonia he may  
16 have suffered during that time, would that be an unusual  
17 finding versus---

18 A No.

19 Q ---in this situation?

20 A Someone with terminal disease, often pneumonia or  
21 sepsis, is, is common cause of the final.

22 Q What about for that same time period, April to June of  
23 2012, would it be unusual for a person in Mr. Farr's  
24 condition to be suffering from respiratory distress?

25 A No. Well, again, certainly had underlying COPD and

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by Mr. Calloway

1 that would certainly be the weakest area of his body. So  
2 for his to have respiratory distress would not be unusual.

3 Q Does the suggestion that Mr. Farr had those conditions  
4 affect your opinion that he died as a result of metastatic  
5 lung cancer?

6 A No, not at all. There, there are co-contributory  
7 obviously to his weakness, but the lung cancer, in my  
8 opinion, was the direct cause of his demise.

9 Q We've already heard some discussion in this trial about  
10 the fact that Mr. Farr was a smoker.

11 what is your -- do you have an opinion as to the effect  
12 of his smoking on his ultimate demise?

13 A Well, I, I suspect the smoking was the cause of his  
14 lung cancer initially in the right lung. He was a 50 pack  
15 year smoker. Anyone over 20 pack years certainly has an  
16 increased risk. The fact that his cancer progressed and  
17 became Stage 4, I mean that's enough cause for him to  
18 succumb to it.

19 Q Doctor Singer, do you have an opinion as to whether the  
20 medical expenses that are already in evidence here were  
21 causally related to a delay in diagnosis of his cancer in  
22 January of 2010?

23 A Yes, I do believe that a lot of the medical expenses  
24 would not have been incurred if he had been diagnosed  
25 earlier. As I said earlier, I do not believe that he would

Barry Singer - Direct examination  
by Mr. Calloway

1 of required radiation and chemotherapy with earlier surgery,  
2 and the subsequent chemotherapy and the surgery on the left  
3 lung, in my opinion, would of been significantly risk or  
4 significantly reduced by earlier diagnosis.

5 Q Okay. So the, the surgery were -- are you saying that  
6 the December 2010 surgery that he had, he still would of had  
7 to have surgery if it had been diagnosed in January of 2010?

8 A Correct. He would of had definitive surgery, removal  
9 of the upper lobe or both lobes, if necessary. I, I suspect  
10 strongly he would of still had one lobe removed. But even  
11 if he had two, that would of been it, and he would not have  
12 required anymore treatment, and, as I said earlier, the  
13 likelihood of metastasis, in my opinion, would of  
14 significantly reduced.

15 Q Can you say more likely than not that the cancer would  
16 not have or that, that would of been all the therapy or all  
17 the treatment he would of needed had it been diagnosed in  
18 January of 2010?

19 A Yes, as I said earlier, Stage 1 or 2 would have about a  
20 70, 75 percent likelihood reduced.

21 Q You talked a little bit about earlier about the fact  
22 that after the, the first cancer that Mr. Farr underwent  
23 chemo and radiation therapy. I know we sort of heard that  
24 term before.

25 could you basically explain sort of what chemo is for,

Barry Singer - Direct examination  
by Mr. Calloway

1 how it works, and how it was used in Mr. Farr's case?

2 A Okay. Chemotherapy is the use of certain drugs or  
3 chemicals. They're essentially poisons in the sense that  
4 they, they will cause toxicity to normal tissue. We try to  
5 use enough of them so that we destroy the more rapidly  
6 proliferated cancer cells versus the normal cells, which  
7 don't turn over as quickly, and we employ certain drugs that  
8 are used. They all have side affects. They all cause  
9 severe debility in the patient to some degree. Various  
10 toxicities through the gastrointestinal tract, bone marrow,  
11 and neuropathies as Mr. Farr developed and the platinum  
12 drugs.

13 They do benefit the patients in the sense that they do  
14 increase survival in many cases. We have certainly shown  
15 that in breast cancer and we use it in, in certain cases  
16 like here in this lung cancer to increase the likelihood  
17 that any cells that were present after surgery would be  
18 destroyed, but it's not a hundred percent effective.

19 Q And what about radiation therapy?

20 A Radiation therapy is a more direct treatment to an area  
21 in the body where radiation is used to destroy cells and  
22 prevent them from dividing. And if you prevent cells from  
23 dividing, they can't multiply and that's the effect against  
24 cancer cells. So we use that as a local treatment.

25 Q And so, Doctor Singer, in your opinion, does the



Barry Singer - Direct examination  
by Mr. Calloway

1 failure to diagnose the cancer in January of 2010, was that  
2 a causal factor in Mr. Farr's death?

3 A Yes, sir.

4 Q Do you hold that opinion to a reasonable degree of  
5 medical certainty more likely than not?

6 A Yes, I do.

7 Q If Mr. Farr had been diagnosed in January of 2010,  
8 would he have needed radiation and chemotherapy?

9 A As I said earlier, no.

10 Q Doctor Singer, as an oncologist and based on what you  
11 reviewed in this case, do you believe that doctor, excuse  
12 me, Mr. Farr's cancer spread from his right lung to his left  
13 lung?

14 A Yes, sir, as I said earlier, I believe they were both  
15 adenocarcinomas with a different predominance of histology  
16 in one compared to the other. But I believe they're the  
17 same cancer.

18 Q Let me just ask.

19 Are you being paid today for your testimony?

20 A Yes, I am.

21 Q Okay. Who are you being paid by?

22 A Your firm.

23 Q Okay.

24 A The Plaintiffs.

25 Q Okay. Have you testified in a medical malpractice case

Barry Singer - Direct examination  
by Mr. Calloway

1 ever before?

2 A Many times. I've been in Court probably over 300  
3 times.

4 Q Does that affect your ability to offer truthful  
5 opinions on -- based on your review of the matters in this  
6 case?

7 A I don't believe it does, no, sir.

8 Q And, lastly, Doctor Singer, has everything that you  
9 have opined on today, all of your opinions, has all of them  
10 been given to a reasonable degree of medical certainty more  
11 likely than not?

12 A Yes, sir.

13 MR. CALLOWAY: Your Honor, at this time we have no  
14 further questions.

15 THE COURT: Yes, sir.

16 MR. WILLIFORD: May it please the Court?

17 THE COURT: Are you gonna use the ELMO?

18 MR. WILLIFORD: I will, yes, sir.

19 THE COURT: Okay.

20 MR. WILLIFORD: At some point.

21 CROSS-EXAMINATION

22 BY MR. WILLIFORD:

23 Q Doctor Singer, you would agree that hindsight is not an  
24 appropriate way to make a determination about a standard of  
25 care as it applies to a physician?

Barry Singer - Cross-examination  
by Mr. Williford

1 Correct?

2 A We always have to use hindsight in reviewing records.  
3 But we'd like to be able to be there when the physician is  
4 doing what he's doing obviously. Sure.

5 Q But it's not a way to, to base an opinion on the  
6 standard of care strictly by hindsight.

7 True?

8 A Well, I don't see how else you could do it. Whenever  
9 you review someone's performance, you're always doing it in  
10 hindsight.

11 Q Doctor, I want to hand you your deposition.

12 Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 Q Your original deposition.

15 And, Your Honor, may I ask for your instruction on what  
16 a deposition is to the jury?

17 THE COURT: All right.

18 MR. WILLIFORD: Yes, sir.

19 THE COURT: All right. Ladies and gentlemen, testimony  
20 is now going to be presented to you by a deposition. A  
21 deposition is a document containing sworn testimony given by  
22 a witness outside of Court in the presence of lawyers for  
23 each party who may ask questions of the witness.

24 This is testimony -- this testimony is entitled to the  
25 same consideration and to be judged as to credibility and

Barry Singer - Cross-examination  
by Mr. Williford

1 weighed by you in the same way as if the witness were  
2 present and gave the testimony about to be read to you from  
3 the witness stand. It is then for you, the jury, to  
4 determine the effect, value, weight, and truth of the  
5 testimony given in the deposition.

6 MR. WILLIFORD: Thank you, Your Honor.

7 Doctor, if you would turn to Page 21 of your deposition  
8 and let me know when you get there.

9 A Sure.

10 I'm there, sir.

11 Q 21, Lines 2 through -- no, sorry. Lines 21 through 25.  
12 Question -- and this is the, this is the -- these are  
13 questions I asked you in Philadelphia when we took your  
14 deposition.

15 Do you recall that?

16 A Yes, sir.

17 Q Q. would you agree that hindsight is not an  
18 appropriate way to make a determination about the standard  
19 of care as it applies to a physician such as Doctor Wan in  
20 this case?

21 Your answer sure, I would agree with that.

22 A I did say that, yes, sir.

23 Q Okay. Thank you.

24 Outcomes are frequently not predictable in medicine.

25 True?

Barry Singer - Cross-examination  
by Mr. Williford

1 A I'll agree.

2 Q A bad result or a bad outcome for a patient can still  
3 occur even when a physician provides reasonable care.

4 True?

5 A I would agree with that too.

6 Q A physician can not ensure a good outcome for their  
7 patient.

8 A I would agree with that.

9 Q You would agree that a physician can not guarantee a  
10 beneficial result as a consequence of his or her care?

11 A I would agree with that too.

12 Q You would agree, sir, that lung cancer can be missed on  
13 a chest x-ray without the physician committing malpractice?

14 A I would agree.

15 Q Doctor, you have not authored any literature or  
16 published any literature on the specific topics related to  
17 this case?

18 A No, I have not.

19 Q Okay. You have not made any presentations, in all of  
20 your years of practice, specifically about the, the subject  
21 matter in this case?

22 A I made presentations I believe at tumor conference.  
23 But not to a large, you know, to a large group of  
24 physicians, no.

25 Q Okay. You're not a surgeon, correct?

Barry Singer - Cross-examination  
by Mr. Williford

1 A No, I'm not.

2 Q You would defer to a surgeon, such as Doctor Nguyen in  
3 this case, in terms of what he did surgically and what he  
4 removed in terms of Mr. Farr's lung cancer?

5 A I would, yes, sir.

6 Q You would also defer to a surgeon in terms of what they  
7 found intra-operatively in the surgery?

8 A Sure.

9 Q And you're not a pathologist---

10 A No, I'm not.

11 Q ---are you?

12 You would defer to a pathologist in terms of what they  
13 see under the microscope with the cells?

14 A I would agree.

15 Q Okay.

16 A Yes, sir.

17 Q And you would defer to them in terms of what they find  
18 pathologically?

19 A Yes, sir.

20 Q You would agree that, in terms of pathology, the  
21 surgical specimen, the area that is removed by a surgeon  
22 during surgery and is sent off to pathology where a  
23 pathologist looks under the microscope, looks at the cells,  
24 looks at the tissues, you would agree that the -- those  
25 surgical specimens, in terms of the pathology of it, is the

Barry Singer - Cross-examination  
by Mr. Williford

1 ultimate determination of what kind of lung cancer someone  
2 has?

3 A Yes, sir.

4 Q True?

5 Would it be fair to say that you are not qualified to  
6 offer pathology, pathology opinions or pathology  
7 determinations in this case?

8 A Correct. I'm not.

9 Q You would agree that you are not qualified to offer  
10 standard of care opinions as it relates to pulmonologists  
11 such as Doctor Wan in this case?

12 A I'm not a pulmonologist. So I would not offer standard  
13 of care. I would agree.

14 Q And you're not giving standard of care opinions against  
15 Doctor Wan in this case?

16 A No, I'm not, sir.

17 Q You're not offering an opinion that Mr. Wan acted with  
18 a conscious disregard for Mr. Farr, are you?

19 A No, sir.

20 Q And you're not offering an opinion that she was  
21 reckless or grossly negligent or intentional in a negative  
22 way towards Mr. Farr?

