

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III
Case No.15-CP-46-1827
Appellate Case No. 2016-001558

Willie Bell, individually and on behalf of the Estate of
Emma M. Davis as its duly appointed Personal Representative, ... Appellant.
v.

McGowan, Hood, and Felder, LLC and Chad McGowan, ... Respondents.

RECORD ON APPEAL
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1 Q Well, then you'd have to just jump out. You couldn't
2 be in the case anymore.

3 A That's absolutely incorrect.

4 Q Well, you can't represent Mr. Strong and Willie Bell
5 and the estate.

6 A Of course, I can. That ---

7 Q You can not ---

8 A --- happens all the time. Of course, you can. It
9 happens all the time.

10 The only dispute, the only -- the only problem that
11 comes up is at the end when people say we need to fight
12 over who gets what. Up until that point, there's no
13 conflict whatsoever because everybody's mutual goal,
14 they're tied at the hip to say, "What we want to do is
15 maximize the amount of money on the table."

16 It's like, you know, you bring in -- you bring in the
17 case and plop it down, and then who fights about it from
18 there, from my perspective as a med mal lawyer, that's --
19 that's not what I get into.

20 And so to say that if Willie Bell came up earlier,
21 from my perspective, it would have had no impact on me
22 whatsoever.

23 Q You wouldn't have represented Mr. Strong.

24 A Absolutely, I would have. If the PR ---

25 Q Then you had Mr. Strong ---

1 THE COURT: Mr. Lewis, you've got to let him answer.
2 Okay.

3 A And they -- they're not against each other for what
4 I'm doing. I'm a medical malpractice lawyer and both of
5 them have the exact same interest, which is to get as much
6 money on -- from the defendants, in the case I was
7 handling, on the table.

8 Now, they may fight down the road for which the both
9 get separate counsel and either come to an agreement or get
10 a court order to say what's what, but the -- my job was to
11 get as much money for the demise of Emma Davis as I
12 possibly could. And who gets it from there, if there's a
13 dispute, that gets resolved; and if there's not, the -- a
14 judge somewhere tells me where to send that money.

15 Q All right. Who declared Mr. Strong as common-law
16 husband?

17 A Emma Davis.

18 Q Emma Davis.

19 A Yes, sir.

20 Q Who agreed with that?

21 A Mr. Strong.

22 Q And you.

23 A And me and every family member.

24 Q And you.

25 A And me and every family member.

1 Q And so Ms. -- you then took it upon yourself to say,
2 "Okay. I agree, Mr. Strong is the common-law husband and
3 I'm going to go with my client, the common-law husband, and
4 make sure he gets \$900,000"; is that correct?

5 A I -- I -- the evidence that was -- I followed the
6 evidence that was available and that was that everybody
7 said he was the common-law spouse, including Emma Davis.

8 Q You -- you talked to Emma Davis?

9 A You've seen the life insurance applications where she
10 signs, under penalty of perjury, that says the beneficiary
11 of my life insurance is my common-law spouse --

12 Q Yes.

13 A Mr. Strong?

14 Q Did -- you seen all the papers that she -- her death
15 certificate, the birth certificate, her obituary, all of
16 the records that she puts into the -- when she checks in
17 the hospital, all the admission slips. There's 25
18 documents says that she's single.

19 A None of ---

20 Q Which one do you believe? You chose to believe your -
21 - that your client who got \$900,000 would -- was the
22 common-law husband rather than the other documents who said
23 she was single; isn't that true?

24 A Yes. Because none of those ---

25 Q Did you ---

1 A None of those other documents were actually signed and
2 written by Ms. Davis. Those were third-, fourth-, fifth-
3 party hearsay statements, whereas I had a direct state --
4 there was -- there's a direct statement from Ms. Davis that
5 says that "this is my common-law spouse."

6 And before these people ever met me, Andrew Strong
7 goes to claim that insurance and he says, "Why? I'm the
8 common-law husband. That's what's on -- that's what --
9 that's the story." That's 'cause it's true. Every person
10 that came in and told me that knows these folks, "They --
11 lived with him for 30-plus years -- says, "He's the common-
12 law spouse. You always saw them together. They lived
13 together. They shared a home. They shared a bed for more
14 than 30 years."

15 Q When did you get this application that made you
16 believe that this is the only evidence that you needed?
17 When did you get it?

18 A That was produced as part of this, but it was
19 completely consistent with every statement.

20 Q I asked you when you got it.

21 A And I told you. And it's completely consistent with
22 what every family member told me. It's -- it is not false.
23 It is a true statement that Andrew Strong was the common-
24 law spouse. It's just true.

25 Q I want to know when you got this application that you

1 now --

2 A During the course of this case.

3 Q Recently, isn't it?

4 A It was referred to in the probate records, and it was
5 the insurance that was at issue.

6 Q When did you see it? When did you learn of it?

7 A It was during the course of this case.

8 Q During this case?

9 A Yeah.

10 When did you learn about it?

11 A It was during the course of this case.

12 Q During this case?

13 A Yeah.

14 Q You didn't have it back when you were making the
15 determination that Andrew Strong was the common-law
16 husband.

17 A Well, you're saying that I made that determination. I
18 didn't. I followed the evidence, and the evidence was that
19 he was the common-law spouse.

20 Q Well, someone has to judge the evidence, don't they?
21 I mean, you just don't have a pile of evidence. You gotta
22 say, "Okay. This evidence means something."

23 A Right. And in my best exercise of my professional
24 judgement, seven to nine family members, who were all
25 consistent that say he's the husband, acted like a husband,

1 I believed it -- I believed he was a husband. I believe
2 that to this day.

3 Q And did you have the death certificate?

4 A Yeah.

5 Q Did you see on the death certificate that she said
6 that -- that says she was single?

7 A I did. It also said that she died of respiratory
8 failure and we know that's not entirely true.

9 Q I'm sorry. What?

10 A We also know that she died of respiratory failure,
11 which wasn't entirely true also.

12 Q There's a lot of difference between putting down what
13 she died of and whether she was single or married. That's
14 --

15 A Well, it -- it goes to show that the source of the
16 information is very important. And whoever wrote the --
17 Dr. Patel, who signed the death certificate and the -- the
18 person who filled it out, didn't know these people from
19 Adam's house cat.

20 Q How 'bout the obituary? The obituary people, when
21 they write, they -- they know them good.

22 A No, they don't. And in fact, if you look at the
23 obituary in this case, according to Mr. Bell, it was
24 substantially different than the one that he told the
25 funeral director. So the obituary, from my perspective as

1 a med mal lawyer pursuing the personal injury claim, is of
2 no import moment, whatever. I'll be honest with you. I
3 don't think I ever read it because there's no reason for me
4 to read an obituary if my job is to sue doctors and
5 hospitals for killing somebody.

6 Q All I'm asking, this could all be prevented, we
7 wouldn't be here today, if you had picked up the phone and
8 called Mr. Bell, would we?

9 A Well, I -- I can't say that.

10 Q Yes or no.

11 A Well, I -- I -- I don't know that there's -- I would
12 say no because based upon what I was told during the course
13 of the case, he wanted no involvement and said he was not
14 adopted. So whether -- if I would have picked up the phone
15 and said, "Hey, Willie, what's the deal" and he says, "I
16 don't want nothing to do with this," then, you know, maybe
17 this wouldn't have been avoided.

18 If Mr. Bell had picked up the phone and said, "Hey,
19 give me some of that," before the -- the distribution, I'm
20 not -- I'm -- that's where this would stop. The money
21 would be in my trust account, and we'd be just figuring out
22 who to give it to.

23 Q Turn to this jury and you tell me that Mr. Bell said
24 he didn't want a million dollars.

25 MR. JANI: Objection.

1 THE COURT: I sustain the objection. Just ask
2 questions.

3 MR. LEWIS: Sir?

4 THE COURT: Just ask questions, fact questions.

5 Q Are you telling me that Mr. Bell said he didn't want a
6 million dollars?

7 MR. JANIK: Objection.

8 A I'll -- I'll tell you what I was told. I was told on
9 one occasion that Mr. Bell didn't want anything to do with
10 the lawsuit, and when it came time to give his deposition,
11 I was told that he said that he'd been in prison so many
12 times, he didn't want to come within 20 miles of a
13 courthouse. That's what I was told.

14 Q He's never been in prison.

15 A I think you're absolutely wrong about that, Mr. Lewis.
16 You and I both know that's not true.

17 Q You think he's been in prison?

18 A For ---

19 Q You didn't ask -- you didn't ask him that up there.

20 A I know he's been in prison more than -- at least once
21 and we have the records. I know he's been in prison for
22 some very serious crimes, Mr. Lewis.

23 Q Oh, really?

24 A Yes, sir. Yes, sir. I think he was sentenced to five
25 years for crack distribution.

1 MR. LEWIS: Your Honor, I -- that's --

2 Q So now, let's see, make sure I understand it. Mr.
3 Bell -- so you -- he's been in jail and he -- you say he
4 has crack distribution, which they didn't put into evidence
5 so it wasn't -- and so -- does that mean that because he's
6 been in jail, because he has crack distribution, that he's
7 not entitled to the inheritance from his mother?

8 A Absolutely not. I represent all kinds of people, from
9 all walks of life, with all backgrounds. I'm not judging
10 anybody.

11 It goes to show, though, that I was told that he
12 didn't want anything to do with this case. He didn't want
13 to come within 20 miles of a courthouse, and that's what I
14 was told.

15 And your fundamental question was if I had just called
16 him, would all of this been different. And I tell you, I
17 can not honestly say it would or it wouldn't based upon the
18 information I had at the time.

19 Q Well, if you called me up and -- or you called Willie
20 Bell up and you say, "Mr. Bell, I represent -- I'm bringing
21 a malpractice on behalf of Emma Davis, and we think it's a
22 -- a good case and we should get some money out of it. Are
23 you interested in being a part -- as an inheritance," what
24 do you think he'd say?

25 A I don't have any idea what he would say.

1 MR. JANIK: Objection.

2 THE COURT: Yeah. I sustain the objection. He
3 wouldn't know that.

4 MR. LEWIS: Sir?

5 THE COURT: He wouldn't know that. I sustain the
6 objection.

7 MR. LEWIS: Well, I agree he wouldn't have any idea
8 what --

9 THE COURT: I -- well, don't -- you don't need to be
10 talking to me. You need to be asking questions of the
11 witness.

12 MR. LEWIS: Yes, sir.

13 DIRECT EXAMINATION BY MR. LEWIS (continues):

14 Q Now, it says the statutory beneficiary -- you have to
15 identify the statutory beneficiaries of the wrongful death
16 or survival action, don't you?

17 A To the satisfaction of the Court, that is correct.

18 Q It says that (as read): "This issue must be verified
19 by the personal representative, shall set forth, in terms
20 satisfactory to the court in which the petition is filed,
21 the basic facts surrounding the death of the decedent, the
22 pertinent facts surrounding liability of the alleged
23 wrongdoer, the amount of insurance available for the
24 damages, the terms of proposed settlement, the statutory
25 beneficiaries of the wrongful death survival action."

1 A Yes, that's what the statute ---

2 Q And it says ---

3 A --- says.

4 Q --- it must be verified and it has to have the basic
5 facts surrounding that.

6 A Yes.

7 Q Do you -- what facts are in the petition to show that
8 Mr. Brown -- Mr. Strong is the common-law husband other
9 than he's saying it?

10 A It's in the petition that he's saying it.

11 Q Just says it. It doesn't say why. It doesn't say
12 anything. It just says he's the common-law husband.
13 There's no facts, no support for it. It's just a blanket
14 statement, correct?

15 A Well, the --

16 Q Is that correct?

17 A Well, the -- I think the petition says that Andrew
18 Strong has asserted claims as the common-law spouse. I
19 don't -- I'd have to see the petition language in
20 particular. But I believe it says "has asserted claims as
21 the common-law spouse of Ms. Emma Davis."

22 Q Does that give you any facts of what those asserted --
23 assertions are based upon?

24 A Well, it -- no. But the -- the point of all that was
25 to provide it to the satisfaction of the Court. And after

1 hearing, the Court signed the order. So apparently what
2 was relayed to His Honor by the defense attorneys, by me,
3 and by my clients was to His Honor's satisfaction.

4 Q You're telling me that this Court, Judge Hayes up
5 there, had a hearing where you put up evidence as to why
6 Mr. -- Mr. Strong was -- claimed a common-law marriage. It
7 says, "The plaintiff, Andrew Strong, has claimed a common-
8 law marriage to Emma Davis." That's true.

9 Now, what do you have in any evidence that that claim
10 is true? What did you put before the Court that that was
11 true as the statute requires?

12 A There was -- there wasn't any needed. So I -- none --
13 none in particular was provided other than His Honor
14 directly asking questions of myself, defense counsel, Ms.
15 Gilmore, and Mr. Strong.

16 Q So you didn't bring in before the Court any of the --
17 did you tell Mr. Court -- the Court that Willie Davis was
18 an adopted -- might be an adopted son?

19 A No. Because at that point, all my information was
20 that he was not an adopted son, he was not an heir, and he
21 was not a statutory beneficiary.

22 Q Now, you -- when you say that ...

23 (Brief pause.)

24 (Marked Plaintiff's Exhibit No. 12, 5-page letter.)

25 MR. JANIK: Objection, Your Honor. The Court's

1 already ruled on it.

2 THE COURT: You object to this coming in?

3 MR. JANIK: Yes, sir.

4 THE COURT: All right. I -- I sustain the objection.

5 MR. LEWIS: We didn't ask him -- the only thing that
6 we wanted to ask ---

7 THE COURT: Well, no, no, no. We don't -- we don't
8 need to be chatting.

9 MR. LEWIS: You want to keep it out?

10 THE COURT: Yes, sir.

11 MR. LEWIS: Can we mark it for ---

12 THE COURT: Court's Exhibit, right.

13 MR. LEWIS: --- proffer?

14 COURT REPORTER: For Court's exhibit?

15 THE COURT: Court's Exhibit.

16 (Marked Court's Exhibit No. 5, letter dated 5/4/15.)

17 MR. LEWIS: We'd move into evidence as No. 11, the
18 deposition of Andrew Strong we read from.

19 MR. JANIK: I believe that was already admitted, Your
20 Honor. No objection.

21 THE COURT: Okay. Without objection.

22 (Marked Plaintiff's Exhibit No. 11, deposition of
23 Andrew Strong.)

24 DIRECT EXAMINATION BY MR. LEWIS:

25 Q Now, let's look -- you keep saying about -- that these

1 -- you had the doctor's information about Ms. Davis. You
2 went to the hospital and you would have gotten all the
3 doctor's records, right?

4 A Yes.

5 Q Do you know what a -- I'm going to show you a doc -- a
6 history and physical is?

7 A I -- it's -- be more helpful if I could see it.

8 Q I'll give it to you. Just a minute, please. I'm
9 sorry.

10 (Marked Plaintiff's Exhibit No. 12, medical record
11 document.)

12 Q I want you to look at this document. You have two or
13 three pages there, Mr. McGowan, called "the history and
14 physical?" Do you have the third page?

15 A I only have one, Mr. Lewis.

16 Q You have the front page?

17 A The -- if -- if -- if the front page is the one that
18 says david -- "date of admission 11/1/1999," then yes.

19 Q Does it say at the bottom page 1 of 3?

20 A Not that I see, sir. It says page 1 right here.

21 Q Okay. Page 1. You've got page 1. That'll be fine.

22 A Okay.

23 Q That would be when Ms. Davis went in the hospital; is
24 that right?

25 A It appears to be when she went into the hospital in

1 1999, yes, sir.

2 Q And so in 1999, would that be the time she died or
3 before that?

4 A That would have been 11 years before she died.

5 Q 11 years. 1999.

6 A Yes, sir.

7 Q And in 11 years, she says that she is, in 1999,
8 single; is that right?

9 A That's what it -- it -- it says (as read): "Social
10 history: The patient is single. She does not drink
11 alcohol. She does not smoke."

12 Q All right. Looking at Exhibit No. --

13 MR. LEWIS: We'd offer that into evidence, Your Honor.

14 THE COURT: Any objection?

15 MR. JANIK: No.

16 THE COURT: In without objection.

17 (Plaintiff's Exhibit No. 12, in evidence.)

18 Q Looking at this one ...

19 (Marked Plaintiff's Exhibit No. 13, 1-page medical
20 record document.)

21 Q Do you see that, it's a patient information sheet?

22 A This says it's -- "Admission Screening" is what it
23 says.

24 Q A what?

25 A It says "Admission Screening."

1 Q Yes, sir. And at the top, it says "patient
2 information."

3 A Yeah.

4 MR. LEWIS: I would offer that into evidence.

5 THE COURT: Any objection?

6 MR. JANIK: No, Your Honor.

7 THE COURT: In without objection.

8 (Plaintiff's Exhibit No. 13, in evidence.)

9 Q All right. Looking at that, that's -- the date of
10 that is April 8, '09, right?

11 A April 8, 2009, yes.

12 Q And when did Ms. Davis die?

13 A February 10 of 2010.

14 Q So this would have been nine months before, eight
15 months before?

16 A Sure.

17 Q And this would have been -- she would have been in --
18 going into admissions at that time or at least they were
19 taking down information about her at that time at the
20 hospital; is that right?

21 A Sure.

22 Q That's an admission screening?

23 A That's what it says.

24 Q And they sit down with the patient and they ask her
25 these questions, don't they?

1 A I -- I would assume.

2 Q And they said in here (as read): "Person legal
3 responsibility: Self." Do you see that?

4 A Yes.

5 Q And then they say (as read): "Emergency contact name:
6 Andrew Strong, friend." Do you see that?

7 A I do.

8 Q Now, that doesn't say he's a common-law husband, says
9 he's a friend; and that's just months before she died.

10 A Okay.

11 Q And that's after your insurance papers. So I don't
12 understand why this would ---

13 THE COURT: All right. Whoa, whoa. That's not good
14 way to ask a -- that's not a good way to ask a question,
15 what you don't understand.

16 MR. LEWIS: Oh, I'm sorry.

17 THE COURT: Just ask him.

18 Q This thing -- this document was after those insurance
19 papers you talk about, isn't it?

20 A I -- I would have to compare the dates. But it's
21 probably in the same neighborhood.

22 Q All right. And so what you did is you chose the
23 insurance papers to be that he was the common-law husband,
24 rather than her admission ship -- slip here where it says
25 that he's a friend. That -- you made that choice, didn't

1 you?

2 A I would say no, and the reason is this is not
3 something -- you know, we get the medical records. Ms.
4 Davis passed -- and the medical records for her visit when
5 she passed were about yay thick (indicates) from February
6 of 2010 and that's when the case was.

7 So I would have had these records, but I probably
8 never looked at them because this case was from the
9 February admission. But even if I had seen this, it
10 doesn't change the spots on the dog where I have seven,
11 nine family members that are all consistent and say he was
12 a husband.

13 This sort of -- this sort of statement from an
14 admission's clerk at a hospital is not something that I
15 would put weight on to the -- to the detriment of nine
16 family members. In -- in a balancing, my judgement would
17 be that the nine family members are correct and this is
18 misinformed or whatever.

19 Q We -- I recognize, Mr. McGowan, your judgement, you
20 determine who the common-law husband -- you, yourself,
21 anoointed Mr. Strong to be the common-law husband.

22 MR. JANI: Objection.

23 THE COURT: Whoa. Just -- no. Just let's ask
24 questions. We don't need your ---

25 MR. LEWIS: Okay.

1 THE COURT: --- editorials.

2 MR. LEWIS: Is this -- excuse me, Your Honor. May I
3 go ahead?

4 THE COURT: Yes, sir.

5 Q You are the one that said, "Hey, he's the common-law
6 husband;" isn't that right?

7 A No, it was the family who said he was the common-law
8 husband, and I had no reason to disagree with them. And I
9 pursued, for my clients, these claims, based upon what they
10 told me.

11 Q And you represented Mr. Andrew Strong based upon your
12 determination that he was the common-law husband.

13 A No, based upon the family's determination that he was
14 the common-law husband.

15 Q And you made no independent judgements yourself?

16 A I did. Because all of the evidence pointed to the
17 fact that he was, in fact, the common-law husband. There
18 was more than sufficient evidence to come to that
19 conclusion.

20 And so he said he was common-law husband, evidence
21 said he was common-law husband, and I went with him being
22 the common-law husband because that's what lawyers do for
23 their clients.

24 Q Except this document says that Andrew Strong was a
25 friend. You just ignored this document.

1 A Well, I -- I honestly ignored all of the Chester
2 documents because she passed at Piedmont 10 months later.

3 Q Now, you keep telling this jury that adoption records
4 are sealed. You can't go get them unless you have --
5 there's a special procedure; is that correct?

6 A My -- I -- I don't practice in adoption law. I don't
7 go to family court. My understanding is that in order to
8 get adoption records, you have to get a court order and you
9 have to have a really good reason.

10 And from what further I understand -- I might be wrong
11 -- that they won't even tell you if adoption records exist.
12 So were one to call the family court and say, "I personally
13 was adopted. Chad, could I call a court somewhere and see
14 were -- was I adopted?" From what I understand -- and I
15 might be wrong -- is that they'll say, "We can't tell you
16 that one way or another."

17 Q That's not the same for a birth certificate, is it?

18 A (No audible response.)

19 Q You can go get a birth certificate.

20 A I -- I don't think I can get somebody -- I -- I -- I --
21 - I don't frankly know the rules, but I would imagine you
22 could not get somebody else's birth certificate without
23 some protection order because otherwise it would seem like
24 it'd be really easy to go steal some identities and do that
25 sort of thing. But I honestly don't know.