23 A No, I've made no comments regarding Doctor Wan at all.

24 Q Now, on direct examination you talked about the, the  
25 size of the tumor as alleged in January on an x-ray---

Barry Singer - Cross-examination  
by Mr. Williford

1 A Yes, sir.

2 Q ---as being roughly two or three centimeters in your  
3 opinion, and then, in December, we have surge, surgery that  
4 occurs and it's a 9-centimeter tumor?

5 A Correct.

6 Q And that's determined pathologically and we even looked  
7 at the pathology report.

8 Correct?

9 A Correct.

10 Q Okay. You would agree that it's certainly not ideal  
11 and not the way it's done in medicine to compare an x-ray  
12 suspicion with a surgical specimen at pathology in terms of  
13 size?

14 A Well, we care -- compare what we have available. In  
15 this case we only have an x-ray because surgery wasn't done.  
16 But I agree. Ideally you would want to compare two surgical  
17 specimens, but rarely do you get that opportunity.

18 Q Okay. You would agree that getting diagnosed with lung  
19 cancer generally has a poor prognosis compared to other  
20 types of cancer?

21 A Yes, sir, cause 75 percent of lung cancers are  
22 diagnosed at Stage 3 or 4. I would agree.

23 Q Okay. And you would agree that the IASLC, the  
24 International Association for the Study of Lung Cancer, back  
25 in 2010 and 2011, they made new classifications and



Barry Singer - Cross-examination  
by Mr. Williford

1 sub-types for lung cancer including adenocarcinoma?

2 A Yes, sir.

3 Q Okay. And, at that point, they sub-typed  
4 adenocarcinomas and now you have different sub-types in, in  
5 terms of papillary adenocarcinoma predominate and you have  
6 lepidic predominate and they're different sub-types?

7 A Yes, sir.

8 Q Is that right?

9 A They're different appearances under a microscope. I  
10 would agree.

11 Q And, as an oncologist, that's certainly important.  
12 As new classifications and sub-types of cancer come  
13 out, there are different treatment options for different  
14 kinds of cancer?

15 A Correct.

16 Q Wouldn't that be fair?

17 A All adenocarcinomas are treated the same way.

18 Q There are different modalities, would you agree, in  
19 treating the different sub-types of cancers because they  
20 behave differently?

21 A From epidermoid to glandular are adenocarcinoma, but  
22 not within adenocarcinoma. All adenocarcinomas, as I said,  
23 are treated the same way.

24 Q All right. You can not say and you do not know what  
25 the rate is at which Mr. Farr's cancer may have grown?

Barry Singer - Cross-examination  
by Mr. Williford

1 A No, I don't think anyone can cause you have to have  
2 exact measurements at least at two sites, preferably three  
3 sites, to get rate of growth.

4 Q And no one can tell you?

5 A No.

6 Q No way can say the rate of growth?

7 A No.

8 Q True?

9 A I agree.

10 Q After Mr. Farr's original right lung surgery, after  
11 that was performed by Doctor Nguyen in December of 2010, he  
12 started doing better, correct?

13 A Yes, sir.

14 Q In fact, I want to go through some of his medical  
15 notes. You were shown some medical records and I want to go  
16 through some of that.

17 Now, these, these are medical records that you reviewed  
18 in the case.

19 Correct?

20 A Yes, sir.

21 Q Okay. Right here, this is the surgery.

22 Now, this is after he was diagnosed with cancer and the  
23 procedure date is December 2<sup>nd</sup>, 2010, and postoperative  
24 diagnosis was preop diagnosis and a postop diagnosis.

25 What, what do these mean?

Barry Singer - Cross-examination  
by Mr. Williford

1 A Well, before they do the surgery they feel he has  
2 cancer, and then, afterwards, they still felt he had cancer  
3 cause they removed it.

4 Q Sure.

5 And here we have Doctor Nguyen, Doctor Christophe  
6 Nguyen?

7 A Yes, sir.

8 Q Okay. Right here, the first line of his surgical  
9 findings, it says no evidence of metastatic disease.

10 Do you see that?

11 A Yes, sir.

12 Q Okay. Second page of his report.

13 There was no evidence of any endobronchial tumor.

14 Do you see that?

15 A Yes, sir.

16 Q Okay. And he goes into some description and we will  
17 have Doctor Nguyen come and testify as to what he did  
18 throughout this description and then there was a frozen  
19 section returned negative for tumor.

20 What's a frozen section?

21 A Well, they, they cut tissue out and they get a quick  
22 reading when they freeze it rather than going through the  
23 long, longer process of staying -- of affixing it and  
24 staining it. So they get an immediate result.

25 Q An immediate read from a pathologist while they're in

Barry Singer - Cross-examination  
by Mr. Williford

1 surgery. They take down the tissues to the pathology  
2 department. They have a pathologist look at it and give it  
3 an immediate read.

4 A Yes, sir.

5 Q Okay. They report back to the surgeon?

6 A Yes, sir.

7 Q Okay. So that's what a frozen section is.

8 It returned negative for tumor --

9 A Yes, sir.

10 Q -- right here?

11 A Little bit further down. The lung cavity was  
12 surveyed.

13 It means they looked around?

14 True?

15 A Yes, sir.

16 Q There was no evidence of any metastatic disease --

17 A Yes, sir.

18 Q -- correct?

19 And here, because of the extent of the disease, I mean  
20 had -- he did have some lung cancer. He elected to proceed  
21 with thoracotomy.

22 True?

23 A Yes, sir.

24 Q Okay. And the tumor was bulky.

25 True?

Barry Singer - Cross-examination  
by Mr. Williford

1 A Large size, yes, sir.

2 Q Okay. Right here -- next we have a few remaining  
3 branches of the pulmonary artery towards the posterior  
4 segment of the upper lobe as well as the middle lobe.

5 These were divided with the endovascular stapler device  
6 as well. The specimen was removed and blocked and frozen  
7 section returned. As mentioned above, negative for  
8 bronchial margin. Now, I want to unpack that a little bit.

9 Again, we have this frozen section, this immediate read  
10 of what the pathology, the cells, the cells and the tissues  
11 showed while in the middle of surgery.

12 Correct?

13 A Yes, sir.

14 Q Okay. And the bronchial margin, again, what is the  
15 bronchial margin?

16 A Well, where they cut the cancer out there is a margin  
17 in the bronchi there and what they do is see if they're  
18 cells still in the margin.

19 Q And according to Doctor Nguyen's report and based on  
20 the immediate read of the pathologist, this was negative?

21 A Yes, sir.

22 Q And negative means there was no cancer beyond that?

23 A Correct.

24 Q Okay. We talked about lymph nodes sections. We then  
25 completed our mediastinum lymph node dissect, dissection by

Barry Singer - Cross-examination  
by Mr. Williford

1 removing all hilum lymph nodes.

2 what's the hilum region?

3 what is the hilum?

4 A Hilum is the area of the lung where the vessels and the  
5 bronchi all go in, into the lung and that's called a hilum.

6 Q Okay. And lymph nodes were taken out. We completed  
7 our mediastinal lymph node dissection. Several hilar lymph  
8 nodes, Level 10, were removed as well as additional Level 4  
9 from the peritracheal mediastinal.

10 Do you see that?

11 A Yes, sir.

12 Q So Doctor Nguyen not only took out the, the lung cancer  
13 that was there, but also lymph nodes as well?

14 A Well, he performed what we expected to be done for, you  
15 know, complete resection.

16 Q Sure.

17 A Sure.

18 Q And then, a few days later, well, I guess immediately,  
19 but we got this report a few days later, this is the report,  
20 the surgical pathology report that you saw a little bit on  
21 direct examination, but this is what the pathologist does  
22 when they -- it's after the surgery is done. They're  
23 looking at the tissues. They do a more full report based on  
24 what they see from a gross description.

25 what is, what is a -- the gross description?

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by Mr. Williford

1 A what it appears grossly. Not under the microscope.

2 Q Okay. So they're looking at the tissues before they  
3 put it under the microscope.

4 Correct?

5 A Yes, sir.

6 Q And then they do a microscopic analysis.

7 So they're looking at cells under the microscope?

8 A Yes, sir.

9 Q Okay. And this is the report after that.

10 Correct?

11 A Yes, sir.

12 Q All right. Here we have right lung, upper and middle  
13 lobectomy. The specimen's intact.

14 What does intact mean?

15 A Well, it hadn't broken, broken up. It's a whole piece.

16 Q Got you. They got it all.

17 All right. The tumor site. Primary tumor at junction  
18 of right upper and middle and right middle lobe.

19 Do you see that?

20 A Yes, sir.

21 Q Okay. And this was adenocarcinoma with papillary  
22 features?

23 A Yes, sir.

24 Q And you would defer to Doctor Wren in terms of what he  
25 diagnosed under the microscope in calling this

Barry Singer - Cross-examination  
by Mr. Williford

1 adenocarcinoma with papillary features?

2 A I have no question about it, no.

3 Q Okay. And this was a Histologic Grade 2?

4 A Yes, sir.

5 Q All right. The visceral pleura invasion was negative.  
6 Correct?

7 A Yes, sir.

8 Q It means it did not spread into the, into that part of  
9 the lung?

10 A Right.

11 Q Okay. And the tumor extension, it was confined to the  
12 lung.

13 Do you see that?

14 A Yes, sir.

15 Q So it didn't spread out beyond the lung?

16 A (Witness nods affirmatively.)

17 Q All right. The margins, and when we say margins, we  
18 mean kind of the line that's drawn that, you know,  
19 whatever's cut out, it's kind of the line that's drawn  
20 where, where the cancer was beyond other tissue that was not  
21 cut.

22 A Correct.

23 Q Correct?

24 Okay. And here we have the margins. They were  
25 negative, but within millimeters at the middle lobe



Barry Singer - Cross-examination  
by Mr. Williford

1 bronchial margins.

2 So it was close, but it was negative --

3 A Yes, sir.

4 Q -- according to Doctor Wren?

5 A Yes, sir.

6 Q And the vascular margin was negative.

7 And what is the vascular margin?

8 A Well, it's any tumors in the vessels. Vascular  
9 involvement, I believe that's what they mean.

10 Q And that, and that -- and there were none.  
11 Correct?

12 A Yes, sir.

13 Q And then parenchymal, parenchymal margin.  
14 What is that?

15 A Again, that would be the actual tissue itself.

16 Q Okay. So it was negative beyond what they removed?

17 A Yes, sir.

18 Q And then according to Doctor Wren, the lymphovascular  
19 invasion, not identified. They didn't see any there.

20 A Correct.

21 Q Correct?

22 A Yes, sir.

23 Q Okay. Right here, the lymph nodes status.

24 What is a lymph node, doctor?

25 A Lymph node are actually a -- structures where lymph

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by Mr. Williford

1 drains into from the organ. In this case, the hilar nodes  
2 or the mediastinum nodes and generally, if tumor cells are  
3 present in them, it means that the tumor has escaped beyond  
4 the primary.

5 Q And, and, therefore -- and many people understand as  
6 if, if cancer spreads to the lymph nodes, then you might  
7 have to worry about it spreading?

8 A Correct.

9 Q And here, lymph nodes status, negative, zero out of  
10 thirteen.

11 That means that, out of 13 they took, took out, they  
12 were all negative?

13 A Yes, sir.

14 Q Correct?

15 No cancer in the lymph nodes?

16 A Yes, sir.

17 Q And there was a pathologic stage and this is different  
18 than a clinical stage, correct?

19 A Correct.

20 Q You would---

21 A After surgery you restage and that's called the  
22 pathologic stage.

23 Q Okay. Now, in your understanding, when they stage a  
24 tumor from a pathologic standpoint, it's a primary tumor?

25 A Yeah. Right.

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by Mr. Williford

1 Q All right. So that's primary lung tumor that Doctor  
2 Wren determined, correct?

3 A Yes, sir.

4 Q Now, doctor, you talked about chemotherapy and  
5 radiation and, and how Mr. Farr did get that and he did---

6 A Yes, sir.

7 Q ---at some point.

8 But initially, in January of 2011, about -- it's about  
9 a month and a half after Doctor Nguyen did the surgery on  
10 the right side, they had a radiation therapy consult note.

11 Do you see this?

12 A Yes, sir.

13 Q Okay. And the dictating physician is Drew Monitto,  
14 Monitto and, and basically the dictating physician's the one  
15 who it's his report.

16 A Yes, sir.

17 Q Correct?

18 Okay. And what is a radiation therapy consult note?

19 A Well, you're going to a radiation therapist who's a  
20 specialist in administering radiation therapy and getting  
21 his or her opinion regarding further treatment.  
22 Specifically with radiation therapy.

23 Q And, doctor, are you familiar with Tumor Boards and---

24 A I was Chairman of one for---

25 Q And what, what is a Tumor Board?

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by Mr. Williford

1 A ---18 years.

2 We determine, on the Board, generally what further  
3 treatment the patient needs in terms of the staging of the  
4 cancer and whether further -- any further treatment is  
5 required.

6 Q So a Tumor Board you have -- often times you'll have a  
7 radiation oncologist?

8 A All specialists.

9 Q --- Oncologists?

10 A --- Have all the specialities.

11 Q --- A pathologist.

12 All the different specialties coming together to try to  
13 decide, you know, how do we treat this patient?

14 A Yes, sir.

15 Q All right. So let's look at his note a little bit.

16 Okay. Now, Doctor Corso, he's one of the, according to  
17 the medical records, he was one of the oncologist working  
18 with Mr. Farr.

19 Correct?

20 A Yes, sir.

21 Q Okay. Doctor Corso felt right here that the patient  
22 had a Stage 2, T2 versus T3NOMO bronchoalveolar carcinoma of  
23 the lung. He felt that the patient was potentially  
24 resectable and I refer the patient to Nguyen, a thoracic  
25 oncologist, oncologic surgery.

Barry Singer - Cross-examination  
by Mr. Williford

1 This is leading up to his surgery with Doctor Nguyen,  
2 correct?

3 A Yes, sir.

4 Q Okay. And let me ask you about that.

5 Bronchoalveo, alveo, alveolar carcinoma, they did a  
6 biopsy. According to the records, they did a biopsy of  
7 that, that and, and what that is or it's really a brushing  
8 just of a few cells and they were reactive and they thought  
9 it might be bronchoalveolar carcinoma.

10 Correct?

11 A Correct.

12 Q This was in late October of 2010?

13 A Yes, sir.

14 Q Okay. Now, when they actually did surgery, they  
15 determined that it was actually an adenocarcinoma papillary  
16 predominant type.

17 A Yes, sir.

18 Q Correct?

19 And so the surgical pathology is, is, is the one that  
20 you go with in terms of what it is?

21 A Well, you have more tissues. So you're getting a more  
22 accurate diagnosis, yes, sir.

23 Q So yes. Okay.

24 All right. So, on December 2<sup>nd</sup>, the patient  
25 underwent a bronchoscopy, mediastinoscopy.

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by Mr. Williford

1           what's a mediastinoscopy?

2   A     It's when they put a scope into the mediastinum, which  
3   is the space between the two lungs. There are lymph nodes  
4   in that area, and if the lymph nodes are positive, often it  
5   indicates a more advanced cancer.

6   Q     Okay. And a bronchoscopy is what?

7   A     It's when they put a tube into the actual trachea into  
8   the bronchi and look into the lungs.

9   Q     So, Doctor Nguyen, during surgery, they looked inside  
10   the lungs. They looked outside the lungs.

11           Correct?

12   A     Yes, sir.

13   Q     And they did a right thoracotomy.

14           what's a thoracotomy?

15   A     Opening the chest.

16   Q     Okay. And they opened the chest.

17           Bilobectomy. They removed the upper lobe and right  
18   middle lobe by Doctor Nguyen. He also had a mediastinal  
19   lymph node dissection.

20           Is that when they remove the lymph nodes from the --  
21   from around the lung area?

22   A     Yeah, when they do the mediastinoscopy they'll sample  
23   the nodes, but you can also remove the nodes surgically.

24   Q     Okay. And, and they were all negative, correct?

25   A     Yes, sir.

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by Mr. Williford

1 Q Okay. And then operative findings were no -- were  
2 notable for no evidence of metastatic disease.

3 A Yes, sir.

4 Q Correct?

5 Okay. The pathology from the patient's surgery on  
6 December 2<sup>nd</sup> showed a 9-centimeter adenocarcinoma and we  
7 went through that. We just looked at the---

8 A Yes, sir.

9 Q Okay. Margin status notable, was notable for a  
10 negative, but close, total of 13 lymph nodes were dissected  
11 and were negative, and there was no lymph node vascular  
12 invasion. The patient reported feeling well following his  
13 surgery.

14 A Yes, sir.

15 Q Correct?

16 Okay. Okay. And Doctor Corso felt that, you know, he  
17 might have a relapse from his lung cancer.

18 Do you see that?

19 A Felt he has significant risk and that's why he gave  
20 them, he gave him eventual radiation and chemo.

21 Q Well, we'll get to that.

22 And, and certainly it's appropriate, early on, to  
23 consider radiation and chemotherapy because you, you could  
24 have a recurrence and that's a possibility for sure.

25 A Well, that's, that's true, and if you do have a

Barry Singer - Cross-examination  
by Mr. Williford.

1 recurrence, you know the patient is gonna succumb to cancer.

2 Q Okay. Right here, on the questioning, the patient has  
3 done quite well after his surgery.

4 Now, now, this is Doctor Monitto describing his  
5 interactions with the patient.

6 Correct?

7 A Yes, sir.

8 Q Okay. So he's talking to Mr. Farr and he's getting  
9 this information.

10 True?

11 A Yes, sir.

12 Q All right. He denies any pain or fatigue. He states  
13 that, overall, his exercise capacity is actually improved  
14 since his surgery and he has less dyspnea on exertion.

15 Now, what, what is dyspnea?

16 A Shortness of breath.

17 Q Shortness of breath.

18 So he's getting better doing more exercises and he's  
19 got less shortness of breath after his right lung cancer  
20 surgery?

21 A Yes, sir.

22 Q He denies any thoracic pain, hemoptysis, history of  
23 wheezing.

24 What are those things?

25 A Hemoptysis is coughing up blood. Wheezing is wheezing.



Barry Singer - Cross-examination  
by Mr. Williford

1 Q Okay. The third page. The assessment, Doctor.  
2 Monitto's assessment. This is a 68-year old male status  
3 post-thoracotomy. The patient has excellent performance  
4 status.

5 Do you see that?

6 A Yes, sir.

7 Q Okay. Recommendations. This is what Doctor Monitto is  
8 describing as what's recommended at this time. This is  
9 January after his right lung surgery.

10 Right?

11 A Yes, sir.

12 Q Okay. If his bronchial margin were positive, I think  
13 there's a role for postoperative adjuvant radiotherapy.  
14 However, given the pathology report that the margin was  
15 negative, although close, I think that radiation --  
16 radiotherapy is likely not indicated.

17 Do you see that?

18 A Yes, sir.

19 Q And Doctor Monitto signed that?

20 A Yes, sir.

21 Q Okay. So, at this point, based on the surgery by  
22 Doctor Nguyen, based on the pathology determination grossly,  
23 you know, looking at the tissues and then under the  
24 microscope and then his improvement, Mr. Farr's improvement,  
25 they actually recommended no radiotherapy.

Barry Singer - Cross-examination  
by Mr. Williford

1 A Initially, yes, sir.

2 Q Okay. Now, did you review the Medical University of  
3 South Carolina pathology records?

4 A Yes, sir.

5 Q Okay. And, and we heard this yesterday.

6 Mrs. McKaughan testified that, you know, she wanted to go  
7 and, and take her father to the Medical University of South  
8 Carolina to get a second opinion.

9 A Yes, sir.

10 Q Do you recall that?

11 Okay.

12 A It's often done.

13 Q And so, when they went to the Medical University of  
14 South Carolina in terms of whether or not, you know, they  
15 should seek a second opinion for further chemotherapy, one  
16 thing they did is they wanted to look at the pathology  
17 slides themselves?

18 A Sure.

19 Q Okay. And that's reasonable and appropriate?

20 A Yeah, they always do.

21 Q So here we are. We have the Medical University of  
22 South Carolina pathology report, and this is dated -- the  
23 date of collected was February 14<sup>th</sup>, 2011. They received  
24 it that same day. Let's look at the diagnosis. Outside  
25 slides.

Barry Singer - Cross-examination  
by Mr. Williford

1 Now, what does outside slides mean?

2 A It means that the biopsy or the tissue wasn't obtained  
3 in the hospital. It came from elsewhere.

4 Q Okay. So these are the ones they got from Spartanburg?

5 A Right.

6 Q Okay. The same ones Doctor Wren looked at?

7 A Yes, sir.

8 Q Okay. We see lymph nodes. No carcinoma identified.

9 Do you see that?

10 A Yes, sir.

11 Q And obviously carcinoma is cancer. So no cancer  
12 identified.

13 Other lymph nodes. No carcinoma identified.

14 Correct?

15 A Yes, sir.

16 Q Other lymph nodes, no carcinoma identified.

17 Do you see that?

18 A Correct.

19 Q Okay. Tumor, here's -- now here's the lung. The  
20 bilobectomy, sections of the lung. Tumor histologic type.

21 Now, histologic type, that is, that is what, at the  
22 cellular level, they're, they're looking at.

23 Correct?

24 A Correct. On---

25 Q Different patterns of cells and also what they look

Barry Singer - Cross-examination  
by Mr. Williford

1 like at a very microscopic level, correct?

2 A Yes, sir.

3 Q Okay. And, and tumor histologic type, adenocarcinoma  
4 papillary predominate histological sub-type.

5 Correct?

6 A Yes, sir.

7 Q Okay. So these pathologist, and they're two of them we  
8 can see at the end of the report, but they looked at the  
9 same slides as Doctor Wren in Spartanburg and they came up  
10 with the same diagnosis.

11 Correct?

12 A Yes, sir.

13 Q Okay. And here, in terms of well to moderately  
14 differentiated, in terms of the grade, that's not poorly  
15 differentiated.

16 Correct?

17 A Correct.

18 Q And, on direct examination, you mentioned that poorly  
19 differentiated histologic grade cancers, they have more  
20 prolific possibility of spreading?

21 A They do.

22 Q Okay. But this was not fully differentiated, was it?

23 A Correct.

24 Q Okay. Tumor extension was complied -- confined to the  
25 lung. The margins, we started here, margins are bronchial

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by Mr. Williford

1 margin, uninvolved. The vascular margin, uninvolved. The  
2 parenchymal, parenchymal margin, uninvolved. Basically no  
3 cancer's identified.

4 Correct?

5 A Yes, sir.

6 Q And the same thing, lymphovascular invasion not  
7 identified.

8 Correct?

9 A Yes, sir.

10 Q And all the lymph nodes, the peribronchial lymph nodes,  
11 it's around the bronchus.

12 Correct?

13 A Yes.

14 Q There were eight of them and they were all negative?

15 A Yes, sir.

16 Q And then 13 other lymph nodes, they were all negative?

17 A Yes, sir.

18 Q Zero out of thirteen 13 mean it's negative, correct?

19 A Yes, sir.

20 Q Okay. And then they, they stage the tumor and they,  
21 they, you know, again, this is a T for a primary lung tumor.