1 Q Well, you know on the birth certificate --

2 (Brief pause as Mr. Lewis confers with his assistant.

3 Q You knew of Willie Bell, didn't you?

4 MR. JANIK: Objection.

5 THE COURT: Overruled. Yeah. Let's ---

6 MR. MCGOWAN: Yeah. I mean, I knew there was a person

7 --

8 THE COURT: Well -- well, he objected. I overrule the
9 objection, but I think you need to make it at a time --

10 MR. LEWIS: But this is in evidence. I'm sorry. I
11 don't understand.

12 THE COURT: Well, he objected and I overruled the
13 objection. Let's just move forward.

14 DIRECT EXAMINATION BY MR. LEWIS:

15 Q This is a birth certificate. Did you see that?

16 A Yes.

17 Q And you -- it says in there that the mother's maiden
18 name is Emma Davis. Do you see that?

19 A I do.

20 Q So according to the birth certificate, the mother of
21 Willie Bell -- Willie Bell's the son of Emma Davis.

22 A That's what this says.

23 Q And if you wanted to check out Willie Bell's status,
24 you could have said, "Get Willie Bell to bring in his birth
25 certificate."

1 A If that was an issue that needed to be resolved, sure.
2 Sure. I could -- I could make requests of a lot of people.
3 But he wouldn't have been able to produce this because this
4 wasn't obtained by him until May of 2014.

5 Q Well, I know, but it's on record. Don't you think
6 that it's been on record down there? This is just the day
7 that they -- we happened to go get it because it's on
8 record. You know that because you're not trying to fool
9 this jury, are you?

10 MR. JANIK: Objection.

11 THE COURT: Yeah. I -- I sustain the objection. Just
12 -- just ask questions.

13 Q It's on record, isn't it?

14 A I would assume so.

15 Q So you could have -- they could have gone down and got
16 it if you had asked them to at the time, and you would have
17 seen that the mother was Emma Davis.

18 A Ask who? Because I couldn't ask Tanisha to go get
19 this because I don't think that's allowed. I think that
20 Willie Bell would have to get this. I don't -- I ---

21 Q You could have asked Tanisha to go get -- ask Willie
22 Bell to get it, couldn't you?

23 A Yeah, if that was an issue. If I was hired to probate
24 this estate, to be the administrator of this estate to
25 determine errors, for sure.

1 Q You just didn't want to find Willie Bell, did you?

2 A No, it made -- I -- I really don't want to seem crass,
3 but from my perspective, as the plaintiff's medical lawyer,
4 who gets the money is important. But my job was not to
5 divvy up the -- the money at the end of the case. So it
6 didn't matter to me if Willie Bell was involved or not. My
7 mission was the same.

8 Q You get the death certificates in cases like this.
9 That's important to you, isn't it?

10 A Yes.

11 Q Because you want to see what it says on there, right?

12 A Well, sometimes they're helpful, and sometimes they
13 are not. So you've got to look at it.

14 Q All right. Look at No. 3, Exhibit No. 3.

15 A (The witness complies.)

16 Q You see that? That's the death certificate. You
17 would have had that, wouldn't you?

18 A I actually got this in mid to late March of 2018. So
19 after the PR had -- had signed the retainer agreement, and
20 after I had Andrew and Tanisha as clients, I -- I received
21 this back from them when they sent back the retainer
22 agreement.

23 Q And when you got this, did you look on there and say
24 the -- and -- that Willie Bell is the son?

25 A I saw that's what it said. It said that he was the

1 informant and he claimed he was the son.

2 Q And he claims he was the son.

3 A Yes.

4 Q And you never called him or contacted him to see if
5 that's true or not, did you?

6 A Well, no. Because at that point, I had had two
7 meetings, one with the seven family members that didn't
8 include Tanisha on the 17th of February where they said he
9 was raised like a son, but never adopted.

10 When Tanisha then came back on the 24th as the PR,
11 that's a little unusual because normally your spouse or
12 your adult children are PR. So her not being either of
13 those caused me to ask some questions of her, which I did.
14 And I was told that Andrew Strong didn't want to do it,
15 didn't feel like he was the best person to, that Tanisha
16 had been elected by the family to do it and that Andrew --
17 that -- that Willie Bell was not an adopted son and;
18 therefore, couldn't do it. And that's what explained
19 Tanisha being there.

20 So as far as I was concerned he was raised like a son,
21 he meant a lot to Ms. Davis, but he was not an actual son
22 adoptive or natural.

23 Q And of course, you -- how much did Ms. Tanisha Gilmore
24 get out of the estate?

25 A I think we've gone over this. She received \$25,000 as

1 the PR fee, and then Andrew gave her \$200,000.

2 Q And the check that Andrew gave her had your name on
3 it?

4 A Of course. It was from my trust account. It was made
5 payable to both of them.

6 Q And so this lady the -- would -- she wouldn't have got
7 the 200,000 if Willie Bell was the heir, would she?

8 A I don't think that's true at all. Because the -- who
9 Andrew wanted to give that money to, quite frankly, came up
10 at literally the last minute.

11 He showed up at my office with a wad of paper about
12 who he wanted to give money to. So I made my handwritten
13 list and I typed up that list and he approved it and he
14 decided to give that money away.

15 Knowing Andrew Strong, Tanisha probably would have
16 gotten a chunk of money regardless of whatever Andrew got.

17 Q Do you know what would have happened if Willie Bell
18 was there or not? You don't know, do you?

19 You know that Willie Bell would have gotten it if he
20 was the adoptive son and Mr. Brown was not a --
21 adjudicated, if that's required, common-law husband, Willie
22 Bell would have got all the money; isn't that right?

23 MR. JANIK: Objection.

24 THE COURT: I -- I overrule the objection. Go ahead.

25 MR. MCGOWAN: No. Mr. -- Mr. Strong would have gotten

1 at least half, and a proper heir, which, I guess, would
2 include Mr. Bell, would get the other half.

3 And so to say that Mr. Strong, who would then, at that
4 point, would have a significant amount of money, not share
5 that wealth with his family, I think is -- it -- it's not
6 right knowing Mr. Strong and knowing what he actually did.

7 He didn't have to give this money away. He chose to.

8 Q Well, I didn't ask you that. I asked you if you
9 hadn't -- if -- if Mr. Bell -- Mr. Strong had of -- hadn't
10 been adjudicated as a common-law husband -- he wasn't
11 adjudicated, we already agreed to that -- and the only heir
12 would have been Willie Bell, he would have got all the
13 money.

14 A No, absolutely not. Because Mr. Strong had a loss of
15 consortium claim that he would recover under. So if Mr. --

16 -

17 Q But he'd have had to be declared a common-law husband
18 to have ---

19 A No, he doesn't.

20 Q --- a consortium claim.

21 A No, he doesn't. He -- he does not.

22 Q Consortium claim doesn't generally have to be a
23 common-law husband to be a consortium claim?

24 A You have to be a common-law spouse -- you have to be a
25 spouse to get a consortium claim. But let's -- let's be

1 clear: If it's an issue that need be proved, I would have
2 to go to court -- this court and prove that he was a
3 common-law spouse for purposes of the consortium claim.
4 It's not that he would have to go to probate court and be
5 proved up to be a common-law spouse in order to recover
6 under his loss of consortium claim. So ---

7 Q So you're saying that there's a different requirement
8 if you're going to do a -- if you're going to be called a
9 common-law spouse in a probate matter than if you're going
10 to be called a common-law spouse in a consortium matter.
11 You're saying the requirements to prove someone is a
12 common-law spouse is different. One has a statute says you
13 how; the other one says you can just determine it yourself
14 without getting it to the court to determine.

15 MR. JANIK: Objection, Your Honor.

16 THE COURT: Well, I -- I overrule the objection.

17 A That's -- that's not what I said at all.

18 (Mr. Lewis and the witness talk simultaneously.)

19 Q Well ---

20 A If ---

21 Q --- let's go ---

22 A --- if --

23 Q --- through it ---

24 A --- if it became an issue in the case, my obligation
25 as the plaintiff's lawyer, who has the burden of proof, is

1 to prove the elements of my cause of action. The first
2 element of a loss of consortium cause of action is that
3 they were spouses. That was an issue that was -- that was
4 getting prepared and would have gone to court, and it would
5 have been proved because it was true. In this case, this
6 case settled before that had to be done.

7 So I'm telling you there are, in fact, two options,
8 from my perspective as a medical malpractice lawyer, that I
9 can either go through probate court, if that seems to be
10 appropriate, or the other.

11 In my judgement, in this case, I was going to go the
12 other, through loss of consortium in the circuit court,
13 because if it came back to it, we'd just go to probate
14 court and the PR -- I know Tanisha, she would have waived
15 any time limit anyway and we would have proved it there.

16 But then, what are we proving? We're proving the PR
17 says he's the husband. Husband says he's the husband. So
18 what we've done is we've gone to court to prove something
19 that everybody agrees with.

20 And so my judgement was, "We agree with all of this
21 over here. Let's go to circuit court and let's get
22 prepared to try this case; and if it settles before we
23 actually have to prove it in court, that's great. And if
24 not, we'll prove it in circuit court."

25 Q But if you -- if you -- if he was going to be a

1 common-law husband in probate court, you had to go under
2 that statute that you did not go under; is that not true?

3 A In probate court?

4 Q Yes.

5 A Sure. If I was practicing in the probate court,
6 that's what you need to do. But that time limit, as we've
7 discussed, can be waived by the PR.

8 Q It doesn't say in there it can be waived.

9 A It can.

10 Q Well, how does it -- does it -- read the statute. You
11 got it before you? Does it say anything about waiver?

12 A It -- it's a time limit that the PR can waive. And my
13 understanding -- and I might be wrong, Mr. Lewis -- is that
14 we specifically asked y'all if y'all agreed with that in
15 this case and you said, "Yeah, of course it can be waived."

16 And then we asked, "Well, would Mr. Bell want to waive
17 it in this case? And he -- you said "no."

18 Q Well ---

19 A So it can be waived, but y'all choose not to this
20 time. But the point is ---

21 Q I don't -- I don't -- I'm asking you a question: Does
22 the statute say it can be waived?

23 A It doesn't say it can't, and the PR has the ability to
24 waive that sort of requirement.

25 Q That's your -- that's your excuse here today?

1 A No, sir. It's not an excuse. It's -- it's the truth,
2 and it's something that, ironically enough, you agree with.

3 Q You want me to tell you that I don't agree with that?

4 A My understanding is we have a request to admit that's
5 in writing, signed by you, that says that it's waivable.

6 Q Now, I want to talk about -- we talked about the
7 obituary. You said you didn't read it. You don't know
8 that, but it says that Mr. Strong is her friend. You agree
9 with that?

10 A I think that's what it says.

11 Q But you didn't read that?

12 A No, the obituary doesn't ---

13 Q Didn't pay attention to it.

14 A The obituary doesn't have anything to do with whether
15 a hospital or physicians were responsible ---

16 Q All right. Let's look at ---

17 A --- for someone's death.

18 COURT REPORTER: Please don't talk over each other.

19 MR. LEWIS: This will be Exhibit No. 14.

20 (Marked Plaintiff's Exhibit No. 14, handwritten notes,
21 1 page.)

22 Q Do you see that, Mr. McGowan?

23 A Yes.

24 Q Those are your notes?

25 A Yes.

1 MR. LEWIS: Move them into evidence.

2 MR. JANIK: No objection.

3 THE COURT: In without objection.

4 (Plaintiff's Exhibit No. 14 in evidence.)

5 Q These are your notes. Is this the first visit you
6 have with -- who? What is this?

7 A Could I get my original?

8 Q I don't have the original.

9 A Well, I wasn't asking -- okay.

10 (To Mr. Janik) Mr. Janik, may I have the original of
11 this? If not, we can go with a copy, but --

12 MR. JANIK: Just give me a second.

13 (Brief pause.)

14 MR. JANIK: Your Honor, may I approach?

15 THE COURT: Yes.

16 (Mr. Janik hands documents to the witness.)

17 THE WITNESS: Thank you very much.

18 Q Is the original different than what copy you gave me?

19 A The -- the scribbles aren't, but the context of it may
20 be.

21 Q What do you mean "the context"?

22 A Well, this is a ---

23 Q It says what it says.

24 A This is a handwritten note that I made, and this is
25 the -- this is what in my office is called an "intake

1 package."

2 Q Yeah.

3 A And it contains a records authorization, a client
4 questionnaire, and a retainer agreement. And this is the
5 folder, the actual folder I took to meet with the family
6 members. There were seven of them, if I recall, and the
7 first -- the first thing I ask these folks is, "Tell me
8 what happened."

9 And this is my doing my best to go through what they
10 are telling me as -- I'm trying to scribble it down as fast
11 as they're telling me for the first time. So ---

12 Q Okay.

13 A --- this is the notes of literally ---

14 Q So that's your intake? What do you call it?

15 THE COURT: Mr. Lewis, you've got to let him finish
16 his answer.

17 MR. LEWIS: I'm sorry.

18 A So this is literally the first notes I'm taking, with
19 the first meeting, in the first minutes of that meeting,
20 with the family that happens to be there. I couldn't tell
21 you who told me what because there were seven of them. But
22 this is -- I asked the question, "Tell me -- tell me what
23 your concern is. How can I help you?" And then this comes
24 out. So that's what these notes are.

25 Q And you had -- you called it some kind of packet?

1 A An intake package.

2 MR. LEWIS: We would introduce the intake package as
3 the next exhibit. What is it?

4 MR. JANIK: Your Honor, I don't have an objection, but
5 I would suggest that you might want to mark the contents of
6 the package separately within the package as well for
7 clarity.

8 MR. LEWIS: I haven't seen this before. I just got
9 copies of things.

10 THE COURT: All right. Well ---

11 MR. LEWIS: What -- whatever -- however they want to
12 mark it's okay with me.

13 THE COURT: All right. In without ---

14 MR. JANIK: --- with copies and all that.

15 THE COURT: All right. In without objection, and the
16 copies will -- the contents will be marked as separate
17 exhibits.

18 COURT REPORTER: Could I see it so I'll know many?

19 THE COURT: Yeah. Let's take a few minutes to do it.
20 All right. Let's be at ease while we get all of them
21 marked.

22 (Brief pause.)

23 (Marked in evidence Plaintiff's Exhibit Nos. 14(B),
24 14(C), 14(D), 14(E), 14(F), 14(G), 14(H), 14(I), 14(J).)

25 MR. MCGOWAN: All right. What was your question, Mr.

1 Lewis?

2 Q All right. Are those documents put into that Exhibit
3 14, are they added throughout time or are they all put in
4 at the same time?

5 A These are added over time.

6 Q All right. Now, one of the documents that's in there
7 is a -- looks like the front page, you call it the
8 scribbling on the -- on the -- all right. So we've marked
9 it as Exhibit No. --

10 A It's 14j.

11 Q 14?

12 A 14 -- this particular one is 14j.

13 Q 14j.

14 A Yes, sir.

15 Q Okay. 14j. And that would have been your initial
16 talking to them; is that correct?

17 A The first words out of their mouths that I could write
18 down and get the gist of are these.

19 Q And the first word out of their mouth was "Emma Davis,
20 dash, 68 years."

21 A Yes.

22 Q And the second words out of their mouth: "Willie
23 Bell, dash, son."

24 A Yes.

25 Q First two things, the lady that died and that Willie

1 Bell is her son. Those are the first two things you write
2 down.

3 A That was -- that was literally -- this is them getting
4 it off their chest.

5 Q All right. Now, do you have in there -- called "memo
6 privileged?"

7 A Yes, that's marked as 14i.

8 Q 14i.

9 A Yes, sir.

10 Q And what's the date of that?

11 A This was created by me on February 18, the next day
12 that I -- the day after I met with the family, at 10:15 in
13 the morning.

14 Q I look at -- there, it says "Date 4/14 -- 2/14."

15 A That was an autocorrect of when it was printed.

16 Q How do you know when you put it on -- what's the date,
17 the right date? Do you have it on that document? Is it
18 the right date?

19 A No. I -- I looked at the properties of the documents
20 in Microsoft Word, and it was created by me on 2/18/2010,
21 at 10:15 a.m.

22 Q Okay. But that's not what the documents says because
23 in your intake file, it has a different date.

24 A Right, because it -- when these memos, when you do
25 them in Microsoft Word, they autocorrect the date. And

1 that 4/14/14 was when this one was printed.

2 And interest -- you know, this case was over, from my
3 perspective, in 2013. So this was printed in April of
4 2014, no doubt in connection with what we're here about.
5 But it was created by me on February 18, at 10:15 in the
6 morning.

7 Q But was there -- was this -- was there a memo put in
8 your file that would have had the right date on it? There
9 should have been a memo that had the right date on it.

10 A This would have been kept on the computer. This is
11 not something that we would have printed out. This was on
12 the -- this was on a, you know, computer under a general
13 file under Emma Davis.

14 Q So this is computer document that just laid on your
15 file -- in your file for how long?

16 A It was on our server since February 18 of 2010.
17 That's when I created it.

18 Q All right. It says on there there's a surviving son,
19 Willie Bell, who may or may not been formally adopted; is
20 that right?

21 A What that paragraph says is (as read): "The family is
22 extended, with Andrew Strong being the 30-year-plus live-in
23 common-law husband of the -- that was my mistake -- Ms.
24 Emma Davis. There's a surviving son, Willie Bell, who may
25 or may not have been formally adopted."

1 Q Okay. So what you did is you investigated whether Mr.
2 Bell [sic] was a common-law husband 'cause you asked
3 everybody. And you had information that he was the common-
4 law husband, right?

5 A Well, let me tell you how this came about.

6 Q I just asked did you investigate it.

7 A Well, I don't know what you mean by investigation, so
8 I was going to tell you what I did so that you can
9 determine if that's an investigation.

10 I met with this family on February 17, and there were
11 seven of them. And the first notes of that conversation
12 were here. The second notes that I made during that
13 conversation --

14 Q Is that the one that we just read where it says Willie
15 Bell's son?

16 A 14j.

17 Q That's where it says Willie Bell, son?

18 A Yeah. And then further in that conversation, which
19 was my client questionnaire, which is marked as 14c, this
20 was after further discussion with the folks that were there
21 with me --

22 Q Just a minute. Let me find that one. That's the --
23 what's it called, client -- client questionnaire.

24 A Right. And it says (as read): "Survived by Willie
25 Bell, paren, maybe son" -- they didn't know his phone

1 number -- "Andrew Strong, potential common-law husband, 30
2 years lived."

3 So the second bit of note taking was when I'm actually
4 getting into the details about what happened, who was
5 there, what the story was. And then that conversation
6 culminated in me typing up the memo, the typewritten memo
7 that I did the next day on February 18, where it was
8 established in my mind, at that point, that everybody said
9 he was the common-law husband and there was serious
10 question in my mind based -- him being formally adopted or
11 not.

12 Now, everybody in that meeting said he wasn't, but I
13 still wasn't convinced. I was waiting on the PR to get
14 that squared away for that to be a done deal.

15 Q Looking at those documents, the client questionnaire,
16 you said that was one day after the memo?

17 A No, sir. No, sir.

18 Q The memo was one day after the client -- client
19 questionnaire?

20 A The typewritten memo --

21 Q Yes.

22 A -- was done the next morning while all this was fresh
23 in my mind, the day after the client questionnaire and the
24 day after this stuff.

25 Q Okay. So the client -- looking at the first one,

1 which was your first thing you wrote down --

2 A Right.

3 Q Okay. What's the second thing of these documents that
4 you have?

5 A The client questionnaire.

6 Q The client questionnaire. So -- and that would have
7 been the same day or the next day?

8 A That would have been trying to record further notes,
9 in the conversation, with the -- the initial family
10 members.

11 Q So it'd be the same day?

12 A Yes, sir.

13 Q And on that same day, you wrote down Willie Bell,
14 maybe son, and Andrew Strong, potential common-law husband.

15 A That's what was recorded at this point. Again, this
16 is, again, earlier in that conversation and -- but shortly
17 thereafter I took the names of everybody.

18 So the -- the way this works is that, "Tell me who
19 we're talking about here. Was she married." And they said
20 yeah. And I said, "Ceremonial or common-law?" They told
21 me common-law.

22 And I wrote that down, "potential," at that point
23 because there was still more discussion to be had, which we
24 had further discussion about that that day. And then once
25 the PR came around, to me, that was a settled question.

1 Q Okay. But right -- at least right now, you have
2 Willie Bell as the son and that Andrew Strong is a
3 potential common-law husband. That's what it says.

4 A No, is just says "maybe son."

5 Q Yeah. Maybe son.

6 A Maybe, yes.

7 Q That's what it says.

8 A Sure.

9 Q And you made more investigation by asking the members
10 of the family, who gave you the initial information, as to
11 whether or not he was a common-law husband.

12 A Yes.

13 Q Then they said -- after you said, "Well, was he a
14 common-law husband?" They said, "Yes, he's a common-law
15 husband."

16 A Right. I said things like, "what makes you say that?"
17 You know, so it was -- it was -- there was sufficient
18 evidence in my mind to call him a common-law husband at
19 that point, reserving the fact that something may develop
20 during the course of the case.

21 Q And then you said because they said that Willie Bell
22 was not adopted, you said, "Well, he's not adopted."

23 A Initially my impression was that he was not adopted
24 because these were -- these were sisters and aunts and -- I
25 mean, there's a whole bunch of folks here that, you know, I

1 had no reason to doubt them that they knew family history.
2 And they said he was -- he said -- they were clear, "He was
3 raised like a son, but he was not formally adopted."

4 Q And do you know if they and -- and Mr. Strong had an
5 agreement if he got the money, they'd share in the money?

6 A I am very confident there was no such agreement
7 because there was -- well, it was a surprise to me that
8 Andrew Strong wanted to give this money to whom he did at
9 the end of the case.

10 Q Well, I -- but you don't know what they had -- that's
11 when you found it out. But you don't know what agreement
12 he had with them before that, do you?

13 A Well, that -- that -- that's interesting because
14 Willie Bell got \$100,000. So if -- if -- if Andrew Strong
15 had an agreement with others to give them money, then he
16 must have also had the same agreement with Mr. Bell because
17 he gave Mr. Bell \$100,000.

18 Q He was just buying off Mr. Bell, wasn't he?

19 MR. JANIK: Objection, Your Honor.

20 THE COURT: I sustain the objection. It's -- that's
21 an editorial comment. We don't need it.

22 Q The others -- I'm asking you about the others. He
23 gave Tanisha Gilmore 200 and what -- \$200,000?

24 A Yes.

25 Q Just out of the goodness of his heart?

1 A Yes.

2 Q It wasn't because she helped him be the common-law
3 husband where he got \$900,000; is that right?

4 A No. Mr. Strong is -- was -- was -- what he told me is
5 that, "Tanisha always took good care of me," and she lived
6 with him ---

7 Q You don't get to say ---

8 A --- and took care of him.

9 Q --- what other people said.

10 COURT REPORTER: Please don't talk over each other.

11 THE COURT: Yeah.

12 MR. LEWIS: I object to him. He's just volunteering
13 what all these people say, and that's not ---

14 THE COURT: I sustain the objection. Move onto your
15 next question.

16 Q All right. I'm asking you, Mr. Strong got \$900,000.

17 A No, he got \$1.2 million.

18 Q Oh. But he -- after he gave away money, he had 900
19 left.

20 A I -- I think it's more closer to eight, but we're --
21 we're splitting hairs at that point.

22 Q Yeah.

23 A He gave away a lot of money.

24 Q 800?

25 A Yeah. He gave away a lot -- he gave away 400-and-

1 something-thousand dollars. Yes.

2 Q Did that surprise you?

3 A It did.

4 Q Did it surprise you when Willie Bell called your
5 office and said that he was the son?

6 A Absolutely because everything I'd been told up to that
7 point is he was raised like a son and he was never adopted.

8 Q But he called your office.

9 A He did.

10 Q And why didn't you call him again? I didn't
11 understand that.

12 MR. JANIK: Objection, Your Honor.

13 THE COURT: I sustain the objection. Just ask
14 questions.

15 MR. LEWIS: Sir?

16 THE COURT: We're not concerned with whether you
17 understand it or not.

18 MR. LEWIS: Oh, I'm sorry.

19 THE COURT: Just ask questions.

20 Q Why didn't you call Willie Bell?

21 A After he called me, I was out of town and my associate
22 called him back.

23 Q Why didn't you call him earlier in the case right when
24 you heard that he might be a son?

25 MR. JANIK: Objection. We've covered this several

1 times.

2 THE COURT: We -- we are kind of plowing the same
3 ground. I'll let you ask one more time.

4 A As of February 24, everything I knew and everything
5 that developed from that point forward, he was not adopted.
6 That's what every family member told me. That's why he
7 wasn't the PR. That's why when Atlene Jordan and Linda
8 Gilmore and Rosa Hall, in the underlying case, were asked
9 and said was he adopted and they said no.

10 So as far as I was concerned, from February 24, which
11 was after my written memo, after I met with Tanisha and
12 Andrew, after she had been appointed PR, he was not an
13 adopted son.

14 Nothing came up between February 28 of 2010 and the
15 time that Mr. Bell called my office after the disbursement
16 of the case that would lead me to believe that he was, in
17 fact, an adopted son. That's why I didn't call him.

18 Q Now, what else is in that document that you -- what
19 other things are in there?

20 A Well, we've got our client questionnaire.

21 Q Yes.

22 A We've got our original retainer agreement.

23 Q That's the one we've -- talked about already.

24 A Right. We've got the memo that I -- that I typed
25 actually the next day.

1 Q So that -- was that in there -- that just got in there
2 recently, didn't it, because you said it was on the
3 computer.

4 A Yeah, it -- it would, but, you know, I -- this is sort
5 of my opening file document. So yeah, this is of recent --
6 this is recently in here because normally it'd be on my
7 computer file, not in a paper file.

8 We've got a picture of Mrs. Davis and Mr. Strong.

9 Q Okay.

10 A We've got an original copy of a death certificate that
11 was mailed to me, with the retainer agreement, back in mid-
12 March of 2010.

13 Q Death certificate?

14 A Yeah.

15 Q And who does it say on the death certificate -- what
16 does it say Willie Bell is?

17 A Well, it says he's an informant, and then he says he's
18 the son.

19 Q That he's the son.

20 A Right. We have a letter to Diane West from 2014 --
21 excuse me, from 2010. My hand-delivered letter to Ms. West
22 that says, "Preserve the records, please."

23 We have the original appointment of Ms. Gilmore, from
24 the probate court, that says she's the personal
25 representative, upon which I relied.

1 And we have the records authorization, signed by Ms.
2 Gilmore on 2/24/10, which is the same day that I sent that
3 hand-delivery letter over to the hospital.

4 Q Okay. You have a list of all the people, a
5 handwritten list in there?

6 A That's -- that's actually the back of part of the
7 questionnaire and it's this (indicates.)

8 Q Yes, that.

9 A Yeah. That's on the back of the -- see, the client
10 questionnaire is on the front, and then that's the back of
11 it.

12 Q Oh, we didn't talk about this. Now, these are the
13 people that were in attendance at the meeting?

14 A Yes.

15 Q Huh?

16 A Yes.

17 Q And Brenda Foster, that's a niece?

18 A That's -- that's what she told me.

19 Q Did she get any money?

20 A I don't remember. I'd have to look at the list of
21 checks.

22 Q Linda Gilmore, who is that?

23 A She told me she was a niece to Ms. Davis.

24 Q Did she get any money?

25 A We'd have to look at the list.

1 Q Debbie Strong, who is that?

2 A She said Andrew Strong's sister.

3 Q Did she get any man -- money?

4 A Again, let's look at the list. I mean, there's no
5 reason to be obtuse, right? Let's just look at the list.

6 Q Well, do you know if any of these people got any
7 money?

8 A There's a list of checks. So I'm thinking they
9 probably did, but there's a list.

10 Q All right. And you -- you have this down -- all these
11 people's names down. But you don't have anything down here
12 in the first meetings that I see -- and if you can show me,
13 I'd really appreciate it -- where it says Willie Bell is
14 not adopted, that everybody agrees. I don't see any place
15 where it says that. Do you have a place where it says it?

16 A I have where it says maybe in my -- in my ---

17 Q I know the maybe. I'm asking you say they say he said
18 he wasn't.

19 A Right.

20 Q I want to see where it says that they say he wasn't.
21 Was there any place you had it written down?

22 A No, that's why I put maybe.

23 Q You put maybe when it's not?

24 A Well, they told me not, but that was pending the PR
25 being appointed.

1 Q Okay. Thank you.

2 (Brief pause.)

3 (Marked Plaintiff's Exhibit No. 15, answer to
4 interrogatories document, 3 pages.)

5 (Hands documents to the witness.)

6 Q You see those, Mr. McGowan?

7 A Yes.

8 Q And those are interrogatory answers signed by you, I
9 guess. Is your scribble there?

10 A Yes. These are the initial standard interrogatories
11 required when we file a notice of intent to file suit.

12 MR. LEWIS: Okay. Now, would you mark that exhibit?
13 Are there any objections?

14 MR. JANIK: No objections.

15 THE COURT: In without objection.

16 (Plaintiff's Exhibit No. 15, in evidence.)

17 Q You -- you see that interrogatories? That's where
18 you're supposed to list -- (as read): "Give the name of
19 persons known to the parties or counsel to be witnessed
20 concerning the facts of the case; and whether -- and
21 indicate whether or not a written or recorded statement has
22 been taken from the witness; and indicate who has
23 possession of such statements;" is that right?

24 A (No audible response.)

25 Q That's what the first question is, right?

1 A That's right.

2 Q And the response?

3 A Tanisha.

4 Q Tanisha Gilmore ---

5 A Yeah.

6 Q --- care of plaintiff's counsel. Was that in care of
7 you?

8 A Yes.

9 Q And then we have Brenda Foster, niece to Ms. Davis.

10 A Yes.

11 Q And then we have the name of one, two, three, four,
12 five, six, seven. That's more people than you had in the
13 first meeting; is that right?

14 A I think the difference is Andrew Strong is -- is
15 listed in the response.

16 Q Okay. But where is Willie Bell's name?

17 A From what I was told up to this point, that he didn't
18 have any facts of the underlying case, he wasn't at the
19 hospital, he wasn't in the aftermath.

20 It turned out, after Atlene Jordan's deposition some
21 time later, that apparently he was there. But my initial
22 information is that he wasn't there.

23 And so what I'm answering here is, "Tell us who we
24 know about concerning the facts of the case," And so far
25 as I knew, he didn't have any evidence to bring to bear.

1 (Indicates) And this list and this list are the same,
2 except for Tanisha and Andrew Strong.

3 Q Except you have on your initial inquiries that Mr.
4 Willie Bell is maybe a son.

5 A Right. But that doesn't have anything to do with the
6 facts of this case because the facts are whether she passed
7 away as a result of medical malpractice. That's what my
8 case is.

9 Q I understand that. But he might be -- he's -- he is a
10 son. You listed the nieces and all these other people.
11 Were all those people at the hospital?

12 A According to my notes, all of them were except for Ms.
13 McClurken. Because I -- and it said "at hospital after she
14 passed" for Ms. Foster. Linda Gilmore, "at hospital."
15 Debbie Strong, "at hospital after she passed." "At
16 hospital for most of it. At hospital for whole thing. At
17 hospital for whole thing."

18 And then Robin was not at hospital. But I put her in
19 there because she was involved in this first meeting and
20 she might have some facts. I didn't put Willie Bell
21 because nobody indicated to me that he was there at the
22 hospital.

23 Now, later it turned out that he was, and that's why
24 his deposition was in the works.

25 Q Did you update your interrogatories to put Willie

1 Bell's name on any interrogatory answers?

2 A No, because the deposition ---

3 Q Do you have an obligation to upgrade your -- update
4 your interrogatories?

5 A Not in this circumstance because the defendants knew,
6 based upon Atlene Jordan's deposition, which is the same
7 information I had.

8 Q I asked did you have an obligation to update
9 interrogatories?

10 A If the defendants didn't know, if they're going to
11 insist on a piece of paper for telling them something they
12 already know, sure, I'd -- I'd do it. No problem.

13 But the defendants were there at that same deposition
14 that caused me to want to get him involved just like they
15 did.

16 Q And look at the request to admit.

17 . (Mr. Lewis's assistant hands a document to the
18 witness.)

19 Q You see those?

20 A (No audible response.)

21 Q I guess they're request to admit answers; is that
22 right?

23 A They appear to be.

24 MR. LEWIS: And would we mark that please.

25 (Marked Plaintiff's Exhibit No. 16, request to admit

1 document, 6 pages.)

2 MR. LEWIS: Do you have any objection?

3 MR. JANIK: No.

4 THE COURT: In ---

5 (Plaintiff's Exhibit No. 16 in evidence.)

6 Q And that's January 30, 2015; is that not right?

7 A Yes.

8 Q All right. You say in accordance with South Carolina
9 such and -- objection. Do you see the answer to No. 1 (as
10 read): "Admits that there existed a conflict of interest
11 in petitioner's simultaneous representation of both Andrew
12 Strong, as the alleged common-law husband, and the estate
13 of Emma Davis." Do you see that?

14 A Do I see your Request to Admit No. 1? Yes, I do.

15 Q All right. And it says (as read): "Answer:
16 objection." Do you see that?

17 A Yes.

18 Q And it says (as read): "In accordance with SC ST 61-
19 1-109, petitioner represented Tanisha Gilmore in her
20 capacity as personal representative of the estate of Emma
21 Davis, but did not represent the estate of Emma Davis." Do
22 you see that?

23 A Yeah. I represent the PR.

24 Q Do you still say that you did not represent the estate
25 of Emma Davis?

1 A Well, my understanding is --

2 Q Do you still say that you did not represent the estate
3 of Emma Davis?

4 A I -- I don't see a difference.

5 Q Do you still say that you did not represent the estate
6 of Emma Davis?

7 A I would say technically, no. I represent the PR.

8 Q So you live by this statement you did not represent
9 the estate of Emma Davis, right?

10 A Well, yeah, because my client was the PR as Code 62-1-
11 109 dictates.

12 Q Further down in there it talks about Willie Bell,
13 doesn't it?

14 A Where is this? Yeah. I see Request to Admit No. 2
15 says -- mentions Mr. Bell.

16 Q It says (as read): "... petitioner were aware of the
17 existence of Willie Bell at the time the petitioners began
18 representation of both Andrew Strong, as the alleged
19 common-law husband of Emma Davis, and Tanisha Gilmore, in
20 her capacity as personal -- personal representative of the
21 estate of Emma Davis." Do you see that?

22 A The existence? Yeah, I saw that.

23 Q And this is in what year? What was the date of this?

24 A January, 2015.

25 Q And you write down the alleged common-law husband.

1 You don't write down common-law husband, do you?

2 A No, actually that's what you wrote, Mr. Lewis. You're
3 the one that writes the part that says (as read): "Please
4 admit that petitioners were aware of the existence of
5 Willie Bell at the time petitioners began representation of
6 both Andrew Strong, as the alleged common-law husband in
7 the estate of Emma Davis."

8 So no, sir. Those are your words, sir, not mine.

9 Q You -- you wrote down that he was an alleged common-
10 law husband. That's what it says. We'll just leave it in
11 there. That's fine.

12 A No, sir. Those -- those -- that's what you wrote.

13 Q Did you disagree with it?

14 A Yeah, 'cause he wasn't an alleged common-law husband.
15 He was the common-law husband.

16 Q But you didn't say that in there. You just put back
17 down "alleged common-law husband," didn't you?

18 A No, sir. That's what you put in there.

19 Q Now, let me ask you something about this estate you
20 keep talking about. You represented the estate and Tanisha
21 Gilmore. You remember that?

22 A Yes.

23 Q The estate was closed, wasn't it?

24 A Come to find out, yeah.

25 Q And when was that date that it was closed?

1 A Well, the paperwork says February of 2011.

2 Q So after February of 2011, there was no estate.

3 Tanisha Gilmore was not a representative anymore. It was
4 closed.

5 A I don't think that's true because I think it required
6 -- the law requires actual notice, and the Court did not
7 provide actual notice neither to me -- 'cause I certainly
8 wasn't the probate lawyer -- nor to Ms. Gilmore.

9 So the estate was closed, but that does not mean that
10 you can't rely upon a PR paperwork. That's what, from what
11 I understand, the probate code says. Actual notice is
12 required.

13 Q The fact is it was closed,

14 A Yes, but that -- that does not mean the effect of the
15 original appointment changes when ---

16 Q And you never checked the records to see if it was
17 open after that date, did you?

18 A No, because it was never brought to my attention that
19 it could be or would be, and I was not the probate lawyer.
20 If I was administering this estate, that would have been
21 important to me.

22 I asked ---

23 Q Did ---

24 A --- Tanisha ---

25 Q Excuse me.

1 A I asked Tanisha, when we were fixing to settle this
2 case, if the -- what was said in the petition was true. I
3 went over it word for word with her, and she said yes. And
4 so she had no idea and I had no idea.

5 Q So you want to blame Tanisha again for this?

6 MR. JANIK: Judge --

7 THE COURT: I sustain the objection. You don't need
8 to answer that.

9 Q All right. So the estate was closed, and then we --
10 they went back and reopened the estate, did they not?

11 A Who's "they?"

12 Q Willie Bell.

13 A Yeah. Well, that's not a "they," that's Mr. Bell.

14 Mr. Bell did, through the same process that Ms.
15 Gilmore used -- from what I understand -- become the
16 successor personal representative to the estate.

17 Q And he remains the personal representative today.

18 A I have no idea. Have you checked that because
19 honestly, the probate court sometimes can do things. I
20 assume so.

21 Q Now, there's a petition for approval of settlement.
22 Do you have that? Is that in already?

23 (Marked Plaintiff's Exhibit No. 17, petition for
24 approval of settlement document, 5 pages.)

25 Q Do you see that?

1 A Yes.

2 MR. LEWIS: You have any objections?

3 MR. JANIK: No.

4 THE COURT: In without objection.

5 (Plaintiff's Exhibit No. 17, in evidence.)

6 Q Looking at exhibit number -- what is it -- 17, this is
7 petition for approval of settlement. Do you see that?

8 A Yes.

9 Q And what's the date of that petition?

10 A It was signed by Judge Hayes on -- excuse me -- it was
11 signed by my clients on July 24, 2013.

12 Q I don't see Judge Hayes's signature on this.

13 A I know. That's why I corrected and said it's signed
14 by my clients on July 24, 2013.

15 Q Did you type this up?

16 A No.

17 Q Did you agree with it?

18 A Yes.

19 Q And did you present this with the defendants to the
20 Court?

21 A Yes.

22 Q And you agreed with it?

23 A Yes again.

24 Q And it says Tanisha Gilmore is a duly appointed
25 personal representative of the estate of Emma Davis. That

1 was not true, was it?

2 A Turned out not to be.

3 Q Huh?

4 A It turned -- it turned out not to be.

5 Q All right. So before you wrote that down, did you
6 check it out to see if that was true?

7 A No. Because it was true and I wasn't told any
8 different, and I assumed it remained true.

9 Q You assumed.

10 A Yeah.

11 Q Thank you. And then it says (as read): "Plaintiff,
12 Andrew Strong, claims a common-law marriage to Emma Davis."
13 And that's true, isn't it?

14 A Yes.

15 Q And does it say anywhere in here why he's the common-
16 law -- why he should be the common-law husband, other than
17 he claims it?

18 A No.

19 Q Huh?

20 A No.

21 Q I can't hear you.

22 A No.

23 Q So what went before the judge was that he claimed to
24 be a common-law husband.

25 A Along with three defense attorneys, myself, and my two

1 clients that were there to explain what happened and
2 provided to the satisfaction of His Honor, which is what we
3 did.

4 Q We don't have a record of that. Do you have a record
5 of what you told His Honor?

6 A It was -- no. It was in the law library back there
7 and ...

8 Q Do you have a record of it?

9 A No, it was -- it was not on the record.

10 Q So, in any event, you have a -- say he's the --
11 claimed a common-law husband marriage to -- a common-law
12 marriage to Emma Davis. That's what it says, right?

13 A It says the plaintiff, Andrew Strong, has claimed a
14 common-law marriage to Emma Davis.

15 Q All right. Then there was an order from the Court on
16 that; isn't that right?

17 A Yes, sir.

18 Q And do you have a copy of that?

19 A No, sir. Well, I do, but not in current
20 circumstances.

21 (Marked Plaintiff's Exhibit No. 18, Order of
22 Settlement Approval, 4 pages.)

23 MR. LEWIS: I move that into evidence. Is there any
24 objection?

25 MR. JANI: No objection.

1 THE COURT: In without objection.

2 (Plaintiff's Exhibit No. 18 in evidence.)

3 Q The order, who -- who typed this order?

4 A John Bradley of the Moore, Taylor, Thomas Law Firm.

5 He was the lawyer for -- I believe it was the

6 anesthesiology group in this case.

7 Q And did you look at it?

8 A Yes.

9 Q Did you approve it?

10 A Yes.

11 Q And you agree with everything said in here?

12 A Yes.

13 Q It says that the -- seeks approval for -- approval for

14 the allocation of settlement proceeds, 50 percent to the

15 wrongful death and 50 cent -- percent to the consortium

16 claim. You see that?

17 A Yes, sir.

18 Q According to you, both of them went to Andrew Strong,
19 didn't it?

20 A Yes, sir.

21 Q So why you put both of them in there?

22 A Well, the defense wanted that in there so they had
23 consideration for the releases being granted. If there's -

24 --

25 Q So there was -- so they asked you to put 50 percent on

1 each one of them?

2 A They -- they proposed 50/50, and I did not object and
3 agreed with it.

4 Q Well, at that time, you knew that Mr. Strong had not
5 been adjudicated as a common-law husband, correct?

6 A Sure. It's a settlement.

7 Q Isn't it true that what you did is you protected
8 yourself because you put part in the consortium and you
9 knew he hadn't been adjudicated. So it's your testimony
10 here today that if the adjudication was required, it'd only
11 be for 50 percent?

12 MR. JANIK: Objection.

13 THE COURT: I sustain the objection. Ask -- don't ---

14 Q I'll try to rephrase it. That was a clumsy question.
15 If -- if you had to have an adjudication to get the
16 wrongful death money that is Mr. Strong, he didn't have an
17 adjudication, did he?

18 A He didn't have an adjudication, but I don't agree that
19 he had to have an adjudication to get the wrongful death
20 money.

21 Q You don't.

22 A No. Not -- not in this particular case, not where the
23 PR agrees who he is and there's no evidence to the
24 contrary.

25 Q The statute -- there is a statute that says he's

1 required, correct?

2 A If he's going to take as a surviving spouse, but that
3 pre-supposes the fundamental question which is: "Is there
4 a dispute? Does anybody disagree?"

5 And if there's no disagreement, then it's by
6 acclamation. It is, "We agree he's the spouse." And that,
7 in my mind, was, under these circumstances, the equivalent
8 -- there was no purpose to get it formally adjudicated in
9 probate court.

10 So to me this made not a dime of difference.

11 Q Now, I notice somewhere this says it's for a million-
12 two, but I see other places where it says a million-three.
13 Which was it?