22 Correct?

23 A Yes, sir.

24 Q Okay. They go down and then they're a few other lymph  
25 nodes right here and right here. No carcinoma identified

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by Mr. Williford

1 and no carcinoma identified.

2 Correct?

3 A Yes, sir.

4 Q And comment, it has this diagnosis essentially  
5 correlates with that rendered by the outside pathologist?

6 A Yes, sir.

7 Q And basically what you're saying is we pretty much  
8 agree with Doctor Wren in Spartanburg?

9 A Yes, sir.

10 Q Okay. There's a difference in staging, but in terms of  
11 what they found --

12 A Yes, sir.

13 Q -- it was the same.

14 Right here, which is signed by two physicians at the  
15 Medical University of South Carolina. All microscopic  
16 sections with this case were examined and the results of  
17 each examination is/are incorporated in the above diagnose.  
18 Doctor Eberts, and then looks like Masha Belik, M.D. I  
19 certify that I personally conducted a diagnostic evaluation  
20 of the above specimens and have rendered the above  
21 diagnoses.

22 Correct?

23 A Yes, sir.

24 Q Now, on direct examination you were answering questions  
25 about Mr. Farr's prognosis after Doctor Nguyen's surgery.

Barry Singer - Cross-examination  
by Mr. Williford

1 Do you recall that?

2 A Yes, sir.

3 Q All right. Let's look at that a little bit. December  
4 22<sup>nd</sup>, 2010.

5 So this is about three weeks after his surgery.

6 Correct?

7 A Yes, sir.

8 Q Okay. I just want to go quickly to impression and  
9 plan.

10 As above, Stage 2 non-small cell lung cancer with  
11 negative margins, negative lymph nodes. Mr. Farr is doing  
12 quite well from his surgery and I am pleased that his  
13 oxygenation is as good as it is. Certainly he is on track  
14 to make a complete recovery and this is signed by Doctor  
15 Nguyen.

16 A Yes, sir.

17 Q Correct?

18 Here's Doctor Nguyen again. This is about a month  
19 later in January and he goes through the history of cancer  
20 and then his interval history. Six weeks now from his  
21 operation. He continues to do quite well and is no longer  
22 taking any pain medication. He has resumed his normal  
23 activities with full function of his right arm and shoulder.  
24 He denies any significant shortness of breath.

25 Correct?

Barry Singer - Cross-examination  
by Mr. Williford

1 A Yes, sir.

2 Q His room air saturations are 96 percent.

3 Correct?

4 A Yes, sir.

5 Q That means he's getting decent oxygen in his, you know,  
6 in, in terms of his breathing?

7 A Yes, sir.

8 Q Okay. So his lungs and his cardiovascular system are  
9 functioning quite well actually at this point.

10 A At that point, yes, sir.

11 Q Okay. I want to move to another note. This is  
12 February 2<sup>nd</sup>. Again, this is Doctor Nguyen for follow-up.

13 Mr. Farr presents for follow-up with me with his family  
14 regarding concerns about adjutant therapy.

15 Adjutant therapy, as you mentioned again, is, again,  
16 can, you know, radiation or chemotherapy, those kind of  
17 things?

18 A With no evidence of disease at the time, correct.

19 Q Okay. He is now approximately two months out from his  
20 operation.

21 A Uh-huh. (Affirmative).

22 Q He has met with Doctor Corso and his case was presented  
23 at out multidisciplinary conference.

24 Again, that's kind of like the Tumor Board?

25 A It is.



Barry Singer - Cross-examination  
by Mr. Williford

1 Q Okay.

2 A Yes.

3 Q Recommendations were for either observation or for  
4 contemporary adjunct therapy. The issue of Tarceva was  
5 raised and thought to be best reserved for situations in  
6 which the cancer has returned or is metastatic.

7 And really what he's saying there is this isn't really  
8 that situation. It's -- it hadn't returned. It's not  
9 metastatic. So Tarceva is not really, not really indicated.

10 I mean that's what he's saying.

11 A To some degree, but it's considered.

12 Q Considered, sure, and that would be, that would be  
13 appropriate to consider it?

14 A Yes, sir.

15 Q Clinically, he denies any worsening shortness of  
16 breath.

17 A Yes, sir.

18 Q And then down under impression and plan, from a  
19 clinical surgical prospective, I feel that he is recovering  
20 nicely and we'll see him back in a few months, and that's,  
21 again, Doctor Nguyen.

22 Correct?

23 A Yes, sir.

24 Q A few months later, Doctor -- Mr. Farr goes to his  
25 oncologist and there's -- and is that Palmetto Hematology

Barry Singer - Cross-examination  
by Mr. Williford

1 Oncology. So, a few months later, now it's May of 2011.

2 Do you see that?

3 A Yes, sir.

4 Q Okay. Flip to the next one.

5 A (Witness complies.)

6 Q You know, they're, they're doing an exam and no  
7 neuropathy, no shortness of breath, and, unfortunately he  
8 continues to smoke in spite of recommendations to quit and  
9 he, he certainly continued.

10 Didn't he?

11 A Yes, sir.

12 Q And they do a physical exam.

13 So, in the oncology office visit, they're still  
14 examining him. They're not just talking to him.

15 Correct?

16 A I would expect them to, yes, sir.

17 Q Sure.

18 And under lymph nodes, no palpable surgical  
19 superclavicular axillary or inguinal adenopathy.

20 Do you see that?

21 A Yes, sir.

22 Q So they're, they're no clinical signs, no, no signs of  
23 lymph nodes being suspicious from the doctor palpating or  
24 touching or feeling around?

25 A That's right.

Barry Singer - Cross-examination  
by Mr. Williford

1 Q Correct?

2 Okay. I'll come back to another note in a moment.

3 All right. Okay. Let me, let me do it real quick.

4 Let me, let me pull from the medical record here.

5 (Pause.)

6 Q Okay. This is directly from medical record notebooks  
7 in evidence, and, again, this is just a continuation of that  
8 note that we just went over. This is Doctor Mehta, the  
9 oncologist, you know, again, and this is from, from that May  
10 visit.

11 Right here under assessment and plan. It says right  
12 here, unfortunately the patient continues to smoke and I  
13 have, once again, expressed to him the greatest factor of  
14 his cancer coming back is because he continues to smoke on a  
15 regular basis. He verbalizes understanding and states that  
16 he will continue to try to cut down. He continues to refuse  
17 formal smoking cessation.

18 Do you see that?

19 A Yes, sir.

20 Q Okay. And I know smoking can be difficult in terms of  
21 stopping.

22 Correct?

23 A Stopping, yes. Nicotine addiction is very difficult.

24 Q But in the face of lung cancer, certainly a good thing  
25 to try to do particularly having survived lung cancer?

Barry Singer - Cross-examination  
by Mr. Williford

1 A Yes, sir.

2 Q Now, they continue to follow Mr. Farr.

3 A Yes, sir.

4 Q And he would come back for some visits, and, at this  
5 point, they decided they were gonna do a bronchoscopy to  
6 kind of see what's going on in his lungs. Procedure date is  
7 August 22<sup>nd</sup>, 2011.

8 So this is about three months after that last note --

9 A Yes, sir.

10 Q -- by Doctor Mehta.

11 Now, again, fiberoptic bronchoscopy and this is where  
12 they have a lighted scope and they're actually going into  
13 the lung and they -- they're looking at the lung to see what  
14 they, they can find.

15 Correct?

16 A Yes, sir.

17 Q Okay. Here under procedure and detail it says  
18 examination of the left upper and lower lobes appear free of  
19 secretions, mass, or bleeding. Examination of the right  
20 upper and middle lobe stumps were in tact. There was no  
21 bulging. There was no endobronchial mass. There were no  
22 mucosal changes. Wayne Needle was done and the area was  
23 lavaged and brushed. The right lower lobes were clear and  
24 free of secretions, mass, or bleeding, and, under diagnosis,  
25 impact of right upper lobe and right middle lobe stump with

Barry Singer - Cross-examination  
by Mr. Williford

1 no endobronchial lesion.

2 Do you see that?

3 A Yes, sir.

4 Q Okay. So they're looking at his lung. They're looking  
5 at it in his lung. This is about a year after he was  
6 diagnosed. Not quite a year after he was diagnosed, and  
7 they're, they're following him and they're not seeing  
8 anything based on the bronchoscopy.

9 A Well, he did that because he had a positive PET Scan  
10 and they were concerned.

11 Q That's right.

12 Then the PET Scan actually decreased on the right?

13 A That's correct.

14 Q So the PET Scan is, is -- and it's fair for the  
15 physicians and reasonable certainty to, to follow along and,  
16 and look and see, you know, is it coming back?

17 A Correct.

18 Q And there was a positive PET Scan, but it actually  
19 decreased later on?

20 A It did.

21 Q On the right.

22 And when they did a bronchoscopy, that was negative?

23 A Yes, sir.

24 Q Okay. I want to move to -- I've only got a few more,  
25 doctor.

Barry Singer - Cross-examination  
by Mr. Williford

1       Okay. Again, this is Doctor Mehta. He's an  
2 oncologist. This is January 16<sup>th</sup>, 2012.

3       So now we are, we are over two years after Doctor Wan  
4 saw Mr. Farr?

5 A     Yeah, about two years.

6 Q     And you understand Doctor Wan only saw Mr. Farr one  
7 time?

8 A     Correct.

9 Q     Two years out from that, he's getting follow-up care  
10 and he had a recent hospitalization for bronchitis.

11       Bronchitis, what is that?

12 A     Just inflammation.

13 Q     Inflammation in the lung?

14 A     Right, the bronchus.

15 Q     Not cancer?

16 A     Correct.

17 Q     Okay. He was hospitalized between these times. He was  
18 treated with antibiotics. Chest x-ray during course of  
19 admission did not show any evidence of recurrent lung  
20 cancer.

21       Do you see that?

22 A     Yes, sir.

23 Q     Under tobacco, Mr. Farr continues to smoke one-half  
24 pack per day. Not interested in any formal smoking  
25 cessation program. Counseled at length today.

Barry Singer - Cross-examination  
by Mr. Williford

1 And, and when a physician typically, in your  
2 experience, puts at length, you know, what are they trying  
3 to communicate?

4 A They're trying to communicate to the patient that it's  
5 significant to do what they're asking them to do.

6 Q Sure.

7 And obviously they care about Mr. Farr?

8 A Yes, sir.

9 Q And, and even though smoking's difficult, they want him  
10 to stop because look, you're two years, two years out from  
11 surviving lung cancer and he, and he's still smoking?

12 A Yes, sir.

13 Q Okay. And, at this point, the plan was -- at this time  
14 we will plan on reimaging the patient in approximately three  
15 months from his most recent previous scans.

16 So, again, they are -- they're doing what they need to  
17 do in, in terms of following up and, and trying to see what  
18 his prognosis is?

19 A Yes, sir.

20 Q Okay. Is otherwise doing fairly well.

21 A (Witness nods affirmatively.)

22 Q Again, we have continued to encourage him to quit  
23 smoking and we have told him that this is his greatest risk  
24 of recurrence in his disease coming back and he understood  
25 what they're talking about according to the records.

Barry Singer - Cross-examination  
by Mr. Williford

1 True?

2 A Yes, sir.

3 Q Okay. And that's just signed by Doctor Mehta.

4 And then -- so that was two years after Doctor Wan saw  
5 the patient. At that point, cancer free, continues to  
6 smoke, he's been encouraged not to, and then we find out, in  
7 April of 2012 -- and he, and he unfortunately passed away in  
8 June of 2012.

9 A Yes, sir.

10 Q So a few months later.

11 But, in April, we find out that, you know, there's  
12 something suspicious on the left side.

13 Correct?

14 A Yes, sir.

15 Q Okay. And they did surgery.

16 Correct?

17 A Yes, sir.

18 Q Okay. And Doctor Nguyen, Christophe Nguyen, the one  
19 who did the right lung cancer, ending up doing the left lung  
20 wedge resection.