14 A (No audible response.)

15 Q I see emails that said it was settled for a million-
16 three. Was it settled for a million-three or a million-
17 two?

18 A Neither.

19 Q Neither.

20 A No.

21 Q How much was it settled for?

22 A It was \$2.2 million of indemnity payment, and an extra
23 \$100,000 of cost reimbursement. And the ---

24 Q Okay. So it was 2.3 million.

25 A The total was 2.3 million, but it was structured in a

1 way to the benefit of the defendant doctors. That's why it
2 was done that way.

3 Q Cause that's so you got the hundred for cost, and the
4 200 -- two million-two for the claimant.

5 A Right. But from my perspective, it was a \$2.3 million
6 settlement.

7 Q 2 point....?

8 A Three.

9 Q Okay. Now, in this document, the order approving
10 settlement, where does it say in there why Mr. Andrew
11 Strong is the common-law husband? What proof is there in
12 there or evidence in there or anything in there about why
13 the Court should consider him a common-law husband?

14 MR. JANIK: Objection.

15 THE COURT: I overrule the objection.

16 A The -- His Honor's order says the Court is informed
17 that plaintiff, Andrew Strong, Ms. Davis's common-law
18 husband, is the sole heir beneficiary of the estate of Emma
19 Davis.

20 Q And who informed the Court of that?

21 A Three defense counsel, myself, Ms. Gilmore, and Mr.
22 Strong.

23 Q Did you just inform him or did you show any documents?
24 Did you give him any proof or did you said everybody
25 agrees?

1 A Everybody agreed.

2 Q Okay, Thank you.

3 Now, I want you to look --

4 (Brief pause.)

5 (Marked Plaintiff's Exhibit No. 19, handwritten list,
6 1 page.)

7 Q Look at Exhibit No. 19. What is that?

8 A This is a handwritten list that I made after a
9 conversation with Mr. Strong, where he pulled out of his
10 pocket a scrap of paper that had names and how much money
11 he wanted to give people. And instead of interpreting him,
12 I sat there with him and made a list of my own, which is
13 this list (indicate.)

14 This was after the settlement approval, but before the
15 checks were cut. And so I got this list to who he wanted
16 to give money to.

17 Q Where is the date on it?

18 A I -- I don't -- there's not one.

19 Q So we just have to accept that you did this afterwards
20 and not -- was this -- wasn't planned all along?

21 A Exactly because it wasn't. Because what your -- what
22 you saying is -- you know, yeah. Because that's what
23 happened.

24 Q (To assistant) Now, would you show him this exhibit
25 here?

1 (Marked Plaintiff's Exhibit No. 20, settlement
2 statement, 1 page.)

3 (Assistant hands document to the witness.)

4 Q This is the disbursement sheet, settlement sheet.

5 MR. LEWIS: That's Exhibit 20. Is there an objection?

6 MR. JANIK: No objection.

7 THE COURT: In without objection.

8 (Plaintiff's Exhibit No. 20 in evidence.)

9 Q That's Emma Davis's settlement statement. Did you
10 type this up?

11 A Yes.

12 Q This was your office?

13 A Yes.

14 Q What's a settlement statement?

15 A When you're disbursing money to clients, they're
16 entitled to know where it's coming from and where it's
17 going. And that's what this was, and I asked them both to
18 sign off on it so that we all kind of knew what the nets
19 were going to be.

20 Q All right. And it says that they're incoming, and it
21 shows a mil -- two million three hundred. Now, we just
22 talked about that, right? It was a hundred cost and the
23 rest was for the bad acts of the doctors; is that right?

24 A 2.3 million total, yes, sir.

25 Q And attorney fees were 40 percent, \$920,000; is that

1 correct?

2 A Yes.

3 Q So you took attorney fees as part -- part of the cost
4 you took as attorney fees, the cost reimbursement you took
5 as attorney fees?

6 A I took my attorney fee off the gross collected, and
7 then costs come out next as the contract provides.

8 Q But -- but in effect, what you won was 2.2 million,
9 and you got a hundred for cost. But you charged your
10 clients 40 percent of the hundred you got for costs more.

11 A No. Because my -- my contract was the gross amount of
12 2.3 was my fee, and then the costs come out. So ---

13 Q Your gross amount. But the gross amount was -- as I
14 understand it -- 2.2 million, plus 100,000 in costs. So
15 the gross amount you recovered was 2.2 million.

16 A No. It's 2. ---

17 Q The cost was reimbursement.

18 A No. It's 2.3 million.

19 Q No.

20 A And then the fee gets calculated and then the costs
21 come out.

22 Q So the client, in effect, paid all your costs.

23 A No. Well, let's be clear about that. I front the
24 costs and if I make a recovery in a case, the client pays
25 all of the costs.

1 Q So after you get your fee.

2 A Yes.

3 Q All right. Now, it says "the loan payback to Mike
4 Malone." Who's Mike Malone?

5 A That's my father-in-law.

6 Q And did he lend Mr. Brown -- Mr. Strong money?

7 A Yes.

8 Q How much did he lend him?

9 A Fifteen-five.

10 Q He lent him fifteen-five?

11 A Yeah.

12 Q It wasn't 30,000?

13 A No. The payback term was 30-something -- was 31. But
14 the loan was fifteen-five.

15 Q So loan payback -- is just 15. Shouldn't it be 31?

16 A I'd have to look at the way the costs were signed off
17 on, but maybe. But fifteen-five was the principal, and
18 then fifteen-five was the return on that.

19 Q So he got 100 percent return on the loan that your
20 father-in-law gave to your client.

21 A No. Well, it's double, but I don't think it's 100
22 percent.

23 Q Well, double.

24 A Yeah, yeah. Double. Sure.

25 Q Double. Okay.

1 A Yeah.

2 Q And that -- you're the one that wrote the documents
3 that set up that loan; is it not?

4 A Yes.

5 Q And you're the one that collected that loan.

6 A I wouldn't -- it was -- it was contingent upon a
7 recovery in the case, the payback of that loan was. So I
8 wrote a check from my trust account, with Andrew's blessing
9 and direction, directly to Mike Maloney.

10 So I don't know if you're going to tell me if I
11 collected that loan, but I don't -- I don't think that's
12 collection. I paid that loan from my trust account, from
13 the money that Mr. Strong was entitled to.

14 Q And you -- that loan was from your father-in-law.

15 A Yes.

16 Q And if you didn't win the case or settle the case,
17 your father-in-law was out the money.

18 A As was I, absolutely. I would be out my cost money
19 for instance and all my time. So yeah.

20 Q I didn't ask about you. I asked about your father-in-
21 law. That's ---

22 A Yeah. He would have gotten absolutely nothing if
23 there was no recovery in the case. That's part of the risk
24 profile with this particular kind of thing.

25 Q And so, isn't it fair to say that you had to protect

1 your father -- to protect your father-in-law's interest,
2 you had to settle or win this case?

3 A Well, to protect my client's interest, yeah. And to
4 protect his, to protect mine, to protect the client's,
5 right. Settling or winning this case was the goal. You're
6 exactly right.

7 Q What if Mr. Strong said, "Don't pay him"?

8 A Well, there's special rules about that, as you know,
9 under the rules of professional conduct. That then becomes
10 a potential third party claim. And what I would have done
11 then is say, "Listen" -- and this happens quite oft --
12 often in medical context where, for instance, a medical
13 provider or a health insurer or somebody says, "We want
14 some of that car wreck money."

15 If there's -- if there's a dispute, what I do or would
16 do is to go, say, "Y'all need to get this worked out and
17 tell me what to do;" or hold it in trust account and say,
18 "Y'all need to get lawyers and fight this out;" or come in
19 and I would file what's called a "declaratory judgement
20 action," where I saw, "I don't really have a dog in this
21 fight. Clerk of Court, here's the money."

22 I would name the two parties to it, Mr. Strong and Mr.
23 Maloney, and say, "Y'all need to get this figured out, but
24 here's the money." I wouldn't give it to Mike, I wouldn't
25 give it back to Mr. Strong, I would hold onto it or pay it

1 to the Court because that's the way those things are
2 handled.

3 Q Wouldn't you have more of a special interest to help
4 your father-in-law than Mr. Strong?

5 A Absolutely not.

6 Q You'd like Mr. Strong better than your father-in-law?

7 A I don't think that's the question.

8 THE COURT: (To the jury) All right. This is a good
9 time to break for lunch. So we'll stop -- we're going to
10 break for lunch at this time. It's one o'clock. We're
11 gonna break til 2:15. Have a pleasant lunch, and we'll see
12 you back at 2:15.

13 (Jury exits at 1:00 p.m.)

14 THE COURT: Any matters for the Court before we break
15 for lunch?

16 (No audible response.)

17 THE COURT: Any matters for the Court before we break
18 for lunch?

19 MR. LEWIS: No, sir.

20 MR. JANIK: No, Your Honor.

21 THE COURT: We'll see you at 2:15.

22 (Off the record at 1:01 p.m.)

23 (Back on the record at 2:18 p.m.)

24 THE COURT: Mr. McGowan, you can come on back up here.

25 (Mr. McGowan re-takes the stand.)

S

1 THE COURT: Plaintiff ready?

2 MR. LEWIS: Yes, sir.

3 MR. JANIK: Defendant's ready.

4 THE COURT: All right. Bring in the jury.

5 I've been told by the Court Reporter that Exhibit 19
6 has not been introduced at this point.

7 MR. LEWIS: Exhibit 19. I -- if they don't have any
8 objection, I move it in. Is it in now?

9 MR. JANIK: No objection.

10 THE COURT: Far as I'm concerned. In without
11 objection.

12 MR. LEWIS: Okay.

13 (Plaintiff's Exhibit No. 19 in evidence.)

14 (Jury enters the courtroom at 2:20 p.m.)

15 MR. LEWIS: We just moved in Exhibit --

16 THE COURT: 19.

17 MR. LEWIS: -- 19. We have no further questions of
18 Mr. McGowan.

19 THE COURT: All right. Cross?

20 MR. JANIK: We'll reserve, Your Honor.

21 THE COURT: All right. You can step down.

22 (The witness complies.)

23 THE COURT: Call your next witness.

24 MR. LEWIS: We call Professor John Freeman.

25 THE COURT: (To the jury) I didn't realize we were at

1 this posture. I'm going to have to let you go back out
2 while we take up a matter that we should have taken up --
3 nobody told me I needed to until right now.

4 MR. LEWIS: I'm sorry, Your Honor.

5 THE COURT: That's okay.

6 (Jury exits the courtroom at 2:21 p.m.)

7 THE COURT: (To the witness) Why don't you just sit
8 down right there so we gonna get you sworn in front of the
9 jury and --

10 (Brief pause.)

11 THE COURT: All right. At issue, there's a motion
12 pending involving whether or not Professor Freeman can
13 testify since he is not an expert in probate matters or in
14 legal malpractice matters. I believe that was the -- the
15 thrust of the motion, Mr. Brooks?

16 MR. BROOKS: Yes, Your Honor. We have submitted our
17 motion and brief both to the Court, and we filed it with
18 the clerk and certainly we've incorporated it -- my few
19 remarks this afternoon.

20 We do not dispute that Professor Freeman is an expert
21 on legal evidence and has been for a long time. Taught
22 professional responsibility to me in law school 40 years.
23 But that does not make you an expert that can help a jury
24 in every type of legal malpractice case that may arise.

25 In particular, Professor Freeman does not have

1 significant experience, enough experience in probate and in
2 wrongful death matters, survivorship matters, in -- in
3 order to be helpful to the jury. So we think he should be
4 excluded.

5 If not excluded, we certainly think his testimony
6 should be limited specifically to legal evidence testimony.

7 THE COURT: Mr. Lewis?

8 MR. LEWIS: There's no such rule that you to be so
9 particular as to have some kind of speciality. Mr. Freeman
10 has taught in the law school. He's been a witness. He's
11 been a lawyer for all these many years. And I don't know
12 of any requirement that you have specialized training as a
13 probate lawyer or as a tax lawyer or anything. You just
14 have to be a lawyer to testify what lawyers should do.

15 THE COURT: Well, analogizing it to a medical area, I
16 -- I think that the -- back up a little bit. Having heard
17 Professor Freeman lecture many times -- I did not have him
18 in law school -- having appeared before me numerous times
19 as a witness in numerous matters, I find he's certainly
20 qualified and I don't think you question his
21 qualifications. It's questioning whether or not he can
22 testify as to some unique issues; is that correct, Mr.
23 Brooks?

24 MR. BROOKS: That's correct, yes, sir.

25 THE COURT: All right. Well, I'm going to find he's

1 qualified -- after he testifies and his qualifications are
2 laid on the record -- unless they're stipulated -- allow
3 him to testify.

4 And I'm -- the way I'm going to deal with it, I'm not
5 going to make a blanket ruling as far as how far his
6 testimony can go. But if you or Mr. Janik believe he is
7 outside the parameters of what he has been qualified for or
8 what he has expertise in, you certainly can object at that
9 time.

10 MR. BROOKS: Understood. Thank you.

11 THE COURT: Okay. Thank you. Let's bring in the
12 jury.

13 (Jury enters the courtroom at 2:25 p.m.)

14 THE COURT: You can call your next witness.

15 MR. LEWIS: I call Professor John Freeman.

16 THE COURT: Please come up and be sworn.

17 THE CLERK: Professor Freeman, stop here to be sworn.
18 Place your left hand on the Bible and raise your right:

19 JOHN FREEMAN, having first been duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION BY MR. LEWIS:

22 Q You ready?

23 A Yes, sir.

24 Q Will you state your name and address for the record?

25 A John Patrick Freeman, F-R-E-E-M-A-N. Address: 2329

1 Wilmot Avenue, Columbia, South Carolina, 29205.

2 Q Describe your educational background.

3 A I graduated from Notre Dame as an Accounting major in
4 1967. I graduated from Notre Dame Law school in 1970. I
5 subsequently got a Masters in Law degree from the
6 University of Pennsylvania in Philadelphia.

7 Q And did you then come to USC?

8 A After I got out of Notre Dame -- eventually, yeah.
9 But got out of Notre Dame, spent two years practicing law
10 in -- in Cleveland, Ohio, and then came down here in 1973.
11 And I taught for many years.

12 Q And was that at USC?

13 A USC Law School, yes, sir.

14 Q And have you retired now?

15 A I'm -- yeah. I am no longer teaching at the law
16 school. From time to time, I do teach continuing legal
17 education courses to lawyers, sometimes judges, and I'm
18 still pretty active doing some legal practice and
19 consulting and expert work.

20 Q And how long did you teach at the law school?

21 A 35 years.

22 Q And what courses did you teach?

23 A Major courses were corporations and securities
24 regulation dealing with business and investment. I also --
25 we also have a course called "Professional Responsibility,"

1 which deals with the lawyer's obligations in practicing law
2 and the ethical obligations of lawyers in practicing law.

3 There's also a course dealing with kind of an advanced
4 professional responsibility course that has a section that
5 deals with legal malpractice, and that's a block of
6 instruction. And for maybe 10 years or so, I taught that
7 to the students.

8 I also taught the students about accounting, legal
9 accounting, corporate finance, business crime, white collar
10 crime. Those were the -- the major areas that I taught in.

11 Q Now, you -- how long -- what did your legal mal
12 practice cover -- your ---

13 A Legal malpractice?

14 Q What did your legal malpractice lecturing cover?

15 A Well, it was to teach students basically about this
16 type of process: What a legal malpractice case is, what
17 legal malpractice is, what the standards are of conduct for
18 lawyers for dealing with clients, what can happen to you if
19 you don't do the right thing on behalf of the client; and
20 many of the different duties that are owed by lawyers and
21 sometimes are not handled correctly, so that lawyers end up
22 with -- in trouble with their clients.

23 Q Have you taught students about professional
24 responsibility outside the law school?

25 A Yes. I taught lawyers about ethics matters and

1 professional responsibility matters for decades, well over
2 100 different classes that -- that I give and let -- let me
3 explain.

4 If you're a lawyer in practice in South Carolina, you
5 must take continuing legal education on an annual basis to
6 keep your license. If you don't keep going to school, you
7 can lose your license. And a portion of that deals -- that
8 mandatory requirement deals with ethics and standards that
9 - that apply to lawyers. So I -- I've taught that many
10 times, many different places, to many different groups of
11 lawyers.

12 Q And I know people don't like to brag, but have you
13 received any honors or awards in your area?

14 A Yes. I was voted the best teacher four times by the
15 students at the law school, and I received other awards as
16 well from Bar groups.

17 Q What do you do to stay current in the area of
18 professional responsibility?

19 A I read the advance sheets first of all, as most
20 lawyers do. But beyond that, just answering the phone
21 every day because I taught -- over 35 years, you can
22 imagine, you would be teaching many, many students,
23 thousands. And I've never backed away from assisting
24 students, when I was teaching or once they became lawyers,
25 helping them when they get into issues where they need to

1 talk to somebody and get some guidance.

2 So my phone rings constantly, and not just five days a
3 week, but more like seven days a week, as lawyers confront
4 different issues and have questions. And helping lawyers
5 solve those problems is one way of staying sharp in -- in
6 practice.

7 On top of that, from time to time, I get involved in
8 cases such as this, and you're always learning. And that's
9 one way I learn as well.

10 Q Have you ever participated in drafting opinions that
11 are applicable to South Carolina law?

12 A Yes. Our -- our Bar organization -- every lawyer in
13 South Carolina is a member of what is called "The South
14 Carolina Bar." And that's a group that's mandatory. It's
15 run under the Supreme Court, and they have different
16 committees and one of the committees is called the "Ethics
17 Advisory Committee" and -- where lawyers -- same as I was
18 describing, they'll come for advice: "How do -- how do you
19 handle this?" "What's the best way to do this?" "Can you
20 do this?"

21 And so yeah. I was on that group and wrote opinions,
22 and then they're published for the guidance of lawyers.
23 Actually published on a national basis as well.

24 Q Have you written and lectured about conflicts of
25 interest and the proper way for lawyers to handle conflict

1 of interest?

2 A Yes, I have, and I've done that more than once.

3 Q What -- what is a conflict of interest?

4 A Trying to serve -- well, different ways of looking at
5 it. Biblically, serve two masters, Matthew 6:24, that's a
6 conflict of interest. It's been around for a long time,
7 that concept, going back to biblical times.

8 Another conflict may be between you and me. If I'm
9 the lawyer and -- and I've got some adversity to you, that
10 can be another form of a conflict.

11 Multiple clients, form of a conflict. Lots of
12 different ways it can come up, and it's a very, very
13 hazardous and important area for lawyers.

14 Q Have you written and lectured about lawyers' duty to
15 be truthful in litigation? What does that mean for
16 lawyers?

17 A It's a mandatory requirement that -- what -- what --
18 when you're dealing with legal matters and when you're
19 dealing with matters in court and when you're dealing with
20 the lawyer on the other side of the case, you are expected
21 to be honest and truthful in your dealings and completely
22 so -- so the system can function. We want disputes
23 resolved. We want the person who deserves to win, not the
24 biggest liar or the one who can fabricate the most evidence
25 or cheat.

1 We want the truth to come out, and so there is a sharp
2 prohibition against anybody playing fast and loose with the
3 truth.

4 Q How about lawyer's duty to communicate when acting and
5 doing their job, to be fully honest and fully open?

6 A Same kind of thing. What you're doing as a lawyer is
7 -- is problem solving and communicating. And if you can't
8 -- if you can't advise people properly, if you can't or
9 don't adequately pass on information, bad things can
10 happen. One of the things that -- that you have to be able
11 to do as a lawyer is anticipate things, and -- and always
12 pass information up if it's important.

13 Q Have you testified concerning these type matters?

14 A Yes, sir, I have, many times.

15 Q Have you written articles about it?

16 A Yes, sir.

17 Q What are some of the major lawyer malpractice risks?

18 A Conflict of interest is -- is a huge one. Another --
19 another big one is competence, just actually -- not just
20 having a skill set, but doing the background work to make
21 sure that you can get the job done and do the job right for
22 the client, giving information to the client, being
23 diligent; and by "diligent," I mean, not being -- not just
24 doing things on the surface, but actually get -- getting
25 things right and investigating, digging into things.

1 Another is avoiding any -- any kind of impropriety
2 over -- over conflicts as I described.

3 And another major obligation that lawyers owe is when
4 you -- you finish a matter, finishing it right. You can --
5 you can do something pretty well the first 80 percent, but
6 if you don't finish it right and it all falls apart in the
7 last 10 or 15 or 20 percent, it's -- it taints the whole
8 thing. So doing -- finishing things correctly, including
9 legal matters, I consider to be very important.

10 Q Have you written and published about these type of --
11 of problems and what lawyers should do?

12 A Yes. For example, for 19 years, I wrote a regular
13 column for the *South Carolina Lawyer* dealing with lawyers'
14 duties typically in handling matters for their clients, so
15 that every time a new issue of the Bar magazine came out --
16 it went out to all of the lawyers -- there would be a
17 column from me. And that -- that was many over -- over
18 many years.

19 Q Are you familiar with the standards of care owed by
20 lawyers when handling lawsuits for their clients in South
21 Carolina?

22 A Yes, I am.

23 Q And what is it?

24 A You're supposed to act with a measure of care, which
25 means not being negligent, doing your work, performing up

1 to proper standards. Skill, you're supposed to have the
2 skill set and the know-how. "Diligence" means what I
3 talked about before, digging in and getting to the bottom
4 of things. And judgment, finding -- finding things and
5 using good judgment, and loyalty I would include. The
6 measure of care, skill, diligence, loyalty, the -- and
7 judgment that lawyers of ordinary skill and capacity -- the
8 average lawyer possesses and exercises in the community,
9 that's the standard. It's not being as good as the best
10 lawyer that ever was or just above the worst lawyer that
11 ever was. It's kind of behaving at a standard that is
12 appropriate for fellow lawyers in the Bar.

13 Q Are you familiar with what the legal malpractice
14 standard is in South Carolina or how it's defined?

15 A Yes.

16 Q How?

17 A Well, the -- first of all, if you're going to bring a
18 legal malpractice case, there has to be a duty of some sort
19 that is owed to you, either directly, like a client, or you
20 -- you could be a possible third-party beneficiary or some
21 other reason why a duty is owed to you. You have to be
22 somebody who the law expects to be protected. Then -- that
23 -- that's No. 1, duty owed.

24 Second, there are various types of duties as we've
25 talked about: Care, skill, diligence, loyalty,

1 information, conflicts. Duty owed, duty breached. Damage
2 suffered, and damage suffered because of the breach of
3 duty. If you put those four things together, duty -- duty
4 owed, duty breached, damages -- and the damages -- and the
5 -- and the breach of the duty caused the damages, that
6 would -- that would be the nucleus of a legal malpractice
7 case in South Carolina.

8 Q What was your assignment in this case?

9 A My assignment was, under the circumstances that
10 confronted Mr. McGowan and -- and -- and Willie, to analyze
11 Mr. McGowan's behavior and determine whether or not he had
12 committed legal malpractice as to Willie Bell.

13 MR. LEWIS: We offer Mr. Freeman, Professor Freeman,
14 in the area of legal malpractice in the handling of these
15 type litigations in South Carolina.

16 THE COURT: Any voir dire?

17 MR. JANIK: No, Your Honor.

18 THE COURT: All right. I find he is qualified. You
19 may proceed.

20 DIRECT EXAMINATION BY MR. LEWIS:

21 Q How have you prepared yourself to testify here today?

22 A I've reviewed a lot of material. Jury's aware of
23 different documents and different names have come up. Mr.
24 McGowan has -- of course, I was here for his testimony, but
25 he's also been deposed in this case, that means testimony

1 taken under oath and written down. You can read it.

2 Willie Bell, the same way. The family members,
3 including Mr. Strong, the same way. They -- they've been
4 deposed. Their -- they give -- told their stories under
5 oath. Court Reporter takes it down and -- and I've read
6 that.

7 There -- we have what are called "pleadings," which is
8 the complaint. There'll be an answer to the complaint.
9 There are what are called "motions" that get filed,
10 including motions for summary judgment, meaning taking the
11 position that there is or isn't a case there and talking
12 about it and analyzing it. It's background information,
13 but it's the kind of thing that somebody like me would
14 review.

15 I've been deposed in this case myself, which means I
16 have given my testimony, under oath, to Mr. McGowan's
17 attorneys. I have read depositions from Mr. McGowan's
18 experts. There are three of them: Greg Adams from the law
19 school; Fayrell Furr, who's been sitting here today; and
20 Ms. Provence -- did I pronounce that right -- who's another
21 expert. And they'll be here later.

22 So I've covered the waterfront, or tried to, in terms
23 of help -- helping me understand what's going on in this
24 case.

25 Q In your preparation, you conducted the kind of

1 investigation that -- common for lawyers in your area of
2 what you do?

3 A Yes, I have. And that includes doing some research,
4 too.

5 Q And what is the standard of care for lawyers, such as
6 Mr. McGowan, in handling litigation in South Carolina?

7 A As I -- as I testified previously, it's to exercise
8 the measure of care, skill, diligence, judgment, knowledge,
9 and loyalty that lawyers of ordinary skill and capacity,
10 your basic average lawyer, would commonly possess and
11 exercise, perform up to that level.

12 Q In your opinion, did Mr. McGowan perform up to that
13 standard?

14 A No.

15 Q Do you have an opinion as to whether or not his
16 failings caused injury to Mr. Bell?

17 A Yes.

18 Q How?

19 A I believe Willie Bell got hurt because he was a son of
20 Emma. He was the only son of Emma. He wasn't a maybe son.
21 He was an actual son. He was an adopted son.

22 Depending on how you look at it, and this is how I
23 look at it, he was the sole heir of the estate; and he got
24 pushed to the side and ignored through this entire
25 \$2,300,000 process. And something is -- in my judgment,

1 there's a -- there's a failure when the man who is -- is
2 legally entitled, legally shown to be family, not a guest,
3 but actually is, ends up with zero until he gets a check
4 from --

5 MR. JANIK: Your Honor, might we have some questions?
6 I think we're getting a bit of a lecture instead of an
7 answer.

8 THE COURT: Okay. Just ask another question.

9 MR. LEWIS: Ask another question?

10 THE COURT: Clarify that.

11 Q Why do you hold the opinions that you hold, Mr.
12 Freeman, about Mr. McGowan?

13 A Because the key thing that brings us here is Willie's
14 -- Willie wasn't treated properly. And I'm looking at this
15 from the least perspective, analyzing it as to what he was
16 entitled to and asking the question: "Did he get it or
17 not?"

18 And he didn't get it, in my estimation. He was not --
19 his interests were not properly protected and they needed
20 to be and they should have been. And I can explain
21 further, but if you want to ask another question, go ahead.

22 Q What duties did -- did he not do? What are the duties
23 he owed to Mr. Bell?

24 A In -- in -- in my estimation, the first duty was the
25 duty of competence and the duty to conduct an investigation

1 to determine exactly who the estate really consisted of,
2 who has ownership of the estate. The -- the retainer
3 agreement, which you've seen -- it was up on the -- on the
4 screen -- says that the client is the estate of Mrs. Davis.
5 That's -- that's -- I didn't write that on there. I didn't
6 have anything to do -- Willie didn't write it on there.
7 Chad McGowan, is my understanding, wrote that on there.

8 Now, the estate has got owners, your heirs on the
9 estate. Willie is an heir of Emma.

10 MR. JANIK: Your Honor, there's an issue that I would
11 like --

12 THE COURT: All right. We'll let the jury go to the
13 jury room for just a minute.

14 (Jury exits the courtroom at 2:46 p.m.)

15 THE COURT: All right.

16 MR. JANIK: Your Honor, Professor Freeman is -- is
17 effectively charging the jury his standards and issues in
18 South Carolina. I have a brief for the Court in that
19 regard. Experts cannot testify on the standards and issues
20 of law -- may I approach, Your Honor -- that he is doing
21 right now.

22 (Mr. Janik hands a document to the Court.)

23 COURT REPORTER: Mr. Janik, please speak up a little
24 bit for me.

25 MR. JANIK: Yes, ma'am. We object and move to strike

1 his testimony.

2 (Brief pause.)

3 THE COURT: What -- which particular testimony are you
4 addressing?

5 MR. JANIK: The -- the testimony that Willie doesn't
6 get what he's supposed to be getting, as opposed to
7 testifying to what is reasonable under the circumstances
8 with what known at that time. We have no foundation. We
9 now have conclusions that are coming out: "I've reviewed
10 the matter. Willie didn't get what he's got. That's
11 malpractice."

12 That is -- is not what the expert's here to do.
13 That's being an advocate and that's not what they're here
14 for. They're here to assist the trier of fact with facts,
15 understanding those facts, and whether or not Mr. McGowan
16 acted reasonably with the knowledge of those facts. As
17 basis for the objection, I think all of his testimony so
18 far has been conclusory in this matter.

19 MR. LEWIS: Well, I really don't understand. He's --
20 he's testified as to why he thinks there was a breach of
21 care as to Willie and what the responsibilities of the
22 lawyer were for Willie. That's what he's here for. All
23 this -- this memo he gives me here has to do with people
24 coming to conclusions of law, and I haven't heard one
25 conclusion of law that Mr. Freeman has given. The

1 conclusions of law are for you, and we agree with that.

2 Now, when they get their experts up, we don't want
3 them giving conclusions of law either. But we want them to
4 give the facts and why the facts constitute and what they
5 constitute that is, in their own opinion, legal
6 malpractice. That's all he's doing.

7 MR. JANIK: It is Your Honor's decision to instruct us
8 on the duty. He is doing that right now and saying that
9 duty has been breached. That's not his role as ---

10 MR. LEWIS: It is his duty to define what the lawyer's
11 duty is as far as the facts of this case go. The duties
12 that judge will charge is he used his ability of loyalty to
13 -- but -- but he has to say what - what the duties are in
14 this case. That's a factual matter.

15 THE COURT: All right. Well, I -- I ---

16 MR. LEWIS: And otherwise the judge has to do it.

17 THE COURT: I'm going to overrule the objection. I --
18 I -- I don't believe he's kind of crossed the Rubicon. I
19 think he's testifying, generally, as to an opinion as to
20 the conduct of the defendant, Mr. McGowan, in this case.
21 So I overrule the objection.

22 MR. JANIK: May I have a continuing objection, Your
23 Honor?

24 THE COURT: Yes, sir.

25 All right. Bring in the jury.

1 (Jury enters the courtroom at 2:51 p.m.)

2 MR. LEWIS: Do you have the next question?

3 THE COURT REPORTER: Do I have it? Why would I have
4 it? You mean the last question? I thought you said the
5 "next question."

6 (Courtroom laughter.)

7 THE WITNESS: You would be really something if you had
8 the next question.

9 THE COURT: All right. You may continue.

10 THE COURT REPORTER: You asked what duties he owed.

11 DIRECT EXAMINATION BY MR. LEWIS (continues):

12 Q What duty did he owe?

13 A And we're -- there was an interruption in there, but
14 I'll -- I'll continue. Understand that one of your jobs as
15 a lawyer is to figure things out, conduct an investigation,
16 get to the bottom of things.

17 I was here with you this morning, and Mr. McGowan -- I
18 wrote down something he said. He followed the evidence
19 that was available, he said. "I followed the evidence."
20 He said that again. And I just want to focus on that for a
21 second: I followed the evidence.

22 What evidence was there? He had the obituary that
23 said that Willie -- if you -- if you wanted to dig,
24 obituary said that Willie was the son. There -- the family
25 had indicated Willie was the son. Mr. McGowan, himself,

1 wrote down or typed down "maybe adopted." Was that ever
2 checked out? Was that ever checked out in any kind of
3 legitimate, thorough way to -- to -- to follow -- to find -
4 - to find out what the truth is? I don't believe it was,
5 and I believe it needed to be when you're talking about
6 finding out whether or not somebody is an heir.

7 So doing an investigation and digging and not -- not
8 accepting things at face value necessarily, not accepting
9 information from people who are not skilled in the law.
10 The issue of whether someone is or isn't adopted, that's a
11 legal question. There's a courthouse, there are papers on
12 file, there's ways of getting at those papers, there's ways
13 of getting birth certificates that list somebody as a son
14 on a birth certificate.

15 There's ways -- and as -- as birth a birth certificate
16 listed Willie, there's ways of checking things out, if you
17 want to, if you care enough to do it, so that you don't
18 leave things flapping in the breeze. You button things
19 down. You tie things down so that everybody's better off.
20 The truth is what it is. People get what they deserve and
21 there's no lawsuits, finger-pointing, recrimination later
22 on.

23 That wasn't handled properly in my estimation. This
24 idea of "the family members told me," the family members
25 aren't lawyers. And one of the family members, Atlene,

1 that I read her deposition, she -- I think she said that
2 she -- that Willie had told her he was adopted and his mama
3 had told her -- Atlene -- that -- that Willie was adopted.
4 There's -- there's one witness right there. Why is that --
5 why is nobody checking?

6 As a lawyer, you don't necessarily let your client do
7 your investigation. Sometimes they don't have the skills
8 to do it. Sometimes they don't know where to look for
9 what's important. That's why you went to law school and
10 got a degree, to learn how to do that.

11 And so to say, "Well, I relied on the family," I don't
12 care if you're relying on 4 people, 6 people, or 100
13 people, if they're not lawyers, when you're relying upon
14 them for a legal judgment, you're making a mistake in my
15 estimation. And that was a failure and it was a blunder;
16 it was an error.

17 So the failure to properly investigate was -- was a
18 lack of diligence and it was a lack of competence. There
19 was no giving of information to Willie. Willie is just
20 kind of cocooned off here, where we know -- people can be
21 reached. Lawyers all the time use investigators. They use
22 clerks or runners to go ring doorbells or to talk to
23 people. There's ways of finding stuff out if you -- if you
24 really want to dig at it.

25 And in my estimation, in this case, factually, when

1 you're dealing with a multimillion dollar claim, it'd be a
2 good thing to dot your I's and cross your T's and to dig a
3 little bit to get to the bottom of things so that maybe a
4 deserving person doesn't get cut out.

5 On top of that, there are conflict of insure --
6 interest issues because --

7 MR. JANIK: Are we moving to a new topic?

8 THE COURT: All right.

9 THE WITNESS: No, this is duty. I was asked about
10 duties and I'm talking about duties.

11 THE COURT: I -- I think he's still talking about
12 duties. Go ahead.

13 A And then one duty is to avoid conflicts of interest or
14 deal with improperly. And to the extent that there's a
15 possible pie-slicing dispute between Willie and Mr. Strong
16 and other people, that raises conflict issues where you are
17 expected to make full disclosure to people, get things out
18 in the open, to have a written understanding as to how it's
19 going to be happen -- how it's going to be resolved. I
20 didn't see any sign of that.

21 Another duty that you owe, that I mentioned earlier,
22 is a duty when you're winding things up, to do it properly.
23 It's not enough -- it's -- it's commendable to go and gotta
24 finish. You've got to hand -- wrap it up properly.

25 Another thing that was said when I was in the

1 courtroom this morning, "Who gets the money is important,"
2 is what was said by Mr. McGowan. I agree. I agree it is.
3 It's important. And the question for you jurors is, "Was
4 it handled properly here? Is it -- is it enough to just
5 let things drift along, rely on people who don't have any
6 legal skills for making legal judgments; split up the
7 money, and say, "I did my job. If there's problems, you
8 know, that -- it's not my job to solve those problems."

9 I believe that a reasonable lawyer, in a -- in any
10 case -- but certainly in a multimillion dollar case -- is
11 expected to dot the I's and cross the T's and make sure
12 that all the people who are deserving of getting that money
13 are taken care of, are found out to the best of your
14 ability and taken care of properly under the law.

15 Part of the requirement in wrapping up a wrongful
16 death case for a lawyer charged with that responsibility is
17 to file a petition, in court, listing the heirs. In my
18 estimation, no reasonable lawyer, particularly in a case
19 involving millions of dollars, would just rely upon family
20 members, who have no legal skills to determine who the
21 heirs are -- which is a legal determination -- where you
22 may have issues such as common-law spouse or is somebody --
23 or -- are they not adopted. That's a legal question. And
24 that, as -- a lawyer's supposed to step up and handle that.

25 And so what I am complaining about here, in terms of

1 breaches of duty -- and that was a question that was asked
2 of me -- are failures to probe, to follow the evidence --
3 which is a job -- to see that the right people get the
4 money; and I believe that those duties were breached and
5 they caused injury.

6 Q What was the -- is there -- explain the possible
7 conflict between the PR and the son and the common-law
8 husband. Is there a conflict in there?

9 A There certainly is a potential conflict for this
10 reason: You're talking about one pie. It's a big pie.
11 It's a multimillion dollar pie. It's a million-dollar-plus
12 pie even if you take 900,000 in fees out of it.

13 Who gets what size piece? And my -- Mr. Strong thinks
14 that he's entitled to more than Willie or the PR thinks
15 something else. Any time you're talking pie slicing,
16 you're talking about the potential for conflict, and -- and
17 that's -- that's really at the heart of this.

18 Q Do you have an opinion to whether Mr. McGowan
19 exercised reasonable care in this case?

20 A Yeah. In my estimation, he didn't, for the reasons
21 that I've given: He didn't dig. He didn't follow the
22 evidence. He didn't see that the money ended up the way it
23 should have, which breeds problems inside the family and
24 inside the courtroom.

25 Q Do you have an opinion whether Mr. McGowan was

1 properly loyal to all his clients in this case?

2 A The estate was a client. He said so. Willie owned an
3 interest in the estate as an heir. He was not loyal to
4 Willie. He wasn't caring toward Willie. He wasn't
5 diligent towards Willie, and that's why we're here today.

6 Q What's the rule of professional responsibility when
7 you have a contingency in a case and -- as to an agreement?

8 A It has to be in writing, and it has to have a -- spell
9 out a lot of particulars, including when you settle up.

10 Q Was there an agreement in writing with Mr. Strong?

11 A I don't believe that there was.

12 Q Was there an agreement in writing with the PR?

13 A There was a retainer agreement, and there was one with
14 the estate as well.

15 Q Are you aware of a statute that says that lawyers who
16 represent an estate fiduciary cannot owe duties to others?

17 MR. JANIK: Objection.

18 A No, I'm not aware of any statute. The statute I'm
19 aware of says that you -- you owe a duty to the personal
20 representative and you owe a duty to anybody else that you
21 designate in writing in your retainer agreement. And here,
22 the estate itself was designated, in writing, in the
23 retainer agreement, as a client.

24 So the duty wasn't purely to Atlene, the PR -- or --
25 or --

1 Q Tanisha.

2 A Tanisha, I'm sorry. The duty wasn't purely to the PR.
3 It was, as well, to the estate, of which Willie, my
4 testimony is, was a -- had -- had an ownership interest.

5 Q You mentioned third-party beneficiary. What is that?

6 A A third-party beneficiary can crop up in multiple
7 ways. But to give you one example: I'm old, I -- I -- my
8 days are numbered. I'm -- I see myself passing away. I
9 want to do a will, and I want all my money to go to my two
10 children; and I ask a lawyer to draft that for me, my will.

11 And he does and -- and I pass away. And because the
12 lawyer messed up, my two kids don't get anything under the
13 will because of a goof up.

14 Do they have -- do they have a gripe? And the answer
15 is yes. Why? They're not the -- per se the client of the
16 -- of the lawyer. It's not necessarily their will. They
17 didn't hire the lawyer. I did, but I'm gone. But they
18 were to benefit from my designation of them. And if the
19 lawyer messes up and causes them not to inherit, it's
20 viewed that the -- they have a claim against the lawyer.

21 Now, here, we don't have a will, we've got a statute.

22 MR. JANIK: Objection, Your Honor.

23 THE COURT: Let's move on to the next question. I'm -
24 - I'm not sure where the answer was going, but just ask
25 another question.

1 Q How would you characterize Mr. Bell?

2 MR. JANIK: Objection, Your Honor.

3 A I would characterize him as a person ---

4 THE COURT: Overruled. Go ahead.

5 A --- person who had a vested financial interest, an
6 honest interest that can't be disputed because he was an
7 heir. He's somebody that -- the statute for wrongful death
8 statutes talks about the -- the children being -- having
9 rights. He had -- he had a right, clearly, under that
10 statute.

11 He has a right under intestate succession. If you die
12 without a will, your -- your child or children have rights.
13 He had those rights; and he was to benefit, under the law,
14 from the lawyers work here in collecting money for the
15 estate of which he had an ownership interest.

16 So he was -- if he was not a client, he was somebody
17 who is certainly akin to being a client whether he -- you
18 want to label him as a beneficiary. In my estimation, he
19 was an intended, by statute --

20 MR. JANIK: Objection.

21 THE COURT: Just don't go into interpretation of that.
22 Move onto the next.

23 Q What duties are owed by lawyers when they pass that
24 money at the end of a wrongful death case?

25 A To get it to the right owners, in the right amounts.

1 That's -- it -- it can all crumble and fail if the -- if
2 the people who actually are entitled to that money don't
3 end up with it. So it's to do the job and conduct the
4 research and get to the bottom of things and get it done
5 right.

6 Q You've read the retainer agreement, right?

7 A Yes.

8 Q Is there anything in that agreement that permitted Mr.
9 McGowan to ignore Willie or shut his eyes to the fact
10 Willie was a son or adopted son?

11 MR. JANIK: Objection.

12 Q Or adopted son?

13 THE COURT: I sustain the objection.

14 Q What -- we've already testified why Mr. McGowan was --
15 wasn't entitled to rely on Tanisha. You said that. What -
16 - what -- have you already testified to that?

17 A I've testified to that, and I think the jury
18 understands what I have to say about that.

19 (Brief pause.)

20 Q Looking at the facts of this case, how do you view
21 Willie's relationship to the estate?

22 MR. JANIK: Objection.

23 THE COURT: I overrule the objection. Go ahead.

24 A I consider him to be an heir of the estate because in
25 my estimation, he was, based on my investigation,

1 knowledge, background, training, and experience. And that
2 means that he was destined to own a share of the proceeds
3 of the lawsuit because the lawsuit was an asset of the
4 estate.

5 Q Do you have an opinion as to whether Mr. McGowan's
6 actions or inactions have -- you testified about hurt Mr.
7 Bell?

8 A Yes.

9 Q What's your opinion?

10 A My opinion is that he took a great deal less --

11 MR. JANIK: Objection.

12 THE COURT: I overrule the objection. Go ahead.

13 A -- a great deal less money in the -- the \$100,000
14 payout than he would have been entitled to if his rights
15 had been properly protected.

16 As it -- as I understand it today, he is the sole heir
17 of the estate. He's the sole person proved to be an heir
18 of the estate.

19 Q That would mean he would get the whole estate?

20 A That's what I understand to be the case.

21 Q On the issue of lawyer ethics, do you have an opinion
22 about the ethical propriety of Mr. McGowan's dealing
23 concerning Mr. Bell?