21 Correct?

22 A Correct.

23 Q And a resection is where you cut out the tissue.

24 Correct?

25 A Yes, instead of doing a lobectomy they just took out



Barry Singer - Cross-examination  
by Mr. Williford

1 the portion of the lung -- of the lobe that had the cancer,  
2 yes, sir.

3 Q Sure.

4 And, and here's the surgical pathology report from  
5 Doctor Rosanna Lapham, and we will hear from her later this  
6 week.

7 Now, again, the surgical pathology report is a  
8 microscopic examination of the tissues that were taken out  
9 during surgery?

10 A Yes, sir.

11 Q Okay. And the diagnosis is well-differentiated  
12 adenocarcinoma. Again, not poorly differentiated, but it's  
13 well.

14 So it's---

15 A Correct.

16 Q ---better, right?

17 A Yes, sir.

18 Q It says lepidic predominate with an acinar pattern, and  
19 there's another portion that was also of the same tissue.

20 Correct?

21 A Yes, sir.

22 Q And the same thing here, well differentiated  
23 adenocarcinoma lepidic predominate and with an acinar  
24 pattern.

25 Do you see that?

Barry Singer - Cross-examination  
by Mr. Williford

1 A Yes, sir.

2 Q Okay. Tumor shows a predominate lepidic pattern with  
3 areas of acinar pattern of infiltrations. Within the random  
4 sections of the lung parenchymal there are multiple minute  
5 foci of lepidic in situ adenocarcinoma.

6 Do you see that?

7 A Yes, sir.

8 Q Okay. Now, in situ typically means that's where the  
9 cancer originated?

10 A It means noninvasive. It doesn't necessarily mean it  
11 originated there. It just means noninvasive.

12 Q Noninvasive and it hadn't spread?

13 A Correct.

14 Q Based on that?

15 A Correct.

16 Q And lepidic predominate with an acinar pattern is a  
17 different sub-type under the new classifications than  
18 adenocarcinoma papillary predominate sub-type?

19 A Well, they're different, but they all contain the same  
20 things.

21 Q Well---

22 A It contained papillary, lepidic, and acinar, but the  
23 acinar and lepidic are predominate. In the papillary,  
24 acinar and lepidic are present too, but they're not  
25 predominate.

Barry Singer - Cross-examination  
by Mr. Williford

1 Q Okay. Well -- right. But in terms of diagnosing the  
2 pathology, they are different tumors predominately, correct?

3 A It's a different histology. I believe it's the same  
4 cancer that's spread.

5 Q Okay. Now, pathologic stage, P2 -- T2A.  
6 Do you see that?

7 A Yes, sir.

8 Q And when a pathologist does that, that's because it's  
9 staged ---they stage it primary, do they not?

10 A They can do it that way, yes, sir.

11 Q And that's what she did?

12 A Metastatic, it's, it's---

13 Q Okay.

14 A ---you don't have to stage it.

15 Q But primary is not metastatic.

16 Primary is actually a new one?

17 A Yes, but the pathologist doesn't know that.

18 Q She -- Doctor Lapham doesn't know that?

19 A No, she doesn't know it's primary metastatic.

20 Q Did you read her deposition?

21 A Yes, I did.

22 Q And you, you read where she said this was not  
23 metastatic and this was a primary?

24 A She said that, yes, she did.

25 Q Okay.

Barry Singer - Cross-examination  
by Mr. Williford

1 A But she doesn't know that just from looking at it.

2 Q You'll -- we will be sure to ask her that.

3 Discharge summary, Doctor Nguyen.

4 A Uh-huh. (Affirmative).

5 Q Now, this is the discharge summary from, from just that  
6 wedge resection of the left lung.

7 A Yes, sir.

8 Q Okay. And the pathology report we just looked at  
9 correlates with this note.

10 Correct?

11 A Correct.

12 Q And a discharge summary is, is the summary of that  
13 patient's hospital visit at that time?

14 A Yes, sir.

15 Q All right. And this is from Doctor Nguyen's surgery as  
16 the attending?

17 A Yes, sir.

18 Q And the admitting diagnosis is what?

19 A Primary neoplasm of the lung.

20 Q And that is a different cancer than -- when they say  
21 primary, that is not a metastatic cancer?

22 A Correct.

23 Q That's what they mean?

24 A That's what this label meant. It doesn't mean it's  
25 that one because he was treating it as a metastatic lesion.

Barry Singer - Cross-examination  
by Mr. Williford

1 Q All right. There's a chest x-ray. This is June of  
2 2012. He's back in the hospital again, you know, with some  
3 issues with his lungs, and they're looking at it. They do  
4 an AP Chest.

5 That's an x-ray, correct?

6 A Yes, sir.

7 Q Right here it says parenchymal lung densities are, are  
8 noted bilaterally. Most typical of pneumonia.

9 A Yes, sir.

10 Q Pulmonary edema would be a possibility as well.

11 So, at this point, he's developing some pneumonia?

12 A It's a terminal phase of his disease, yes, sir.

13 Q And extensive parenchymal lung densities bilaterally  
14 are a little more pronounced than on the previous study.  
15 Findings most compatible with pneumonia. Pulmonary edema  
16 would be a clinical consideration as well.

17 Do you see that?

18 A Yes, sir.

19 Q And this is the, the pulmonary consultation, a  
20 pulmonologist, this is the last note I'm gonna go over at  
21 the moment, and the pulmonary consultations is a  
22 pulmonologist giving their, you know, assessment of Mr.

23 Farr?

24 A Yes, sir.

25 Q True?

Barry Singer - Cross-examination  
by Mr. Williford

1 And this is that same day, June 10<sup>th</sup>, 2012.

2 Okay. The pulmonary consultation, consultation was  
3 respiratory failure and the impression.

4 what is impression?

5 A what they feel the diagnosis are.

6 Q The diagnoses. And it was right lower lobe pneumonia  
7 is number one. Number two, end stage chronic obstructive  
8 disease.

9 A Yes, sir.

10 Q That's COPD?

11 A Yes, sir.

12 Q And acute on-chronic respiratory failure.

13 Correct?

14 A Yes, sir.

15 Q That means he's got a chronic problem, but it's just  
16 now worse?

17 A It's acute problem superimposed on the chronic problem.

18 Q Okay. And then they talk about a history of lung  
19 cancer. Not saying it's lung cancer now, but they're  
20 talking about he's had a history of it.

21 Correct?

22 A Yes, sir.

23 Q Next page in the note, long past history of tobacco  
24 use. Apparently continues to smoke, and this is June 10<sup>th</sup>  
25 of 2012.

Barry Singer - Cross-examination  
by Mr. Williford

1 Correct?

2 A Yes, sir.

3 Q And unfortunately Mr. Farr died on I think it was June  
4 19<sup>th</sup>. So---

5 A Yes, sir.

6 Q ---a little over a week later.

7 Correct?

8 A Yes, sir.

9 Q All right. Isn't it true, doctor, that you do not know  
10 the criteria for determining a multiple primary lung cancer  
11 in terms of being synchronous or metachronous?

12 A No, I don't.

13 Q You don't know that criteria?

14 A No.

15 Q You're an oncologist and you don't know that?

16 A Correct.

17 Q And---

18 A As I've never seen synchronous lung cancers in my 42  
19 years of practice.

20 Q And there are certain criteria that help diagnose  
21 multiple primary lung cancers --

22 A I'm not---

23 Q -- and multiple primary lung cancers are just that.

24 They're different new -- they're different cancers from each  
25 other?

Barry Singer - Cross-examination  
by Mr. Williford

1 A Yes, sir.

2 Q And there's a certain set of criteria?

3 A Yes, sir.

4 Q And you're offering the opinion that Mr. Farr died from  
5 his right lung cancer metastasizing to his left, and yet you  
6 don't know the criteria for determining what the multiple  
7 primary tumors are?

8 A That's correct.

9 Q In fact, when I took your deposition you were actually  
10 never given the pathology report from Doctor Rosanna Lapham  
11 to even know what the left cancer was, correct?

12 A I don't recall, but that may be true.

13 Q Okay. So you're giving an opinion in a deposition and  
14 you didn't even have all the information if that's true?

15 A If that's true, I don't.

16 Q You would agree that Mr. Farr unfortunately didn't  
17 abide by his physicians and, and his recommendations -- the  
18 recommendation to stop---

19 A To stop smoking, correct. I agree.

20 Q And I think you mentioned, on direct examination, his  
21 smoking most likely caused the lung cancer initially?

22 A I would think so, yes, sir.

23 Q Okay. Certainly his smoking did not help him and  
24 probably affected him in a negative way throughout his  
25 course as he continued to smoke?



Barry Singer - Cross-examination  
by Mr. Williford

1 A Well, I'm sure it contributed to his COPD. Sure.

2 Q Okay. And, and the way that works is, when you have  
3 COPD, Chronic Obstructive Pulmonary Disease, it's difficult  
4 to breathe?

5 A Correct.

6 Q Okay. And when it becomes difficult to breath, you can  
7 have atelectasis?

8 A Yes, sir.

9 Q And atelectasis is a collapse of, of the lungs in a  
10 sense where it just makes it difficult to breathe?

11 A Correct.

12 Q And when you have the lungs -- when you have smoking  
13 and COPD and atelectasis and you have pneumonia, pneumonia  
14 can develop cause you're not passing airway through to, to,  
15 to kind of ventilate the lungs?

16 A That is true.

17 Q True.

18 All right. And that is a progression of what occurs  
19 with COPD?

20 A Yes, sir.

21 Q Doctor, if Mr. Farr's cancer was successfully removed  
22 by Doctor Nguyen in December of 2010, and if he did not die  
23 of that right lung cancer, which was alleged to have been  
24 missed by Doctor Wan, you would agree that Doctor Wan did  
25 not cause the death of Mr. Farr?

Barry Singer - Cross-examination  
by Mr. Williford

1 A If that occurred, correct. I would agree.

2 Q I want to briefly go over a few final questions and  
3 then I'll be done.

4 Doctor, you started doing expert witness work in the  
5 1970's?

6 A Correct.

7 Q And you, you have reviewed well over 1,500 cases?

8 A Yes, sir.

9 Q You have given deposition testimony at least 700 times?

10 A Yes, sir.

11 Q You have testified 1,079 times for the plaintiff and  
12 only six times for the defendant in your career?

13 A Most likely, yes, sir.

14 Q Okay. You have testified over 300 times in court?

15 A Yes, sir.

16 Q About 99 percent of the legal cases you get involved in  
17 have been in medical malpractice cases?

18 A Yes, sir.

19 Q By far, almost all of your testimony has been against  
20 doctors or healthcare providers?

21 A Yes, sir.

22 Q About 95 percent of your legal work has been against  
23 doctors.

24 True?

25 A Yes, sir.

Barry Singer - Cross-examination  
by Mr. Williford

1 Q And you have testified for plaintiffs in at least 47 of  
2 the 50 United States?

3 A Yes, sir.

4 Q There were years when you would review about 20 legal  
5 cases a year?

6 A Yes, sir.

7 Q And you have charged 450 an hour for your time in this  
8 case?

9 A In this case.

10 Q How much are you charging for being here at trial?

11 A \$7,500.

12 Q Okay. Is that just for one day?

13 A Two days, sir.

14 Q Two days.

15 A I came yesterday.

16 Q So that's 1,500?

17 A Yes, sir.

18 Q I mean -- I'm sorry. \$15,000?

19 A No, 7,500 for the two days.

20 Q Okay. 75 for the days.

21 How much time do you estimate that you have put into  
22 this case?

23 A I'd say---

24 Q Before trial.

25 A Before trial, ten or fifteen hours.

Barry Singer - Cross-examination  
by Mr. Williford

1 Q Ten or fifteen hours.

2 So ten or fifteen hours at 450 an hour?

3 A That's what I charge. That includes that.

4 Q Okay. It includes that and then---

5 A Yes, sir.

6 Q ---in addition to that, it's the \$7,500 for being here  
7 today at trial?

8 A Yes, sir.

9 Q You have made upwards of 90,000 a year testifying in  
10 legal cases.

11 Correct?

12 A Yes, sir.

13 Q It would be fair to say that you had -- you have made  
14 millions of dollars giving expert witness work, doing expert  
15 witness work primarily for plaintiffs all across the United  
16 States?