24 A Yes.

25 Q What is it?

1 A I believe that there was a failure as to Rule 1.1
2 which deals with competence because I don't believe he was
3 competent. I believe there was a failure as to Rule 1.3,
4 which deals with diligence because, as I testified
5 previously, I don't think he was diligent. I believe
6 there's a breach as to 1.4, which deals with lawyer
7 communications, because I didn't see anything that led --
8 that led me to believe that there was proper communications
9 with or -- or relating to Mr. Bell. I believe that there
10 was a conflict of interest, which is wrong, under 1.7, that
11 wasn't properly handled. And I believe that the money was
12 not properly passed out in violation of 1.15.

13 Q When you said "1.15," those are rules?

14 A Those are rules that are binding on lawyers, the
15 ethics rules. There are a lot more, but those are the ones
16 that I consider to be pertinent here today.

17 Q You have specified some opinions here today as an
18 expert witness. Do you hold those opinions to a reasonable
19 degree of professional certainty as an expert in the field?

20 A Yes.

21 Q Would you answer any questions they may have for you?

22 A Yes, sir.

23 MR. JANIK: Can I have one minute, Your Honor?

24 THE COURT: Yes, sir.

25 (Brief pause.)

1 CROSS-EXAMINATION BY MR. JANIK:

2 Q Mr. Freeman, we've met.

3 A Yes, sir.

4 Q Steve Janik, I got to take a deposition we talked
5 about the other day.

6 A Yes, sir.

7 Q You were very specific that Mr. McGowan could only
8 rely on lawyers for information, not on family members.

9 A I didn't say that.

10 Q I think that's exactly what you said.

11 A May ---

12 Q Let's ---

13 A --- may -- may I explain my answer.

14 MR. JANIK: I haven't asked the question yet, Judge.

15 MR. LEWIS: I think he did. I'd like him to be able
16 to explain his answer. He cut him off.

17 THE COURT: Well, let -- let him answer the question.

18 MR. JANIK: Sure.

19 A I didn't say that a lawyer can't rely on a client. My
20 testimony was that when it comes to making -- dealing with
21 matters that involve making legal determinations, such as
22 whether somebody is adopted or not, that it's foolish for a
23 lawyer to -- you're gambling if you want to rely on people
24 who don't have the requisite training; and you're shutting
25 your eyes to your own obligation which is, as a lawyer, go

1 out and check out the facts yourself or have somebody else
2 do it for you, but not a layperson; and don't count on a
3 layperson.

4 Q Who are the persons that have the requisite training
5 that you just told us about?

6 A Mr. McGowan knows -- knows about adoption and he knows
7 it's a legal process.

8 Q But who should he have seen? Tell us the people that
9 you're referring to that have the requisite training.

10 A He should have -- he should have gone -- first of all,
11 a reasonable investigation means talking to Tanisha and
12 getting Willie Bell's phone number or sending a message --
13 may ---

14 Q Who are the requisite ---

15 A Hold it. I'm trying to answer a question.

16 THE COURT: Let him -- let him finish his answer.

17 MR. FREEMAN: And -- and I'd -- I'd like that.

18 A Willie Bell is a good place to start, and if Willie
19 Bell says, no, I wasn't adopted and you get him to sign a
20 written statement to that effect, you're looking pretty
21 good. Okay. That didn't happen. That -- that's picking
22 up a phone and calling the guy and tracking it down.

23 You can do that as a lawyer. You can have your
24 investigator do that. You can have your paralegal do that.
25 You can have your secretary do that. You can have an

1 associate at your law firm do that. There are lots of ways
2 of getting that done, to chase that down and get that
3 started. And if you can't go to the Family Court because
4 they won't entertain you, then ask Willie to go for you, or
5 get -- or -- or get a signed document from Willie to open
6 the court file.

7 Q Okay. How much time have you spent with Willie on
8 this case?

9 A Counting -- well, I read his deposition, so that was
10 maybe an hour. We probably talked for 20 minutes or so.

11 Q Was Willie there when you read his deposition?

12 A He wasn't there, no.

13 Q And you spent 20 minutes with him?

14 A Right.

15 Q When did you start working on this case?

16 A I don't know. You -- I -- I've supplied my timesheet.
17 You have that information. I don't recall.

18 Q What's -- you have any basic recall? A year, year and
19 a half, two years?

20 A It's over a year.

21 Q How many hours have you put in -- have you billed?

22 A I don't have a number for you.

23 Q How much do you charge an hour?

24 A 600 an hour.

25 Q Okay. So it's been over a year, and your personal

1 investigation with Willie Bell directly was 20 minutes and
2 you're yelling about what Mr. McGowan does. And you've
3 been yelling the whole day, right?

4 MR. LEWIS: I object, Your Honor.

5 THE COURT: I overrule. It's cross.

6 Q Other than the people involved with this issue, who
7 are these requisite people that Mr. McGowan should be
8 talking to?

9 A He should -- he should be talking to Willie.

10 Q That's people involved. Who else? Who outside of the
11 immediate family?

12 A The Family Court -- whoever keeps the records at the
13 Family Court would have the -- the -- the adoption decree
14 on file ---

15 Q How do you ---

16 A --- and get a copy of it.

17 Q How do you get the adoption decree from the Family
18 Court?

19 A Well, one way to get it is pick up the phone, call
20 Willie, have Willie come in, and Willie -- either send
21 Willie over to get his own adoption paper or give you
22 permission to go to court and get it or verify whether it
23 is there.

24 Q Let's back up a little bit. The family members, you
25 said, was a reasonable way to start at least?

1 A Start what? Start the investigation on whether he's
2 adopted?

3 Q Yeah.

4 A Well, the -- you find out about Willie through them.
5 He was at the meeting. He wrote down -- these are -- he --
6 maybe -- Willie is a son, maybe adopted. Okay. That --
7 that's what -- I didn't write it down --

8 Q So you -- that's a good way to start.

9 MR. LEWIS: Let him finish.

10 A That starts the investigation.

11 Q Okay. And that investigation then continues, it's
12 ongoing.

13 A Yes. Like -- like Reagan said, "Trust but verify."
14 They say he's not -- they say he's not -- you know, you're
15 there, they say he's not adopted. That's fine, but they
16 may not know. Let's get to the bottom of it. Call up
17 Willie. Get a hold of Willie. Have Willie come down.
18 You're talking about five minutes. He comes down. He says
19 I was adopted. You say, "Well, here's -- we need to get
20 that record. One way or the other, we need it."

21 Q Was Willie a client of Mr. McGowan's?

22 A Potentially.

23 Q But never ever in reality.

24 A No, I -- I wouldn't agree with that. I -- I -- I -- I
25 consider him to be a beneficiary of the services that Mr.

1 McGowan was rendering and somebody who -- to whom a duty
2 was owed.

3 Q You started to explain that. I'm going to come back
4 to that.

5 Did Mr. Bell ever talk with Mr. McGowan at any time
6 before this lawsuit, before we got to court here today?

7 A I don't believe that -- that they ever directly
8 talked. I believe that Mr. Bell did call the law firm and
9 spoke to somebody else.

10 Q That was on August 22nd of 2013 when he was trying to
11 find out about the money, right?

12 A When he had been alerted that there had been a court
13 case producing a settlement.

14 Q Right. Before that, was there any contact between
15 them at all?

16 A I don't believe so, between the two of them.

17 Q So there never was any request for legal services from
18 Mr. Bell and an offer to provide those services by Mr.
19 McGowan.

20 A There was an offer to provide services by Mr. McGowan,
21 but it was not made personally to Mr. Bell. It was made on
22 behalf of the estate, of which Mr. Bell has an ownership
23 interest.

24 Q Let's talk about that. You're talking --

25 (To assistant) Do you have Exhibit 24?

1 (No audible response.)

2 Q You're talking about the handwritten note at the top
3 of the retainer agreement.

4 (Mr. Janik begins to use a demonstrative aid.)

5 Q This is the notation you're talking about?

6 A That's where Mr. McGowan, is my understanding, hand
7 wrote in that the client was the estate of -- I think it
8 says "Emma Davis."

9 Q Mrs. Davis.

10 A I'm sorry. Right.

11 Q Where'd you get your understanding from?

12 A Where did I get my understanding about what?

13 Q That Mr. McGowan wrote that on the contract.

14 A That was just what I -- what my understanding was.

15 Q Who told you that?

16 A I forget where I first heard that.

17 Q You don't know who wrote that on the retainer
18 agreement, do you?

19 A Well --

20 Q Yes or no. Do you?

21 A Well, my understanding was it was Mr. McGowan.

22 Q I understand that.

23 A But the truth is I don't particularly care. It's Mr.
24 McGowan's agreement, it's Mr. McGowan's contract, and it's
25 part of Mr. McGowan's contract regardless of who put it on

1 there.

2 Q Let's go back to my question: Who wrote that on the
3 contract? Give me the name of the person that wrote that
4 on the contract.

5 A My understanding is Mr. McGowan.

6 Q But you don't know that. That's your understanding.

7 A I wasn't there, sir.

8 Q Thank you. And who signed this contract?

9 A Tanisha.

10 Q And she was the duly appointed personal representative
11 of the estate.

12 A Yes.

13 Q Is she the proper party to sign this type of contract
14 on behalf of the estate?

15 A She would be a proper party, yes.

16 Q When was that notation made on the contract?

17 A My understanding it was contemporaneously with the
18 contract being written.

19 Q When did you get that -- from who did you get that
20 understanding?

21 A Because of the way it's written. Because it says (as
22 read): "This is an agreement between McGowan, Hood &
23 Felder, hereinafter attorneys," and -- and then it says (as
24 read): " ... hereinafter client."

25 Now, there's -- you -- you -- for there to be a

1 client designated, somebody has to write that down at the
2 beginning of -- of the contract.

3 Q When? Do you know when it was written down?

4 A My understanding or -- or belief is that it would be
5 contemporaneously with the issue -- with the signing of the
6 contract.

7 Q Which is it? Belief or understanding?

8 A Both.

9 Q Both. Where did your understanding come from?

10 A Because lawyers, when they write contracts to identify
11 parties, typically, at the outset of the contract, identify
12 the parties to the contract. And here, if you -- if it
13 wasn't -- if her name wasn't on the contract, the estate of
14 Mrs. Davis, then only one of the contracting parties would
15 be -- would be identified and that's the McGowan firm. And
16 then you would have nobody as a client. That doesn't make
17 any sense to me. That's simple logic.

18 Q So all of your understanding comes from you. You're
19 just assuming this? That's your logic.

20 A My understanding comes from my knowledge, background,
21 training, and experience. I've been a lawyer since 1970.

22 Q I -- I understand that. I'm -- I'm almost up there
23 with you. Not quite. And someday I'll grow up and I'll be
24 as good as Mr. Lewis.

25 But the simple fact of the matter is --

1 MR. LEWIS: Excuse me. I didn't understand that.

2 THE COURT: You don't need to.

3 MR. JANIK: It was a compliment.

4 MR. LEWIS: I'll take it.

5 CROSS-EXAMINATION BY MR. JANIK (continues):

6 Q You don't know who put it there, when it was put
7 there, why they put it there, what they meant when they put
8 it there. You weren't there.

9 A I -- I -- I have a real good idea. I can -- I -- with
10 my knowledge, background, training, and experience, I got a
11 real good idea why it was put there. And a -- and if you -
12 - if you match that up with Tanisha's signature on this --
13 on the last page, doesn't look like her handwriting, I'll
14 say that.

15 Q Who's is it?

16 A I'm -- I'm thinking it's Mr. McGowan.

17 Q You're thinking it. Okay. I think we've gone a long
18 way of saying, no, you don't know anything about that.

19 Let's move on.

20 Tanisha signed the agreement, right?

21 A Yes.

22 Q And she signed it in the space for the client, right?

23 A Yes, sir.

24 Q Would you not conclude that she is the client?

25 A She's one of them. No, she -- you can have multiple

1 clients there. The estate, being non-human, can't hold a
2 pen. So it can't sign for itself.

3 But it is at the very first part of the contract where
4 it's identified as a party to the contract as a client.

5 Q But the only person identified in the contract as the
6 client is Tanisha Gilmore.

7 A The only human person is Tanisha.

8 Q Okay. Are there any other human persons identified
9 anywhere in that agreement like Willie Bell?

10 A Yes. The McGowan firm, which consists of humans, is
11 also identified.

12 Q How about any of the other family members or Willie?

13 A No, not by name.

14 Q Now, Tanisha signed the -- was the personal
15 representative. She signed the agreement. She signed the
16 record releases. We saw that earlier today. She was the
17 plaintiff in the caption of all of the filings with the
18 Court, right?

19 A Yes. She was a plaintiff.

20 Q A plaintiff. She appeared at the settlement hearing
21 before Judge Hayes. She signed the settlement petition.

22 A Yes.

23 Q Did anybody else do any of that for the estate?

24 A I don't believe any -- well, Mr. McGowan.

25 Q Other than the counsel.

1 A No.

2 Q Now, when you talked about Atlene before, you meant
3 Atlene Jordan?

4 A Yes.

5 Q When did Atlene Jordan ever tell Chad McGowan Willie
6 Bell was adopted?

7 A I don't think that she did. Certainly in -- well, she
8 gave a deposition that you were present as his agent, so
9 ... But I don't -- I don't -- I don't know that she
10 personally did.

11 Q Who from the family, any of them, over three years of
12 litigation, over all their depositions, over all the
13 affidavits, while Mr. McGowan was working on his file
14 diligently, loyally, and generating a great result -- you
15 admit it's a great result, true?

16 A Good -- good result on the recovery on the
17 malpractice.

18 Q Okay.

19 A The split up of money, I'm not so ---

20 Q Sure. That's what your ---

21 A --- quick to praise.

22 Q --- issue is, where the money went, right?

23 A Yes.

24 Q Okay. Which, of all those people, that he spent all
25 that time working with from the family, everyone that was

1 involved, which of them ever said, "Willie Bell's adopted"?

2 A The answer is I -- I have not seen anybody on record
3 as telling Mr. McGowan that. I have seen Mr. McGowan's own
4 notation saying that -- that there was an issue as to
5 whether or not Willie was adopted. It's a quote in one of
6 his typed out notations.

7 Q His memo from February 17, 2010 meeting ---

8 A Yes.

9 Q --- is what you're talking about.

10 A Yes.

11 Q Okay. Are you aware that, between Ms. Emma and
12 Willie, they only told four people in the whole world that
13 Willie had been adopted? Did you know that?

14 A I -- I haven't got a number in mind.

15 Q It's in the answers to discovery that you said you
16 reviewed, the interrogatory answers. Did you miss it?

17 A Well, if it's in there, it's in there.

18 Q It's in there. You know that he's admitted that he
19 doesn't have an attorney-client relationship with the
20 McGowan firm or with Chad McGowan. See those?

21 A Personally, individually, he was never a client. He
22 was a client as an heir of the estate and an owner of the
23 estate assets.

24 Q And you talked about the -- let me ask you this: The
25 -- the owner of the estate and the estate assets, this is

1 an intestate -- intestate situation, right? There's no
2 will, right?

3 A True.

4 Q Is there anything in writing that we have from Ms.
5 Emma that told her -- where she wanted her benevolence to
6 go?

7 A As far as I know, there is no will.

8 Q No will. Have you seen the insurance policy that she
9 designated Andrew Strong as her beneficiary for and the
10 application of that policy that she signed, under pain and
11 penalty of perjury, saying I want this to go to Andrew
12 Strong, my common-law husband?" See ---

13 A I'm aware -- I'm aware of that.

14 Q Have you seen it?

15 A I'm sure I have in the course of my investigation.
16 I'm aware of that document.

17 Q You should have seen it anyway, right, in the course
18 of your investigation?

19 A I'm aware of it, yeah.

20 Q Is there any case in South Carolina dealing with an
21 intestate third-party-beneficiary situation like this one?

22 A The only case is not intestate. The only case is one
23 involving a will, which we're both familiar with, the
24 Fabian case. I consider this to be the first cousin of
25 Fabian.

1 Q And the events that we've been talking about here were
2 back in 2010, when Ms. Emma passed away; and then
3 litigation went up to and was settled out in late 2013,
4 right?

5 A Yes.

6 Q When was *Fabian* decided?

7 A Most recently. Last couple of years.

8 Q October 20th of 2014?

9 A Last couple of years, yes, sir.

10 MR. LEWIS: Your Honor, he objected to going into --
11 me going into the case law, and he gave you a memorandum
12 which is against his testimony right -- with his questions
13 right now.

14 MR. JANIK: One more question, Judge. It goes to
15 credibility.

16 THE COURT: Yeah. I overrule the objection.

17 Q You've read *Fabian*.

18 A Yes.

19 Q It sets the law, right?

20 A Pardon me?

21 Q This is the Supreme Court ruling on the law of South
22 Carolina.

23 A Third-party beneficiary, right.

24 Q And the Supreme Court specifically held ---

25 (Mr. Lewis and Mr. Janik speak simultaneously.)

1 MR. LEWIS: This isn't ---

2 MR. JANIK: --- this will be ---

3 THE COURT: Okay. Wait.

4 MR. JANIK: --- applied prospectively.

5 THE COURT: All right. Wait. He's ---

6 MR. JANIK: I'm sorry.

7 MR. LEWIS: He had one more question and I objected.

8 This is his memoranda he just put in front of me saying
9 this is improper. You gave him one more question and now
10 he wants to ask another one.

11 MR. JANIK: No. That was my question.

12 Q Are you aware that *Fabian* only applies prospectively
13 on a going forward basis?

14 A To those facts.

15 Q You're applying it going retroactively, right?

16 A No, I have a different fact situation here.

17 Q Did you ask Willie why he never called McGowan when he
18 heard Andrew was talking to a lawyer, when he knew someone
19 had called the home saying, "The hospital killed your
20 mama;" when the sisters were talking about it? Did you ask
21 him why he never made a call?

22 A You know, I did not ask that exact question. What I
23 understood from talking with them is that he just was
24 clueless.

25 Q You talked a little bit about Mr. McGowan's notes, the

1 obituary, the medical records, birth certificates, those
2 types of things. Are any of those types of things included
3 in 62-1-109, statute that governs strict privity
4 relationship between an attorney and a personal
5 representative?

6 A When you under -- in my estimation, when you undertake
7 to represent the estate separately as a client, the estate
8 being, to my belief, an entity that has people who have
9 interest in it, just like a corporation's got shareholders.
10 Here Mr. Bell was -- had an ownership interest in the
11 estate. He had an ownership interest in the client. To
12 the extent that the estate is collecting assets, he has an
13 ownership interest in those assets. That's my testimony.

14 Q And that testimony is all based on the handwritten
15 notation stating Mrs. Davis [sic] signed the retainer,
16 correct? It's not based then upon the obituary, the birth
17 certificate, or all the other stuff?

18 A Correct. And I -- I want to just clarify something
19 that came up earlier because I -- I remember at my
20 deposition saying that those were Mr. McGowan's words, they
21 weren't mine.

22 Q What words?

23 A Estate of Emma Davis.

24 Q You made it clear you believe those are his words.

25 A Yes.

1 Q Doesn't mean ---

2 A And I -- I -- I didn't get any criticism at my
3 deposition for saying that.

4 Q You weren't in trial at your deposition.

5 A Okay.

6 Q And you know that.

7 A However, let's talk about trial. You've never tried,
8 as lead counsel, a wrongful death case.

9 A As lead counsel, no, sir.

10 Q Or a medical malpractice case.

11 A No, sir.

12 Q Or legal malpractice case.

13 A Oh, I --

14 Q Trial counsel. You stand up when the judge says ---

15 MR. LEWIS: Could he finish his answer, please?

16 MR. JANIK: Yes, I'm sorry.

17 A I need to think about that. I've been in them, but
18 it's been -- I just can't call one to mind. So that's --
19 that's my answer.

20 Q Have you tried 5 to 10 jury trials total over your 40,
21 50-year period?

22 A I would say that's -- that's probably so. Could be
23 more, but ...

24 Q And the last one was five, six, seven years ago?

25 A No, no. Oh, jury trial. Yeah, that was some time

1 ago. There was a trial to a judge in more recently.

2 MR. JANIK: A moment, Your Honor?

3 THE COURT: Yes.

4 MR. JANIK: Nothing further, Your Honor. Thank you.

5 Thank you, sir.

6 THE COURT: Re-direct?

7 MR. LEWIS: No, sir.

8 THE COURT: All right. You can step down and be
9 excused if you wish.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Call your next witness.

12 MR. LEWIS: Your Honor, I don't -- if there's no
13 objection to these, I'd offer into evidence the -- one of
14 the checks that came -- came to Tanisha Gilmore out of
15 McGowan's office.

16 (To Mr. Janik) Do you have any objection to that?
17 Just a copy of your check.

18 MR. JANIK: No objection, Your Honor.

19 MR. LEWIS: I'd offer it as exhibit -- what is it?

20 COURT REPORTER: 21.

21 MR. LEWIS: 21.

22 (Marked Plaintiff's Exhibit No. 21, copy of check, in
23 evidence.)

24 (Mr. Lewis and Mr. Janik confer.)

25 MR. LEWIS: We'd offer Exhibit No 22, the discharge of

1 the estate in February 21, 2011.

2 THE COURT: In without objection.

3 (Plaintiff's Exhibit No. 22, discharge document, in
4 evidence.)

5 (Mr. Lewis and Mr. Janik confer.)

6 MR. LEWIS: We'd offer that as an exhibit. It's
7 acknowledgment agreement that he drafted for the loan, for
8 Mr. Maloney, that Mr. McGowan testified to. And it's
9 Exhibit No. 23.

10 THE COURT: In without objection.

11 (Marked Plaintiff's Exhibit No. 23, acknowledgment and
12 agreement document, in evidence.)