17 A Yes, sir.

18 Q Essentially all of your millions have been made  
19 testifying against doctors?

20 A Yes, sir.

21 Q You have testified against physicians in almost all  
22 specialties of medicine?

23 A Well, they've been involved in all specialties of  
24 medicine. I have not given standard of care.

25 Q Okay. Let me go through a few.

Barry Singer - Cross-examination  
by Mr. Williford

1 OBGYNs, you've testified against them?

2 A Well, I have given causation issues. Sure.

3 Q Okay. Neurosurgeons?

4 A Yes, sir.

5 Q Psychiatrists?

6 A Probably.

7 Q Rheumatologists?

8 A Yes, sir.

9 Q Vascular surgeons?

10 A Yes, sir.

11 Q Heart surgeons?

12 A Well, any, any physician who has done anything that  
13 would involve cancer or hematologic disorder I would have  
14 testified. Sure.

15 Q Gastroenterologists?

16 A Yes, sir.

17 Q I'm curious, doctor, what psychiatrist missed cancer?

18 A I don't know unless they gave someone other drugs that  
19 caused the hematologic problem and didn't pick -- check up  
20 on it.

21 Q And you don't recall?

22 A No.

23 Q I mean there have been so many cases you just don't  
24 recall specifics?

25 A I don't recall, no, sir.

Barry Singer - Cross-examination  
by Mr. Williford

1 Q All right. You've done so much witness work, expert  
2 witness work that I believe a secretary at your office or  
3 her daughter created a painting of you with a law diploma.

4 Isn't that true?

5 A Yes, sir.

6 Q Doctor, isn't it true that you failed, you failed your  
7 oncology boards when you took them?

8 A The first time, yes, sir.

9 Q Okay.

10 MR. CALLOWAY: Doctor Singer?

11 MR. WILLIFORD: Wait. One last question.

12 MR. CALLOWAY: Oh, I'm sorry.

13 Q Doctor, can a patient die of end stage COPD?

14 A Yes, sir.

15 Q Okay.

16 THE COURT: All right. Ladies and gentlemen, we're  
17 gonna take a short recess. I need to remind you not to have  
18 any discussions among yourselves about anything involving  
19 the case. We'll get you back just shortly.

20 (WHEREUPON, the following takes place outside the  
21 presence of the jury.)

22 THE COURT: Doctor, you may step down. I just need to  
23 remind you you can't have any -- doctor, I just need to  
24 remind you you can't have any discussions with anyone about  
25 the substance of your testimony.

Barry Singer - Redirect examination  
by Mr. Calloway

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: So you may step down.

3 We're gonna take a short break.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. Anything before we bring the  
6 jury back, gentlemen?

7 MR. MCKINNON: Nothing from the Plaintiff, Your Honor.

8 THE COURT: All right. You want to check to see if  
9 they're ready?

10 (WHEREUPON, the following takes place within the  
11 presence of the jury.)

12 THE COURT: Is the Plaintiff ready to redirect limited  
13 to what the defense went into?

14 MR. CALLOWAY: We are, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. CALLOWAY:

17 Q Doctor Singer, in your forty plus years, how many  
18 patients have you seen for oncology purposes?

19 A Oncology, thousands. Maybe tens of thousands.

20 Q How many patients have you seen as an oncologist for  
21 lung cancers?

22 A It's about 30 percent of my practice. Probably  
23 several, many, thousands.

24 Q Mr. Williford asked you on cross-examination, you may  
25 remember, about some questions maybe about whether this

Barry Singer - Redirect examination  
by Mr. Calloway

1 tumor or the left sided tumor may of been a second primary  
2 tumor.

3 Do you remember those types of questions?

4 A Yes, sir.

5 Q In your practice or your experience, your experience,  
6 I'll get you to take a look at this document and another of  
7 his medical records. Look down at the bottom here in number  
8 four.

9 When it uses the word recurrent---

10 MR. WILLIFORD: Your Honor, if he may identify it?

11 MR. CALLOWAY: Sure.

12 MR. WILLIFORD: We don't know what it is.

13 THE COURT: If you would, yes, sir.

14 MR. CALLOWAY: Absolutely. I apologize for that.

15 MR. WILLIFORD: Thank you.

16 Q This is a Spartanburg Regional Medical Center document  
17 from, let's see, the date on this one is October 18<sup>th</sup>,  
18 2011.

19 Do you see that, Doctor, Doctor Singer?

20 A Yes, sir.

21 Q Okay. And number four in there, when you read the word  
22 recurrent, what does that mean to you as an oncologist?

23 A That it's cancer that's recurring. It's not a new  
24 cancer.

25 Q Does that indicate to you that it's -- that the tumor



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1 that's being described there is not a second primary?

2 A Correct.

3 Q I show you another document here.

4 THE COURT: Do y'all have those Bates stamped there?

5 MR. CALLOWAY: I do, Your Honor. I apologize. That  
6 is -- that -- the document that was just shown is PH00010.

7 THE COURT: Thanks.

8 MR. CALLOWAY: Sure.

9 I'll show you another document here, Doctor Singer.

10 This is PH00086. This is a document from Palmetto  
11 Hematology and Oncology.

12 Do you see that?

13 A Yes, sir.

14 Q And the date of the visit here is 1/6/2012.

15 Is that right?

16 A Yes, sir.

17 Q Take you to about right here in the document where it  
18 says patient status post-concurrent chemotherapy for  
19 recurrent not solved -- small cell lung cancer.

20 What does that mean to you as an oncologist?

21 A Again, it's recurrent. It means the same cancer has  
22 recurred.

23 Q What does that tell you or what does that mean to you  
24 as an oncologist relative to whether it's a primary tumor?

25 A It's not a primary. It's a recurring tumor meaning

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1 it's from the -- another tumor that's being previously  
2 diagnosed.

3 Q Show you another document here, doctor. This is a  
4 Spartanburg Regional document and the Bates stamp is  
5 GSO00165. The date on this one, doctor, if you see at the  
6 beginning at the top, the date of service is 4/24/2012.  
7 That would be slightly less than three months before Mr.  
8 Farr's death.

9 Is that right?

10 A Yes, sir.

11 Q Okay. And if you look at the history of present  
12 illness section there, the first line reads Mr. Farr is a  
13 69-year old Caucasian male with a history of recurrent non  
14 small cell lung cancer.

15 What does that tell you when it says recurrent?

16 What does that tell you about the---

17 A It means that the primary tumor has recurred. In other  
18 words, it recurred somewhere other than where it was, but  
19 that's been resected.

20 Q Does that tell you anything about whether he had  
21 metastatic cancer?

22 A Yes, that would certainly indicate that he had spread  
23 this cancer and was metastatic.

24 Q Doctor, in your experience and your understanding,  
25 could Mr. Farr have had no cancer in January of 2010 knowing

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1 what we know from the records where he had a 9-centimeter  
2 tumor in December of 2010?

3 A No, as I said earlier, I mean it takes cancer several  
4 years to develop, even the more rapidly growing cancers, and  
5 he had a moderately well differentiated or well  
6 differentiated cancer. So it had to be present there for a  
7 few years.

8 Q Does surgical resection remove every cancer cell from a  
9 patient's body?

10 A Absolutely not. We, we certainly look at the lymph  
11 nodes, but even in patients with pathologic Stage, Stage 1  
12 lung cancer where every node is negative and every margin is  
13 negative, 30 percent die cause they have metastatic disease  
14 that turns up within a year or two.

15 Q And, in your opinion, is it, is it more likely than not  
16 that that's what happened in Mr. Farr's case?

17 A Yes, sir.

18 Q Is it possible for cancer to metastasize after a tumor  
19 has been surgically resected?

20 A No, you have to have a primary. Metastasis can  
21 appear---

22 Q Right.

23 A ---after the tumor's been resected. But what happens  
24 is that isolated cells go. Some remain dormant for a while.  
25 Lung cancer is one of those that the cells regrow pretty

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1 quickly. It's rare to see a metastasis appear in lung  
2 cancer after three years. Whereas, in breast cancer, in  
3 malignant melanoma, it can appear eight or ten years down  
4 the road.

5 So by lung cancer, the cells have escaped obviously  
6 before the tumor was resected. You have to have a primary  
7 metastasis to occur, and what happens in some patients is  
8 that their immune system may hold back the growth of the  
9 cancer for a period of time. But eventually it fails and  
10 the cancer regrows and that's where we see metastasis.

11 Q Now, diagnosing him with cancer on the right in  
12 November area of 2010 and his ultimate death in, in June,  
13 2012, is that, in anyway, inconsistent with metastatic lung  
14 cancer?

15 A Absolutely not. It's almost very typical. Usually you  
16 see it within one to two years, the metastasis appear, if  
17 it's going to appear. That's why, when we say five years  
18 survivals in lung cancer, generally if the patient survives  
19 five years without a metastasis they are cured.

20 Q Do you remember Mr. Williford taking you through the  
21 operative note from December of 2010 from Doctor Nguyen's  
22 surgery?

23 A Yes, sir.

24 Q It -- he indicated or it seems to indicate in his  
25 records some negative lymph node involvement.

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1 Do you see that?

2 Do you remember that?

3 A Yes, sir.

4 Q Does that indicate to you or does that mean that there  
5 couldn't have been metastatic process?

6 A No, as I said earlier, 30 percent of patients who have  
7 completely negative findings at surgery still have  
8 metastasis appear two, two years later.

9 Q Can you have metastasis appear even with negative  
10 margins?

11 A Absolutely.

12 Q All right. Is it your opinion, to a reasonable degree  
13 of medical certainty, that that's what happened in Mr.  
14 Farr's case?

15 A Yes, sir.

16 Q Doctor Singer, also on, on cross-examination, he took  
17 you through some of the records immediately after that  
18 surgery in December of 2010.

19 Do you remember that, some indication that maybe he was  
20 feeling a little bit better?

21 A Yes.

22 Q Okay. Does that mean that he couldn't later have a  
23 metastasis appear?

24 A No. No. I mean that's normal postoperative course,  
25 the patient feels well after surgery, and then something

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1 appears later. Mr. Farr's case was typical of someone who  
2 has recurrent metastatic disease.

3 Q Doctor Singer, did Mr. -- did Mr. Farr die from COPD?

4 A COPD contributed to his illness at the end. But he  
5 died of metastatic lung cancer.

6 Q Did he die of smoking?

7 A Yes, sir.

8 Q Okay. He died while he was smoking.

9 what was the cause of his death?

10 A The cause of his death ultimately was his lung cancer.  
11 But the lung cancer was caused, in my opinion, initially,  
12 the right lung, by his smoking.

13 Q One last thing I want to take a look at, doctor. This  
14 document is already in evidence, what has previously been  
15 marked as Plaintiff's Exhibit 2.

16 Do you recognize this document, doctor?

17 A Death certificate.

18 Q Okay. At the bottom there, what do you read there as  
19 the cause of Mr. -- excuse me.

20 A Oh, the cause, metastatic lung cancer.

21 Q You -- and do you hold the opinion, to a reasonable  
22 degree of medical certainty, that Mr. Farr died from  
23 metastatic lung cancer?

24 A Yes.

25 MR. CALLOWAY: Your Honor, we have nothing further at

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1 this time.

2 MR. WILLIFORD: Briefly, Your Honor.

3 THE COURT: I usually don't -- y'all want to approach?

4 Mr. Davis.

5 MR. DAVIS: Oh, yes, sir.

6 (WHEREUPON, a bench conference was held out of the  
7 hearing of the jury at this time.)

8 THE COURT: Yes, sir, go -- proceed.

9 (Pause.)

10 MR. WILLIFORD: Your Honor, I don't have any further  
11 questions.

12 THE COURT: Okay. Thank you, doctor. You may step  
13 down.

14 Any reason why that witness can not be excused?

15 MR. MCKINNON: Not from the Plaintiff, Your Honor.

16 THE COURT: All right. Thank you.

17 Sir -- any from the defense?

18 MR. WILLIFORD: No, Your Honor.

19 THE COURT: Thank you, sir.

20 MR. WILLIFORD: That's fine.

21 THE COURT: You may be excused.

22 Plaintiff ready to call their next witness?

23 MR. MCKINNON: Your Honor, may we approach?

24 (WHEREUPON, a bench conference was held out of the  
25 hearing of the jury at this time.)

1 THE COURT: All right. Ladies and gentlemen, we're  
2 gonna need to take a short recess, and, again, I want to  
3 remind you not to have any discussions among yourselves  
4 about anything involving the case. But you may step back in  
5 the jury deliberation room.

6 (WHEREUPON, the following takes place outside the  
7 presence of the jury:)

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: Madam Bailiff, will you bring the forelady  
10 out?

11 You may be seated.

12 THE BAILIFF: I beg your pardon, Your Honor?

13 THE COURT: The forelady.

14 (WHEREUPON, the foreman comes into the courtroom at  
15 this time.)

16 THE COURT: Mr. Jones, this is your first job as  
17 foreperson of this jury.

18 THE FOREMAN: Yes, sir.

19 THE COURT: I've talked with the lawyers and what we've  
20 decided to do is I'm gonna let the jury take an early lunch.

21 THE FOREMAN: Yes, sir.

22 THE COURT: There's some things we have to do outside  
23 of your presence. No sense in holding you hostage back in  
24 the back.

25 THE FOREMAN: Yes, sir.



1 THE COURT: Remind them not to have any discussions  
2 with anybody about anything involving the case. Ask them to  
3 be back in the jury deliberation room let's say by ten  
4 minutes after 1:00 according to that clock. So that will  
5 give them about an hour and a half.

6 okay?

7 THE FOREMAN: Ten after 1:00, sir?

8 THE COURT: Yes, sir.

9 ~~THE FOREMAN: No problem, sir.~~

10 ~~THE COURT: Thank you, Mr. Jones.~~

11 ~~THE FOREMAN: Thank you.~~

12 (WHEREUPON, the following takes place outside the  
13 presence of the foreman.)

14 THE COURT: All right. At this time we're gonna step  
15 down.

16 MR. MCKINNON: Thank you, Your Honor.

17 MR. DAVIS: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, Court was in recess for the lunch hour.)

20 THE COURT: Anything before we bring the jury back?

21 MR. MCKINNON: We're ready to proceed, Your Honor.

22 MR. WILLIFORD: No, Your Honor.

23 THE COURT: All right. Let's see if the jury is ready.

24 THE BAILIFF: Yes, sir.

25 THE COURT: Did y'all email the stuff?

1 MR. CALLOWAY: We did.

2 THE COURT: Did the defense get that to you too?

3 MR. CALLOWAY: Yes, sir.

4 THE COURT: And, Mr. Davis, your proposed verdict form  
5 you had this morning.

6 MR. DAVIS: Yes, sir.

7 THE COURT: Okay.

8 MR. DAVIS: Thank you, sir.

9 (WHEREUPON, the following takes place within the  
10 presence of the jury.)

11 THE COURT: Is the Plaintiff ready to call your next  
12 witness?

13 MR. MCKINNON: We are, Your Honor.

14 THE COURT: Yes, sir.

15 MR. MCKINNON: Plaintiff calls Doctor William Woodruff.

16 THE COURT: Sir, just come right up here. Let the  
17 Clerk of Court swear you in.

18 DOCTOR WILLIAM WOODRUFF, being first  
19 duly sworn, testified as follows:

20 THE COURT: Sir, just have a seat in the red chair and  
21 pull the red chair up to the microphone if you would. Be  
22 sure you try to speak into the microphone cause the lady  
23 that's behind you, the court reporter, as well as that very  
24 last juror over there need to be able to hear you. So  
25 really speak up if you would.

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1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MCKINNON:

5 Q Good afternoon, Doctor Woodruff.

6 A Good morning. Good afternoon.

7 Q Would you tell the jury your name please?

8 A My name's William W. Woodruff, III.

9 Q And where do you live, Doctor Woodruff?

10 A I live in Jamestown, North Carolina.

11 Q And what's that near?

12 what the closest big city to you there?

13 A It's next to Greensboro, North Carolina. That would be  
14 the largest city.

15 Q Doctor Woodruff, what do you do for a living?

16 A I'm an M.D. and I'm a radiologist.

17 Q Okay. And what is a radiologist?

18 A A radiologist is -- I'm a diagnostic radiologist and I  
19 spend the bulk of my time interpreting all kinds of images  
20 like x-rays of all kinds, CT scans, ultrasounds, mammograms,  
21 nuclear medicine, et cetera.

22 Q Okay. Doctor Woodruff, let's go a little bit through  
23 your background if that's okay.

24 Tell me where you went to college.

25 A I went to the University of North Carolina at Chapel

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1 Hill.

2 Q Okay. And what did you get a degree in?

3 A It was a major in chemistry.

4 Q Okay. And then, after that, where did you go to  
5 Medical School?

6 A I went to -- immediately after my undergraduate I went  
7 to Duke University Medical School for four years.

8 Q Okay.

9 A Got my M.D. Degree.

10 Q And then did you do a residency after that?

11 A I did a year internship in, in surgery at Duke and then  
12 stayed four more years at Duke and got my residency in  
13 diagnostic radiology.

14 Q And are you board certified in radiology?

15 A I am.

16 Q And when were you board certified?

17 A I was board certified -- in radiology we get our or at  
18 least at that time you did your board certification right at  
19 the end of your residency. So I was board certified in June  
20 of 1987.

21 Q And have been since then?

22 A I have been since then, yes.

23 Q And that's a national test?

24 A That is correct.

25 Q Can you tell the jury a little bit about what you have

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1 to do?

2 A Well, in our case it's actually three tests. We have  
3 a -- in, in the Fall before I finished residency I had to  
4 pass both a, a written clinical examination and a written  
5 physics examination. Then, in June, to finish up, you did  
6 an oral examination where different examiners showed  
7 different studies of different kinds.

8 Q And, doctor, when did you first start actually working  
9 as a practicing radiologist?

10 A Well, I went straight from my residency to High Point,  
11 North Carolina July 1<sup>st</sup> of 1987. We were a practice  
12 called High Point Radiological Services and I've actually  
13 been in the same situation for now 28 years. Now three  
14 years ago my practice merged into a larger practice,  
15 Greensboro Radiology, so that now they're my, my employer if  
16 you will. So we're all part of the same practice.

17 Q And so you have 28 years of practicing radiologist?

18 A Correct.

19 MR. MCKINNON: Your Honor, the Plaintiff moves that  
20 Doctor Woodruff be qualified as an expert in radiology.

21 MR. WILLIFORD: No objections, Your Honor.

22 THE COURT: Radiology?

23 MR. WILLIFORD: Yes, Your Honor.

24 THE COURT: Normally, ladies and gentlemen, normally a  
25 person can not give opinion testimony. Normally, when a

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1 person testifies, they must testify as to what they either  
2 saw, heard, or sensed by smell, or something of that nature.  
3 However, there is an exception when someone is qualified  
4 because of education or experience. They are permitted to  
5 give their opinion in certain areas if the Court qualifies  
6 them that way.

7 This witness will be qualified in the area of radiology  
8 to give opinion testimony in that area. That does not mean  
9 that you must accept the opinion. But it is evidence for  
10 you to use in anyway that you see fit.

11 Yes, sir.

12 MR. MCKINNON: Thank you, Your Honor.

13 THE COURT: Uh-huh. (Affirmative).

14 CONTINUED DIRECT EXAMINATION

15 BY MR. MCKINNON:

16 Q Doctor Woodruff, how much of your time do you spend  
17 practicing radiology and how much time doing expert witness  
18 work like this?

19 A Well, I would say that I do 90 -- between 90 and  
20 95 percent of my time is the clinical practice of radiology,  
21 and so say somewhere five, maybe seven percent at the most.

22 Q Five percent of your time would be witnessing type  
23 work?

24 A At, at most.

25 Q Okay. And I'm paying you to be here today?

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1 A You are.

2 Q Right?

3 A Yes, you are.

4 Q How much am I paying you to be here?

5 A You're paying me 3,500 to be here today.

6 Q Okay. Come down from North Carolina and take a day, a  
7 day off from work?

8 A Correct.

9 Q Doctor Woodruff, you yourself have been involved in a  
10 couple med mal cases, right?

11 A You mean as a---

12 Q Personally.

13 A Yes, I have.

14 Q Just very briefly, do you want to talk about those?

15 A I've had two cases that both settled. One in 2001 and  
16 one early 2002. One was -- several of us in my practice,  
17 you know, we saw a lesion that we thought was a bone, bone  
18 lesion called Paget's Disease. It turned out to be a rare  
19 form of cancer and, and that went to that trial and we  
20 settled that.

21 Q And you are a partner and one of the owners of your  
22 firm?

23 A Yes. Yes.

24 Q Okay. Doctor, the main thing we're gonna be here  
25 talking about today is x-rays --

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1 A Yes.

2 Q -- and I know the jurors know what an x-ray is, but  
3 you -- can you tell them a little about how they work, you  
4 know, what it --.

5 A Right. Sure.

6 Basically what we do is -- an x-ray is a type of, of,  
7 of -- it, it allows us -- it will penetrate soft tissues and  
8 certain things, like, for instances, if we'll see air -- the  
9 x-ray then completely goes through the air. That's why the  
10 look -- the way we do it, it will look black when we show  
11 you x-rays.

12 Bones stop the x-ray beam. So they will look  
13 relatively white and soft tissues will be shades of gray  
14 because they, they stop part of the, of the beam going  
15 through. And we will do it -- we will -- you know,  
16 basically patient stands in front of a, of a tube and then  
17 there's a cassette and the image goes through and we  
18 make up -- we make a, an image. I mean it can either be done  
19 digitally or, in this case, they were done -- actually  
20 captured on, on x-ray film.

21 Q And, doctor, in this case, we're gonna be talking about  
22 two chest x-rays.

23 why do physicians sometimes order two chest x-rays on  
24 someone?

25 A Well, well, first of all, if I can correct you, it's



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1 actually two views of one---

2 Q Thank you.

3 A ---examination.

4 Q Thank you.

5 A Now, the reason that we normally do two views -- and  
6 one is called a frontal view. It's also known as a PA  
7 viewing going from the back to the front and -- but, but  
8 it's a frontal view and that's, that's like I'm looking at  
9 you now.

10 And if you think about how are we built, you know,  
11 we're in three dimensions. So we have length, we have  
12 width, and we have depth.

13 Now, if I show you just a plain old picture like, you  
14 know, just like a photograph, you're gonna see length.  
15 You're gonna see width. But there's the issue of depth.