13 (Brief pause.)

14 MR. LEWIS: That's our case, Your Honor.

15 THE COURT: All right. Members of the jury panel,
16 plaintiff is resting, that is plaintiff is telling us
17 they've presented their evidence. So this is the point of
18 the trial where we have to take a break. So we'll take our
19 afternoon break at this time. We have some matters
20 probably to take up outside your presence, and we'll send
21 for you as promptly as we can.

22 (Jury exits the courtroom at 3:39 p.m.)

23 THE COURT: Anything from the plaintiff?

24 MR. LEWIS: No, sir, I'm done.

25 THE COURT: Defense? Mr. Brooks?

1 MR. BROOKS: Your Honor, we have a motion to make.

2 Can we take a break?

3 THE COURT: Okay. We'll take our break first. Take
4 about a 15-minute break.

5 (Off the record at 3:40 p.m.)

6 (On the record at 3:59 p.m.)

7 THE COURT: All right. Mr. Brooks?

8 MR. BROOKS: Thank you, Your Honor. At this time, the
9 defendants would move for a directed verdict in the matter
10 as to all the claims in the amended complaint. We now have
11 the plaintiff's evidence. We would ask the Court to take
12 the evidence that it's heard throughout the plaintiff's
13 case and apply the law that we set forth in our summary
14 judgment memorandum -- in our renewed summary judgment
15 memorandum and apply the facts you've heard to that law.
16 And we think that forms the basis for our motion.

17 In addition, we have a written motion, but believe it
18 or not, it's not in the boxes back here. It's in a box
19 back -- can we get that and email it to you later today ---

20 THE COURT: Please. That'll be fine.

21 MR. BROOKS: --- for your consideration?

22 THE COURT: All right. Well --

23 MR. BROOKS: But the one thing I'd emphasize at this
24 point, put aside the malpractice claim, the other causes of
25 action for fraud, negligent misrepresentation, breach of

1 contract, fraudulent intent, and the Unfair Trade
2 Practices, plaintiff clearly has failed to prove all the
3 elements necessary for those claims to move forward.

4 That leaves us with legal malpractice. Mr. Bell has
5 admitted that Chad McGowan was not his client. That's
6 basic. You got to have the attorney-client relationship.
7 We think his claim as an individual -- in his individual
8 capacity, should also be dismissed at this point in time.

9 That leaves -- that leaves the attorney-client
10 relationship, which he says was formed with the estate and
11 third-party beneficiary. And we talked about it before, in
12 the context of our motions, before this trial started.

13 Mr. Lewis is trying to extend *Fabian*, but the problem
14 is *Fabian* itself recognized this is a new right. It is
15 prospective only --

16 THE COURT: Well, I went back after that came up in
17 the testimony and re-read *Fabian* and the dissent, and I'm
18 not sure it really is. The language is a little strange
19 because they say it applies to cases now pending before the
20 -- on appeal. And then Justice Pleicones says, "I would --
21 I would apply it only prospectively." So I'm not ---

22 MR. BROOKS: That's what was needed for the majority.

23 THE COURT: Yeah. So I'm not sure that that language
24 about -- I'm not sure it's as clear as -- that it's clearly
25 prospective, number 1, because of the way -- the way it's

1 worded and it's, I think, awful.

2 And the other is if it is prospective, it's
3 prospective as to the context of wills and trust, which is
4 a different fact situation, I -- I -- I believe. But --
5 but the -- the rationale -- whether the rationale is
6 prospective or not, I don't -- I don't know.

7 MR. BROOKS: Well, and that's -- that's our -- our
8 point, Your Honor. He can only get there through *Fabian*.
9 He's trying to extend *Fabian* and create new law to go
10 outside of the will context. And it's a new right that did
11 not exist at the time Mr. McGowan was handling the medical
12 malpractice case. He can't be held -- his standard of
13 care can't be based on a right that no longer -- that does
14 not exist under the law.

15 THE COURT: All right. Well ---

16 MR. BROOKS: Actually, it's not this Court's
17 responsibility. It's for the Court of Appeals and the
18 Supreme Court to decide if they're going to extend the
19 logic or rationale, whatever you want to call it, from
20 *Fabian* to other type situations. But it doesn't exist
21 today.

22 THE COURT: All right.

23 MR. BROOKS: And -- and the final point, we talked
24 some about disgorgement. We think the claim for
25 disgorgement must clearly -- he doesn't have the facts or

1 the evidence to meet the standard for that type of remedy.

2 THE COURT: All right. Well, be glad to hear from Mr.
3 Lewis, but in addition to the -- the *Fabian* argument, we've
4 got the -- the latest Judge Hayes ruling on the legal
5 entity of an estate, whereas we have the language of the
6 estate of Emma Davis in the retainer agreement, too. So
7 there's -- there's -- there's -- there's another issue.

8 MR. BROOKS: But his case does not establish that that
9 language was part of the agreement between Ms. Gilmore and
10 the estate, if you want to say that, and Mr. McGowan.

11 THE COURT: Well ---

12 MR. BROOKS: We don't know who put it there or we
13 haven't heard yet who put it there and when it was there.

14 THE COURT: Well, I -- I heard -- I certainly saw that
15 coming or felt that was coming. But it's -- it's presented
16 as in evidence now as the -- it's in evidence now as the
17 retainer agreement between McGowan, Hood and the personal
18 representative.

19 So at least right now, it doesn't matter who wrote it
20 in as far as getting past the directed verdict stage -- I
21 don't know where we'll go from there -- and probably from
22 a directed verdict stage at the end. Doesn't matter who
23 put it in there, the testimony is that that was the
24 agreement, at least that's my understanding of the
25 testimony.

1 MR. BROOKS: The -- the agreement with -- has to be
2 between Mr. McGowan and the client, Ms. Gilmore. And we
3 don't have testimony saying that's what they agreed to.

4 THE COURT: But we have the document though.

5 MR. BROOKS: We have the document with a -- with a
6 handwritten note.

7 THE COURT: Yeah.

8 MR. BROOKS: The mysterious handwritten note.

9 But in any regard ---

10 THE COURT: Well, I ---

11 MR. BROOKS: --- the -- the -- you know, that's our
12 motion, subject to submitting our written motion, which
13 we'll email to your office shortly.

14 THE COURT: Okay. Well, I -- I don't want to prolong
15 the matter, but I want to take that -- I'm going -- I'm
16 going to take the motions under advisement. I'm gonna hear
17 from Mr. Lewis anyway.

18 I do have some real concerns, Mr. Lewis, being very up
19 front with you, about the fraud and the breach of contract
20 accompanied by a fraudulent act. And I'm not -- haven't
21 been able to get my arms around the Uniform Fair Trade
22 Practice Act, whether or not there's enough in there for
23 that. But I -- I do have real concerns about fraud and
24 breach of contract, the fraudulent misrepresentation, the
25 negligent misrepresentation, and the -- I have real

1 concerns about those and the breach of contract accompanied
2 by a fraudulent act.

3 MR. LEWIS: Yes, sir. I'll talk about the fraud. If
4 that's what you want me to talk about, I'll be glad to.

5 THE COURT: Okay.

6 MR. LEWIS: The fraud in this case is on the -- on the
7 -- it's fraud and it really centers on fraud on the Court
8 under a case called *Chewning vs. Ford Motor Company*.

9 But what happens is they represented to you that the
10 sole heir was Mr. Strong. He was the sole beneficiary, and
11 they hid from you and the other Courts and everybody else
12 Mr. Bell.

13 THE COURT: So I got a right to sue them because they
14 committed fraud ---

15 MR. LEWIS: Yes, sir.

16 THE COURT: --- on me?

17 MR. LEWIS: They blamed you today. I was going to
18 jump up and ask you that.

19 But -- so that -- that one -- that's one of the
20 frauds.

21 The second fraud is -- is in the deposition of --
22 well, the other fraud is in the deposition of Mr. Beighley,
23 which is in evidence, where they ask him if he'd been
24 adjudicated. And they want to say -- they want to use the
25 language and say it wasn't clear that he -- that he was --

1 was adjudicated, Mr. Strong said; but he was never
2 adjudicated by anybody. I -- making -- I don't know of any
3 adjudication of Mr. Strong being the common-law husband and
4 they represented that he was.

5 THE COURT: Well, that's not fraud by Mr. McGowan,
6 though. Mr. McGowan -- in order to commit fraud, you've
7 got to know the true facts.

8 MR. LEWIS: Well, he -- I think there's enough
9 evidence in there to know that Mr. McGowan knew and should
10 have known that Willie Bell was a son. He wrote it down.

11 THE COURT: That's different. We're talking about
12 fraud.

13 MR. LEWIS: I mean -- excuse me -- Mr. McGowan knew
14 that Willie Bell was a son.

15 THE COURT: Right. But you're -- we're talking about
16 the fraud. You -- I thought you were telling me the fraud
17 had to deal with Mr. Strong, whether or not he had been
18 adjudicated a common-law husband or not. I don't -- I
19 don't think there's -- there's any fraud there.

20 MR. LEWIS: Well, he represented -- if -- if you read
21 Mr. Beighley's deposition --

22 THE COURT: Well, I'm not going to read his
23 deposition. I've got to go on the record.

24 MR. LEWIS: Okay. But it's in evidence, and we --
25 what it says in there is -- is that Mr. -- no, not Mr.

1 Beighley. Read the deposition of -- deposition of Mr.
2 Strong.

3 And it says in there and they ask him if he was
4 adjudicated in front of Mr. Beighley and Mr. Gunn and Mr.
5 McGowan. And -- and Mr. Beighley asked him, "Have you been
6 adjudicated as a common-law husband?" And Mr. Strong said,
7 "Yes."

8 That's -- that's one interpretation of that language
9 right in front of Mr. McGowan. And Mr. McGowan, under the
10 rules, cannot let a client tell an untruth without
11 correcting him. That is a legal principle that everybody
12 agrees to.

13 So there's a factual issue there: Was that -- was he
14 quibbling or really -- really did he not say that? But the
15 best he can get is he quibbled and let an impression go by
16 that Mr. Strong had been adjudicated when he wasn't. And
17 that indeed is a fraud under any stretch of fraud.

18 And so that's important to us because he did, sitting
19 there with Mr. Beighley, asking the question because Mr.
20 Beighley -- any of the people, as he said, came before you,
21 it was important for them to know that Mr. Strong was a
22 common-law husband.

23 And they all stood in front of you and said he was a
24 common-law husband. And the only thing that they have in
25 the record that says he was a common-law husband is Mr.

1 Strong saying it when it wasn't sure.

2 THE COURT: Well, I don't know if it's true or not. I
3 mean, common-law, you keep going back to the --

4 MR. LEWIS: That's a -- that's a question of law now
5 of whether or not you can have a common-law husband other
6 than through the statute.

7 THE COURT: Well, I don't think that -- I don't think
8 that's -- I -- I think it's clear that you can have a
9 common-law. We've got Worker's Comp cases, it comes up all
10 the time as whether or not somebody's a common-law husband
11 or not.

12 MR. LEWIS: Question -- that's a question. If that's
13 your ruling, that's fine with me. I just need that ruling.
14 If you say -- there's no other reason to have that common-
15 law husband statute. If you had -- if you can do it
16 another way, that statute is been made void. There's no
17 reason for it.

18 THE COURT: The statute deals only with estates, does
19 it not?

20 MR. LEWIS: Sir?

21 THE COURT: The statute only deals with estates, does
22 it not?

23 MR. LEWIS: Well, I mean, if that -- if it deals -- I
24 don't think it only deals with estates.

25 THE COURT: Well, isn't it under 562?

1 MR. LEWIS: You can have an estate statute, and you
2 say, okay, a common-law husband, you have to have him
3 adjudicated. But we won't adjudicate him, we'll set -- we
4 won't give him any money under the estate. We'll give him
5 under only loss of consortium. So you're running around
6 the statute by just calling it names.

7 And that's our position. You're -- you're the judge
8 of law, of course -- that we can't -- you can't do that.
9 You can't run around the statute, change the statute. The
10 only reason for that statute is to stop fraud or tricks
11 under common-law husband, just bringing them in, bringing a
12 much of people in. It needs to be adjudicated; otherwise,
13 you don't even need that statute. That statute's of no
14 value.

15 THE COURT: Yes.

16 MR. JANIK: Quick response, Your Honor? The Court's
17 correct that the adjudication, 802, only applies to the
18 wrongful death intestate succession. It carves out an
19 exception to qualify for the intestate succession. As
20 opposed to the Companionship Consortium Act, 15-75-20,
21 which was a codification of the common-law -- of the loss
22 of consortium; and then also extending the reciprocal to
23 both women and men, in an entirely different setting, that
24 applies here.

25 That Act -- that particular cause of action was

1 brought at the beginning as a strategic move, as Chad
2 testified to, for Mr. Strong. And so it's totally
3 different. And in fact, when the Court ruled on the
4 underlying motion for summary judgment and granted the
5 survivorship defendant's motion, observed that you can't
6 have a double dip. If -- if we go forward, Mr. Strong, you
7 may have to elect where your remedies would be, what are
8 you going to pursue down here. So it clearly is an
9 independent cause of action. That's -- that's the first
10 point.

11 The second point, we're in -- we're in a deposition
12 setting when it's supposed to be fraud on the Court. I
13 think it's a red herring in view of the fact that we have
14 an independent consortium statute that is allowing us to
15 proceed on that -- on that count anyway. But -- but
16 opponents can't rely on representations of adversaries.
17 And there was no follow-up questions by Mr. Beighley. It's
18 his deposition. He can ask anything he wants. And you
19 know, it's -- you know, the answer itself shows that --
20 that's where it -- if it's an inquiry, it should've been in
21 the discovery process and Mr. Beighley would be satisfied
22 with it. But to escalate that to intent to fraud on the
23 Court would be taking it too many stretch.

24 THE COURT: All right. Well, I -- I'm going to take
25 all of that -- I know it is unusual, but this case is

1 unusual. And I -- I'm going to take the directed verdict
2 motions under advisement. I look forward to getting a
3 brief and proceed with the -- the testimony.

4 I don't -- I hope that does not put a wrinkle in the
5 presentation of the defense.

6 MR. JANIK: It -- it has caused us to do some
7 scrambling, Judge. We'd -- we'd like to take the rest of
8 the day off so we can get it lined up, and beg the Court
9 for another day on the jury charge, if we may have until --
10 -

11 THE COURT: Okay.

12 MR. JANIK: --- Thursday morning.

13 But with -- with some phone calls now, and we should
14 be able to get started in the morning.

15 THE COURT: All right.

16 MR. LEWIS: I -- if -- if -- I'm not going to object
17 to someone that needs more time.

18 THE COURT: Okay.

19 MR. LEWIS: I'm just not gonna do that.

20 THE COURT: Well, we'll stop for the day. I'll get
21 the jury in and just tell them we'll start back at 9:30 in
22 the morning. And -- well, I'll say 10 and lets us get
23 together at 9:30, and hopefully, I'll be able to have
24 looked at the email and be able to make some more
25 definitive rulings.

1 So I'll bring the jury in, and we'll break until 9:30,
2 with the jury coming back at 10.

3 Bring in the jury.

4 (Jury enters the courtroom at 4:16 p.m.)

5 THE COURT: Members of the jury panel, we've moved
6 along a little faster than we anticipated today, so we're
7 going to stop a little earlier for the day and start back
8 at 10 in the morning. We -- we have some legal matters to
9 take up and rather than have you sit back there while we do
10 that, we're just going to allow you to leave for the day.

11 You haven't heard the whole case. You've only heard
12 the plaintiff's side at this point. So don't be trying to
13 make up your mind or discussing the case. Keep in mind all
14 those admonitions that I made, and we'll see you back at 10
15 in the morning. Have a pleasant afternoon.

16 (Jury exits the courtroom at 4:17 p.m.)

17 THE COURT: All right. Look forward to getting the
18 email. And Mr. Lewis, after you get it, if you hadn't --
19 if you had not already gotten the email, after you get it,
20 if you'll just have any response or we can take it up at
21 9:30 in the morning.

22 MR. LEWIS: After we get his -- yes, sir. I'm having
23 a hard time hearing. I'm getting old.

24 THE COURT: It happens. All right.

25 (Off the record at 4:18 p.m.)

-- END OF EXCERPT OF TRANSCRIPT RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Sixteenth Circuit Court for York County, South Carolina, on the 18th and 19th days of July, 2016.

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

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

February 8, 2017

Court of Common Pleas

Defendant.

July 20, 2016
York, South Carolina.

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P R O C E E D I N G S

* * *

THE COURT: Good morning. We have a new court reporter, Bethanie. She's met all of you, but please, everyone, state your name for the record and who you represent.

MR. HEISKELL: Ryan Heiskell, H-E-I-S-K-E-L-L, for the plaintiff.

MR. LEWIS: Cam Lewis, plaintiff.

MR. JANICK: Steven Janick, defendants.

MR. BROOKS: Lovic Brooks, defendants.

MS. MALUCHNIK: Crystal Maluchnik, defendants.

THE COURT: You want to spell that for her?

MS. MALUCHNIK: M-A-L-U-C-H-N-I-K.

THE COURT: We'll go back. We got motions for the directed verdict on all of the causes of action. I've gotten the briefs in. I admit, I'm still wrestling with some of it. I have one thought after I hear Plaintiff's response to the motion for directed verdict.

MR. LEWIS: Unfortunately, Your Honor, we didn't get that until -- the papers until last night, so I don't have any papers to go against them. So I have to argue orally, if that's all right.

1 THE COURT: That's fine.

2 MR. LEWIS: We've argued the privity question
3 on items, so I want you to think of two different
4 things with reference to this case. We've got
5 Willie Bell individually as a beneficiary. That's
6 the Fabian line of cases. And then we have --

7 THE COURT: There's really not a line yet.

8 MR. LEWIS: Sir?

9 THE COURT: There's not really any line yet.

10 MR. LEWIS: And the other one is Willie Bell as
11 executor and as a successor PR. So there's two ways
12 that he comes at this case; as a beneficiary and as
13 the successor representative. The successor
14 representative, he has -- there's no question he has
15 privity because he just takes in the shoes of the
16 old PR.

17 He also has, and we've ruled, that he --
18 Mr. McGowan represents the estate, and Willie Bell
19 is the representative of this estate, and the estate
20 has continued through there. So there's three ways
21 that Mr. McGowan is liable, as far as a duty goes,
22 and that is a duty to the beneficiaries.

23 He put in his e-mail with Mr. Pete Strom, he
24 represented the whole -- not just the estate, but he
25 uses the whole estate, the complete estate. And

1 that's true; he does that. And they've ruled that
2 the estate is a separate entity and it continues
3 forward. So he represents that, that gets your
4 privity there. He's a third-party beneficiary.
5 And, under Fabian, that argument's -- the privity is
6 there. And he is the successor PR, and there's
7 privity there. So privity is in all three lines of
8 attack.

9 THE COURT: Okay.

10 MR. LEWIS: All right --

11 THE COURT: Is that all?

12 MR. LEWIS: No. I mean, if you want me to go
13 through each of their arguments, that was the first
14 one that they make. How do you want to do it, Your
15 Honor?

16 THE COURT: Well, we can do it one at a time.
17 Go ahead. I think I visited that enough --

18 MR. LEWIS: Yes, sir.

19 THE COURT: -- but I'll be glad to hear
20 anything further on it.

21 MR. BROOKS: Well, thank you, Your Honor.
22 First off, may I hand up our written motion for
23 directed verdict?

24 THE COURT: I think I've got it.

25 MR. BROOKS: We e-mailed it to the Court

1 through your law clerk last night and opposing
2 counsel. We apologize for the delay, but we had
3 technical issues. Incorporate that into, obviously,
4 with what I said yesterday.

5 I did not say one thing that's important in the
6 complaint: They allege and seek punitive damages.
7 I think it's clear, based on the evidence at this
8 point, the plaintiff cannot move forward on the
9 issue of punitive damages, and we'd ask that they be
10 dismissed from this case. Now, it's been bifurcated
11 but, nonetheless --

12 MR. LEWIS: Bifurcated?

13 MR. BROOKS: -- we would ask that they be
14 dismissed at this stage.

15 And just to summarize, Your Honor, as we put
16 forth in our motion, based on the facts presented by
17 the plaintiff, Plaintiff cannot establish any of his
18 causes of action individually or as successor PR
19 under the law as it exists today.

20 Now, in the law, among other things on legal
21 malpractice, you have to have an attorney-client
22 relationship, number one. And there -- it's
23 undisputed there was none between Mr. Bell and
24 Mr. McGowan and his firm.

25 So we would conclude by urging the Court,

1 urging Court -- we know Mr. Lewis, Mr. Heiskell, on
2 behalf of their client, Mr. Bell, is trying to make
3 new law in this state. Fine, that's their right.
4 Please don't force Mr. McGowan and his law firm to
5 have to defend what we think is a frivolous
6 complaint based on the current law. Thank you.

7 THE COURT: Your turn.

8 MR. LEWIS: Yes, sir. I didn't understand the
9 term bifurcated. There's --

10 THE COURT: Well, sometimes we do. I haven't
11 ruled on that. I know of another judge who ruled
12 that we bifurcate the actual and punitive damages
13 parts of the trial if the punitive damages exist at
14 the time it goes to the jury.

15 MR. BROOKS: Before it got transferred from
16 Richland to York, the court in Richland did
17 bifurcate.

18 MR. LEWIS: Bifurcated the what?

19 THE COURT: Punitive from actual.

20 MR. LEWIS: Oh, punitive from actual. I
21 gotcha. I thought it -- there's all kinds of
22 bifurcations, and I didn't understand which one.