16 So how do we solve that problem?

17 We turn you 90-degrees and then we take another  
18 picture.

19 Now then -- so, therefore, the beam is going through  
20 this way. Now, get length again, get length twice, but now  
21 I'll have depth. So two pictures, three dimensions, and  
22 that's really important to be able to look at all three  
23 dimensions.

24 Q Okay. Well --.

25 A Oh, here we go.

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1 Q There we go.

2 A Yes.

3 Q Okay. Now, before we get to Mr. Farr's real x-rays  
4 we're gonna talk a little about anatomy, doctor:

5 Can you tell me, is this a normal chest x-ray?

6 A Yes, sir, this was a study that -- actually you'll  
7 notice that there's no patient name or anything on here.  
8 This was actually x-rays that I chose off of Google. Google  
9 has some cites, normal chest x-ray anatomy, and this was  
10 actually a random image that I chose off of that.

11 So, again, it's no, no, no patient confidentiality  
12 issues or anything, but this is what is touted to be a  
13 normal chest. I believe it is a normal chest having looked  
14 at it, and, you know -- could I stand up?

15 Am I allowed?

16 Q So this is a healthy person, doctor?

17 A This is a normal chest x-ray.

18 Q Okay.

19 A I mean as far as---

20 THE COURT: If you would, if you move away from the  
21 microphone, be sure you speak up loud enough so that---

22 THE WITNESS: Okay.

23 THE COURT: ---the court reporter behind you can hear  
24 you.

25 THE WITNESS: Tell me if there's a problem. I can talk

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1 pretty loud.

2 THE COURT: If you do step down, just be sure you speak  
3 up.

4 THE WITNESS: Yes, sir. Yes, sir.

5 THE COURT: And, Madam Court Reporter, if ever you  
6 can't hear him---

7 THE WITNESS: Please.

8 THE COURT: ---just let us know.

9 THE WITNESS: I'll, I'll talk loud.

10 THE COURT REPORTER: Okay.

11 THE WITNESS: I can carry.

12 (Witness comes down from the stand.)

13 THE WITNESS: Okay. Now, I want to just get you, first  
14 of all, oriented a little bit.

15 Obviously this is -- and, again, if you looked at me,  
16 this would be the, the direction that it, that it's going  
17 in. Of course, up top is towards the patient's head. This  
18 is towards the patient's feet. Remember this is the  
19 patient's right side, the patient's left side. It's like  
20 looking in a mirror. So, remember, every -- you know, to  
21 your right -- well, I guess, you know, like to my right is  
22 the patient's left.

23 Okay. So, therefore, this is the left lung and this is  
24 the right lung.

25 Now, this structure in the middle here is the heart.

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1 This is the right side of the heart here, the left side of  
2 the heart here.

3 Let me get up here a little bit.

4 This structure right here is the aorta and it comes up,  
5 goes toward the left and down. This is what -- the main  
6 artery that takes blood from the heart and takes it onto the  
7 rest of the body.

8 Now, this black line here is the trachea, the main part  
9 of the windpipe, and it divides into what's called the right  
10 bronchus and the left bronchus, and these branch into  
11 smaller little what we call bronchi and they get even  
12 smaller to what's called bronchioles, but this is, is your  
13 wind -- your, your wind tubes right in here.

14 You heard the words earlier the hilum and this is the  
15 left hilum over here, the right hilum here, and what you see  
16 here, this is where the pulmonary arteries come out. Like  
17 this would be the pulmonary artery to the left upper lobe,  
18 to the left lower lobe, right upper, right middle and lower  
19 lobes up over here, and there's also pulmonary veins that  
20 are running in here as well.

21 They all -- it sort of runs together a little bit on,  
22 on this view. But that's basically the major anatomy.

23 Now here we go---

24 Q Doctor, would you mind explaining to the jury what  
25 pulmonary arteries and pulmonary veins are?

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1 A Yes, of course.

2 The pulmonary arteries -- okay. What, what -- the way  
3 this works is we have our, you know, the -- first of all,  
4 the aorta takes the blood -- you know, what's -- what do the  
5 lungs do?

6 The lungs basically -- let me just sit down here a  
7 minute. That light is catching my eyes there. I'm sorry.

8 (Witness returns to the stand.)

9 A You know, the lungs exchange, you know -- it's, it's  
10 where oxygen gets into the blood.

11 Okay. So we have to get blood to and from the lungs.  
12 So what happens is -- let's start off with blood coming  
13 back. You know, the, the aorta takes blood full of oxygen  
14 and takes it on down through the arteries to all the  
15 tissues -- all the organs in the body and they extract  
16 oxygen so that we can, can do what we do.

17 Then, of course, then the veins take the blood that  
18 needs more oxygen and takes it back up through a tube, well  
19 actually there's two tubes, that one is, is the inferior  
20 vena cava from down below, and the other -- and this one's  
21 kind of hard to see. But right next to the trachea on the  
22 right would be what's called the superior vena cava.

23 (Witness comes down from the stand.)

24 A So those vessels take the, the blood to the right  
25 atrium and into the right ventricle then out through the

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1 pulmonary arteries to the lungs. That's where the oxygen  
2 exchange occurs and the pulmonary veins take it to the left  
3 atrium, to the left ventricles, then out the aorta, and it's  
4 a continuous cycle, and, of course, our beating hearts is  
5 what keeps it going.

6 And just to finish up a little bit of the anatomy, this  
7 is the right diaphragm, the left diaphragm. The stomach  
8 would live here. Liver would live over here. Of course,  
9 all of these bones right here are ribs and in the middle is  
10 the, the spine.

11 And, again, if you look at that view, you see length.  
12 You see width. You infer depth just because, you know, you  
13 live, you live your life, but you really don't see depth  
14 here. That's why we have to have that second view.

15 Q Doctor, what is the kind of black area in the x-ray?  
16 what is that?

17 A Oh, here?

18 Q Right.

19 A Okay. Remember that the, the, the lungs are maybe  
20 filled with air and the x-ray goes through and it's not  
21 stopped by air. So the blood -- what is black is air  
22 filled -- it is lung.

23 Now, again, here's the lateral view. So say---

24 Q Doctor, if I could just stop you for one moment?

25 A Oh, I'm sorry.

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1 Q It's okay.

2 Doctor, tell me what -- whose x-ray is this or is  
3 this---

4 A Okay. Same view as before. This is, again, another  
5 normal patient that we got off of the Goggle site for normal  
6 chest x-ray anatomy. So here we are.

7 Q What view of -- what view is this?

8 A And this is the lateral view. This is the one that  
9 gives us the depth.

10 Okay. And, again, let's just look at some structures  
11 again. Everything that's dark or the, the black stuff is,  
12 is lung.

13 Now here's our heart here. Here's the patient's front  
14 by the way. Here's the patient's back and that's easy  
15 because you've got the spine, which, of course, we know is  
16 in the back. This is towards the head, towards the feet.

17 Again, here is the heart and I'll just tell you that  
18 the right heart normally is more towards the front compared  
19 to the left heart if, if you actually were to take a cadaver  
20 and, and look at that. So this is the right heart here,  
21 more of the left heart back here. There is some overlap  
22 here.

23 Here is that aorta coming out and around. Here are  
24 the -- here are the hilum. Now, this time you'll notice  
25 that they're superimposed on each other. But here's where

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1 the pulmonary arteries and veins live here.

2 Now notice this space here is kind of clear. That's  
3 gonna become important later on. But this space right in  
4 here is, is where the lungs meet in the front and normally  
5 there isn't much that lives there. So if you see something  
6 living there that's a little denser, that is something you  
7 got to be careful about it being abnormal, and, of course,  
8 we see bones and we see spine. We see some ribs coming down  
9 here. Here's the diaphragms superimposed here.

10 Q Thank you, doctor.

11 A Yes, sir.

12 Q Doctor, as part of your work in this case, have you  
13 reviewed the actual x-rays that Doctor Wan took of Mr. Farr?

14 A I did.

15 Q Doctor, if we want to pull those, I'll help you get the  
16 box up here.

17 A Sure.

18 Q You can orient that however you like so the jury can  
19 see it.

20 A Sorry about the light.

21 Q I'll put the x-rays up and then we can turn it on.

22 (Pause.)

23 Q Okay. Doctor---

24 A Okay. All right now.

25 Q Doctor, just tell us, in general, what, what do we have



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1 here?

2 A Okay. Now this, this was Mr., Mr. Farr's x-rays from  
3 January 11, 2010, and here's -- his name is up here, William  
4 Farr, and these were the, the x-rays that were sent to me to  
5 review that were obtained and interpreted by Doctor Wan.

6 Now, first I want to start off on this, this lateral  
7 view, the one that shows you length and depth. And, again,  
8 you know, we go back into like black is, is lungs here.  
9 Again the diaphragm's here. Here's the heart. Right heart  
10 coming up here. Left heart. Your pulmonary vessels are  
11 sort of in the middle back here.

12 Now remember where I told you that the area that's,  
13 that's in here that ought to be sort of, you know, dark?

14 Notice this white area here, this density right here?

15 That is not normal. That is absolutely not normal and  
16 it's, again, I think it's readily apparent and -- now,  
17 coming over to this x-ray, and, and I'll be honest, this  
18 one's a little harder, and if, and if I didn't have this  
19 this would be harder. If you look carefully, you see --  
20 normally these ought to be about equally dense and you see  
21 that there's more density here than here.

22 Now, again, that's kind of subtle, but, if you look  
23 over here, and I've lined it up, you know, this projects  
24 over here. So, on first glance, this may look like oh,  
25 that's just a big pulmonary artery over here, but, no,

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1 actually you got to think in three dimensions, it's this  
2 density here superimposed here.

3 So if you look at this, this is abnormal and you can  
4 see the difference between here and here, but you really  
5 have this view -- this lateral view to bring it out, and,  
6 again, this looks extra dense not because it's pulmonary  
7 artery. It's because this is lined right over top of it in  
8 this view.

9 Again, second view to give you the depth. You've got  
10 to have it and now you see that's, that's the lesion right  
11 there. That's the abnormality.

12 Q Doctor, can you show us, on the side-view of the right  
13 x-ray, on the pulmonary artery if you don't mind?

14 A Yes, I can.

15 Pulmonary arteries -- the main pulmonary artery is  
16 living here and then they branch out. Now notice -- let me,  
17 let me just take this on Mr. Farr also on the normal.  
18 You'll notice that, that these vessels become smaller as  
19 they go out, and that makes sense because they're, they're  
20 branching. And the way to think about this is just like  
21 tree branches.

22 You know, how tree, you know, the branches get smaller  
23 and smaller, and we actually use the word arborization in  
24 arbor like a tree to explain cause the, the vessels -- and  
25 as far as that goes, the, the breathing tubes, they get

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1 smaller as they branch out, and we see that on, on here and  
2 you'll see it on this lateral view as well. I -- personally  
3 I think it's a little easier to proceed -- to appreciate on  
4 this view, but it's the same thing on both.

5 Q And, doctor, on that side-view, do you think it's  
6 possible to confuse the pulmonary artery with that, that  
7 abnormality you talked about?

8 A Right here?

9 Q Right.

10 A Personally I do not.

11 Q Okay. -- And, doctor, doctor, just to be clear, on that  
12 side-view, lateral view, can you show where the heart is?

13 A Yes, sir, the heart -- again, this is the heart right  
14 here, from here to here, and we know the right heart is  
15 coming up and it comes up, and, if you remember, it was a  
16 nice even density and suddenly you've got this thing  
17 superimposed and we know it's separate from the heart on  
18 this view as well because here is the right heart coming up  
19 to about here, and this is above and to the, to the right  
20 side of the heart.

21 So this is clearly separate from the heart. It's  
22 separate from the pulmonary arteries. It's in the right  
23 lung. It's in the front part of the upper part of the lung.  
24 So this is in what's called the anterior segment of the  
25 right upper lobe.