23 The next thing is they talk about there was no
24 testimony on the standard of care. And Professor
25 Freeman did nothing but talk about duties and the

1 standard of care, the standard to be thorough, the
2 standard to investigate, the standard not to put --
3 depend on lay people for legal opinions. He went ad
4 nauseam about that, and I can repeat it, but I don't
5 think there was anything that he testified to more
6 than the standard of care and the duty of the law,
7 Your Honor.

8 The next, sir, they say there's no damages.
9 Well, the punitive damages, as Your Honor has
10 pointed out, have been bifurcated. The damages --
11 there's testimony in the record that the damages, if
12 he had -- there was no common-law husband, then he
13 would have got all of the money; if there was a
14 common-law husband, he got half of the money. He
15 got none of the money.

16 So the damages range between the entire estate,
17 half of the estate. So the damages are on the
18 disbursement sheets throughout the exhibits that
19 were put in there. So that wouldn't be -- that's an
20 issue of fact and the facts are in the record for
21 the jury to determine.

22 The next thing is they said that there's a case
23 within a case. And I don't understand that
24 argument. There is no case within a case. Either
25 he is the -- he should have followed his nose and

1 gone and found the adopted son, or if there's a
2 legal excuse for him not doing that, that will be
3 the jury's question. So that's the question, not
4 a -- whether he should have won the underlying case
5 or not.

6 A case within a case is when you complain about
7 a lawyer blowing the underlying case or the statute
8 of limitations and you have to try the underlying
9 case to get to the amount of damages that would be
10 caused. But in this case, everybody has agreed that
11 the amount of money was within the range of
12 reasonableness, so there is no case within a case.

13 Fraud and fraudulent misrepresentation are
14 center on three different things. There's no
15 question that -- there's testimony in the record
16 that Mr. McGowan hid Willie Bell. He kept him in
17 his pocket, he kept him from the Court, he kept the
18 Court from Willie Bell, he kept Willie Bell from
19 being part of the settlement.

20 He didn't tell the people that -- and he
21 certified that Mr. Strom was the sole beneficiary
22 when he hadn't looked and had in his pocket that
23 Willie Bell might have been adopted. He never went
24 and got one piece of paper to check and see if
25 Willie Bell was adopted. Those are all questions of

1 fact as to whether it's fraud.

2 The other thing he did in the testimony and the
3 interrogatories, he hides Mr. Willie Bell, never
4 puts him down -- he had him as a witness from the
5 very beginning and never put him down on any
6 interrogatory and settled the case right before
7 Willie Bell's deposition was to be taken.

8 And then he had before the -- in his
9 deposition, he -- Mr. Strom said he had been
10 adjudicated, and he hadn't been adjudicated. And
11 Mr. McGowan sat there and let him tell a non-truth,
12 which is not allowed under the rules of any kind.

13 As part of the old case, there is no employment
14 agreement for Mr. Strom. And under the rules, he's
15 required to have an employment agreement for a
16 contingency fee case. All those lead up to a fraud
17 causes of action and, we think, at least factually,
18 should go to the jury.

19 THE COURT: Anything further?

20 MR. BROOKS: No, Your Honor. Our position has
21 been submitted. And we appreciate the Court's time
22 in considering our motion.

23 THE COURT: I had sort of a Damascus this
24 morning when I tried to think through the facts of
25 this case. And it popped in my mind, pretty basic

1 fact, and that is that the plaintiff has the burden
2 of proof; the defendant does not have the burden of
3 disproof. The issue on which that Damascus moment
4 occurred has to do with the common law status of
5 Mr. Strom.

6 I find that the plaintiff has failed to prove
7 that Mr. Strom did not qualify as a common-law
8 husband, except for as to the conscious pain and
9 suffering recovered. As to the -- his status, the
10 only competent evidence in the record is the
11 application for insurance of Ms. Davis which she
12 lists him as common-law husband.

13 All the other evidence that talks about him
14 being a friend or companion is hearsay evidence,
15 even the obituary. Mr. Bell didn't do anything with
16 the obituary. So as to the plaintiff's position
17 that Mr. Strong was not the common-law husband, I
18 find the failure to prove that he was not.

19 I don't have to find that he actually was, but
20 I have to find that whether or not this defendant,
21 who has the burden of proof, proved that he wasn't.
22 I find that the plaintiff has failed to disprove
23 that Mr. Strong qualified under the wrongful death
24 action and the consortium action as a common-law
25 husband.

1 Now, he didn't qualify under the estate because
2 of Section 802. So there's no question that he
3 qualified as a beneficiary under the estate because
4 he could not recover as a spouse because of 802.

5 So I'm going to direct the verdict in favor of
6 Mr. McGowan as to any claim of damages as to
7 recovery by Mr. Strong as a common-law husband. I'm
8 going to deny the motion for directed verdict on the
9 legal malpractice case. I'm going to grant the
10 motion on the Unfair Trade Practices Act because
11 it's predicated in Mr. Strom's status as a
12 common-law husband.

13 That leaves the breach of contract accompanied
14 by fraudulent act and, two, fraudulent
15 misrepresentation, negligent misrepresentation. And
16 I hate to put lawyers in a position of -- I don't
17 think it will change anybody's proof, but I'm still
18 wrestling with it, to be quite candid with you. So
19 that's where we are. And we'll take a break until
20 the jury comes in at 10:00.

21 MR. LEWIS: Can I ask you one thing?

22 THE COURT: Yes, sir.

23 MR. LEWIS: I want to make sure our position
24 with reference to the common-law husband -- and I
25 think -- if you've ruled, I want to make sure that I

1 understand it -- that we say you can't be a
2 common-law husband for any purposes unless you're
3 under the statute.

4 THE COURT: Exactly.

5 MR. LEWIS: You've ruled, I think, that it's
6 only under the probate that -- if you're common-law
7 husband, you have to use the statute, but otherwise,
8 you don't have to use the statute.

9 THE COURT: Right. Like the wrongful death is
10 a separate statute, and it just says spouse. And
11 the consortium, those will be matters of proof if
12 you went to trial. But I find at this stage, the
13 burden is on Mr. Bell to disprove that Mr. Strong
14 qualifies. He does not have to come in at this time
15 and prove that he was a common law --

16 MR. LEWIS: And the other thing we want to
17 point out is there is testimony that he was not a
18 common-law husband -- she wrote down single and so
19 forth -- and we think that's a question of fact.

20 THE COURT: Well, I don't think she wrote down
21 single though. I think those were all -- if I
22 remember correct and if you can show me something
23 different, all of those things said friend,
24 companion, single. None of those were signed by
25 Emma Davis.

1 MR. LEWIS: They were admission things to the
2 hospital. And, you know, that's -- you can say that
3 they weren't. I just want to make sure I understand
4 it. Those, we think, are issues of fact.

5 First, we think we went as an issue of law as
6 to the statute, and then that leaves the factual
7 question, and we just want to make sure we
8 understand your ruling. But I want to make sure I'm
9 clear on it, and I think I am.

10 THE COURT: I think you are.

11 MR. LEWIS: Okay. Thank you, Your Honor.

12 MR. BROOKS: Your Honor, we have a lineup of
13 witnesses out there. Most of them are going to
14 address the common-law husband issue. In light of
15 the Court's ruling -- and I know you asked the jury
16 to be here at 10:00 -- can we have, like, 15 minutes
17 to regroup?

18 THE COURT: We will. And if -- this case may
19 go upstairs. If you want to make any kind of
20 proffer -- I don't think you need to. Well, I think
21 it would be inappropriate. Work on your lineup and
22 we'll regroup at 10:00 -- or in about 15 minutes.

23 MR. BROOKS: Thank you, Your Honor.

24 MR. JANICK: Your Honor, if I may have a minute
25 more of the Court's time. Did the Court rule on the

1 individual attorney-client legal malpractice claim?
2 Because he had admitted he had no relationship with
3 her.

4 THE COURT: Well, no. I denied the motion for
5 directed verdict on that cause of action except for
6 as to the claim for damages for Mr. -- based on the
7 representation of Mr. Strom.

8 MR. JANICK: Okay. And then secondly, Your
9 Honor, we have raised the issue of damages. If you
10 look at the 1.2 million and if -- even if you
11 allocate it out -- well, with the Court's ruling,
12 he's already received \$350,000.

13 THE COURT: That has to do with y'all's issue
14 as far as settlement. And when we get to it later
15 on, it will be a question of whether or not it's set
16 off. I did not rule on disgorgement. I considered
17 that, and I can go ahead and rule on that now.

18 I find that there's no common scheme or
19 conspiracy regarding the representation of the
20 estate. It may be negligent because of not
21 following up on the notation of Willie Bell being
22 the son, but I'm going to find -- I find that
23 there's no requirement for disgorgement of fees.

24 And so what Mr. Bell would be entitled is what
25 was paid under the conscious pain and suffering,

1 less attorneys' fees apportionment and his portion
2 of the costs, of course not including any costs
3 associated with Mr. Strom's loan from Mr. Malone.

4 MR. LEWIS: Make sure I understand this now
5 because you've made a new ruling, Your Honor. On
6 reference to the disgorgement, disgorgement is based
7 on a conflict. And are you ruling as a matter of
8 law, Your Honor, that there was no conflict?

9 THE COURT: Well, I thought -- show me what law
10 you've got. I thought we talked earlier. And I
11 have not seen any case law on disgorgement, quite
12 frankly. But I was going, I think it was, on your
13 representation, because I questioned it earlier in
14 chambers and you said it required -- or predicated
15 on a common scheme or plan --

16 MR. LEWIS: No, sir. If I --

17 THE COURT: -- or conspiracy.

18 MR. LEWIS: If I did that, I withdraw that,
19 because I don't mean to say that. I withdraw that
20 statement. Our disgorgement is based upon the
21 following, and I'll hand this up to you --

22 THE COURT: Yeah. I'd like to look at it
23 because I --

24 MR. LEWIS: It says in this the law -- it's
25 never been determined in South Carolina. And it

1 says: Another aspect of damages usually found in
2 malpractice cases involving a lawyer's conflict of
3 interest and requires forfeiture disgorgement of
4 fees. And it goes on to tell you that that is,
5 indeed, one of the elements. And it says that there
6 are two kinds; that if you have a conflict, you lose
7 it automatically, and if you don't -- if you have a
8 conflict that impacts on the representation, then
9 you lose it.

10 In this case, the conflict is on both of them.
11 So my question is, Your Honor, to make sure that I'm
12 clear and the record is clear, is, to get rid of
13 disgorgement, you've either got to determine the
14 disgorgement is not a remedy in South Carolina,
15 either law or equitable, or that there was no
16 conflict of interest as a matter of law.

17 THE COURT: All right. Well, let me regroup on
18 that then because I was going -- and this, of
19 course, there's no South Carolina law on it.

20 MR. LEWIS: There is no South Carolina law.

21 THE COURT: So I was going on what you
22 intentionally or unintentionally -- how you couched
23 it the other day.

24 MR. LEWIS: Well, I apologize very much.

25 THE COURT: No. I may have misunderstood. But

1 I'll take a look at this while we go forward because
2 that doesn't become issue until we get into the --

3 MR. LEWIS: Yes, sir.

4 THE COURT: -- until we get down the road.

5 MR. LEWIS: Yes, sir.

6 MR. JANICK: May I speak to that briefly,
7 Judge?

8 THE COURT: Yes. Let me make sure though,
9 before I move forward, is it your position,
10 Mr. Lewis, that the disgorgement would go to all the
11 attorneys' fees or just that portion to the recovery
12 of the conscious pain and suffering? And I know the
13 answer.

14 MR. LEWIS: When you have a disloyalty, as the
15 conflict goes, you give up your fees. I don't know
16 of any case that have split them. But that -- you
17 know, we don't have any law in this case. But the
18 cases hold that you lose all your attorney fees when
19 your disloyalty is found to be because of a conflict
20 of interest. And a conflict of interest, by
21 definition, is disloyalty. And the cases hold that
22 the whole fee is gone. But I don't know of any
23 other cases that address this particular point.

24 THE COURT: All right. Well, I'll continue to
25 dig.

1 Yes, sir?

2 MR. JANICK: If I may, Your Honor, on the
3 disgorgement issue, we've cited to the Court Brown
4 vs. Butcher, 1 V. 11-WL-12565695. And I believe the
5 Court's observation is correct. Disgorgement is
6 equitable remedy, it is an extreme remedy. It is
7 only awarded in the most unique circumstances and
8 only where the conduct of counsel has virtually
9 superseded and gutted the case. And that's not what
10 we have here.

11 And, particularly, we don't have that here
12 because Mr. Freeman -- Professor Freeman said it was
13 a potential conflict on the part of Mr. McGowan. A
14 potential conflict, at some point, may or may not
15 have even been realized. So from the standpoint of
16 the burden of proof itself, I don't believe the
17 plaintiff has carried that burden on the
18 disgorgement issue.

19 Second point, Your Honor, just so that I'm
20 clear: The conscious pain and suffering in the
21 underlying case -- I think that's what the Court has
22 referred to -- was out on summary judgment.

23 THE COURT: I thought it was part of a
24 settlement. I thought there was a settlement. My
25 recollection of the testimony -- again, I've got a

1 stack of papers up here that will take me a day to
2 read. My understanding was, and maybe I'm confusing
3 it with the anesthesiologist or somebody wanting it
4 being paid as a cost as opposed -- I thought I
5 recommended that in order -- and it's not unusual in
6 medical malpractice cases, even when there is no,
7 really, evidence of conscious pain and suffering,
8 that some amount is attributed to that.

9 I thought there was some amount attributed to
10 conscious pain and suffering in this case. I cannot
11 find -- I went through the petition for settlement
12 and settlement order this morning to --

13 MR. JANICK: Exhibit 91, Your Honor, is the
14 underlying order, Defendant's Exhibit 91, granting
15 summary judgment to the defendant on survivorship.

16 THE COURT: Okay. All right.

17 MR. JANICK: If the Court may just look at that
18 so we can have your further guidance on that issue.

19 THE COURT: Well, if there was no recovery --

20 MR. LEWIS: There was a survival action,
21 wrongful death, and a --

22 THE COURT: Consortium.

23 MR. LEWIS: -- consortium. They've divided it
24 between consortium and wrongful death and got rid of
25 survival action. That is the record as I understand

1 it. Is that correct?

2 MR. JANICK: But the survivorship was out by
3 summary judgment.

4 MR. LEWIS: Yes. I agree to that. So the only
5 two causes of action that were settled were wrongful
6 death and consortium.

7 THE COURT: And your client's concern is how
8 that money was distributed. And as to -- I may have
9 misspoken. I think Mr. Bell would be entitled under
10 19-15-10 or whatever, 20, under the wrongful death
11 statute, to one half of the wrongful death recovery
12 in addition to conscious pain and suffering.

13 So conscious pain and suffering is out.
14 Consortium, of course, is in Mr. Strom's basket; the
15 other basket would be the wrongful death basket.
16 And out of that, based on my rulings, then Mr. Bell
17 would be limited to recovery of his half of that
18 basket of money.

19 MR. JANICK: \$300,000 approximately.

20 THE COURT: Then depending on what I rule as
21 far as disgorgement, whether or not there would be
22 further damages, or if there's no disgorgement,
23 Mr. Bell would, I think, reasonably be required
24 to -- the estate and Mr. Bell, to participate in
25 the -- there's been no testimony that the fee was

1 unfair. So I think that if there's no disgorgement,
2 then Mr. Bell would have to pay part of the fair fee
3 and a portion of the fair costs. I think that
4 covers all of the stuff that's swirling around in my
5 head.

6 MR. JANICK: That does, Your Honor. That
7 answers the outstanding.

8 And the last question, Your Honor, is, will you
9 tell the jury what's going on if we're going to
10 switch gears on evidence, give them some type of
11 instruction?

12 THE COURT: No. I don't want to give the jury
13 any -- the jury will get the instructions at the end
14 of the trial as to what law to apply. It's kind of
15 a slippery slope. If I try to start explaining
16 something to them mid-trial, then I'm afraid I may
17 gum it up, quite frankly. Maybe I just don't feel
18 comfortable with my ability to convey that.

19 MR. JANICK: Thank you, Your Honor.

20 MR. BROOKS: Again, in working with our lineup
21 of witnesses, the jury has heard for two days about
22 the common law issue. And if the Court's not going
23 to instruct, I'm going to ask them briefly about
24 that issue just so the jury will understand.

25 MR. JANICK: No, no, no. We'll meet on that,

1 Your Honor. We'll be back to you.

2 THE COURT: Okay. All right. I think at the
3 end of the trial I can tell the jury what are the
4 issues.

5 MR. JANICK: Judge, you could simply say that
6 the case has been resolved, as we go forward, to the
7 issue of the malpractice, and we're probably all
8 set. I don't want to rule for the Court, I just
9 don't want them to think that we're avoiding all of
10 the evidence that the plaintiff has put up.

11 MR. LEWIS: We have put up a lot of evidence on
12 common law. I agree with the other side, Your
13 Honor.

14 THE COURT: All right. Well, I can certainly
15 instruct the jury that I have made a ruling
16 regarding Mr. Strom's status as a common-law husband
17 and found that -- again, I'm not really finding that
18 he was, I'm just finding that Mr. Bell hasn't proven
19 that he wasn't. So I can certainly state to the
20 jury that the issue of whether Mr. Strom's status as
21 to a common-law husband is not a matter at issue
22 anymore.

23 MR. JANICK: That's all we need, Judge.

24 MR. BROOKS: That's good.

25 MR. LEWIS: Our objection, of course, continues

1 on that.

2 THE COURT: Right. Your objection is my
3 ruling. And, like I said, for those who weren't in
4 attendance in the -- in chambers, I've had higher
5 comfort levels on rulings in the past than I'm
6 having in some of the rulings in this trial.

7 I'll tell you, this is plowing new ground. And
8 to use a term that I use a lot that our court
9 reporter said she'd never heard before and that was
10 used by defense counsel, it's sort of a sea change
11 in things. And so we'll take a break and be ready
12 in a minute.

13 MR. JANICK: Thank you, Your Honor.

14 (Short break 10:10 AM - 10:30 AM.)

15 THE COURT: Over the break we've had some
16 dialog, and also I've have had an opportunity to
17 further look at the disgorgement issue. And I
18 deny -- let's see how I want to couch it.

19 I find that disgorgement is not an appropriate
20 aspect or element of damages to which Mr. Bell would
21 be entitled under the facts that were presented and
22 what little law there is in South Carolina. I find
23 from an equitable standpoint, particularly since the
24 case was settlement, there was no argument about the
25 amount of settlement, but rather distribution of

1 funds, that there should be no disgorgement.
2 Whether or not there is or is not a conflict of
3 interest, Professor Freeman has pointed out, talked
4 about potential conflict, and I'm not really sure
5 whether that becomes a jury issue or whether that's
6 an issue for the Court.

7 But I find in this case that the plaintiff has
8 failed to carry the burden of proof to prove, by a
9 preponderance of the evidence, and I believe the
10 preponderance of the evidence is by burden of proof
11 on that. I think it's clear in the -- it's the
12 first disgorgement case I've had. So I don't know
13 that I find that it not -- by a lesser standard of
14 greater weight or preponderance of the evidence, not
15 proven sufficiently to the Court's satisfaction of
16 conflict, which would require a forfeiture of the
17 disgorgement.

18 Now, based on that it's my understanding and
19 I've directed verdicts in favor of the defense that
20 have, in essence, brought this case to a conclusion
21 by virtue of the fact that -- well, it brings the
22 Court to the -- brings the case to a conclusion.

23 Any comments on that, Mr. Lewis?

24 MR. LEWIS: Sir?

25 THE COURT: Any comments on the fact that

1 I'm --

2 MR. LEWIS: I understand that you've taken away
3 disgorgement. I understand that. And the other
4 thing I didn't understand, but your ruling, in
5 effect, eliminates any damages, so, therefore, ends
6 the case. So we didn't see any reason for us to go
7 forward. With those rulings, we'll just have to go
8 on up the ladder and see what they should be.

9 THE COURT: Okay. All right. Any comments,
10 Mr. Janick?

11 MR. JANICK: No, Your Honor. I understand the
12 Court's ruling, Your Honor. Just as a matter of
13 housekeeping, we would have, had we gone forward
14 today, stipulated to the defense -- initial
15 Defendant's Exhibits. Can we have them admitted for
16 the record?

17 MR. LEWIS: Oh, no problem.

18 THE COURT: All right. Well, I've got a mess
19 up here; my law clerk will clean it up. The two
20 sets of you, clean up the messes you've made. And
21 the mess I've made, either Court of Appeals or
22 Supreme Court will clean it up.

23 MR. LEWIS: Thank you, Your Honor.

24 MR. JANICK: Thank you.

25 THE COURT: Let's bring the jury in.

1 (The jury enters the courtroom at 10:40 AM.)

2 THE COURT: Members of the jury panel, I
3 appreciate your patience. We've not just been in
4 here working crosswords and drinking coffee; we've
5 been working. And as a result of some of my
6 rulings, the case is concluded. So the case is over
7 at this point.

8 I'll tell you in front of the lawyers, this
9 case is very complicated from a legal standpoint and
10 a factual standpoint. In fact, the lawyers call it
11 plowing new ground. Some of the issues that were
12 here have not been dealt with by our courts. They
13 will be now.

14 This case is -- my rulings are always subject
15 to being reviewed by appellate court; the Court of
16 Appeals and the Supreme Court. Some of the rulings
17 that I've made based are on my interpretation of the
18 law where the lawyers have different interpretations
19 or one has a different interpretation than the
20 other.

21 And again, it's novel, new stuff that the
22 case -- that we don't have any real playbook. So I
23 was playing without a playbook, as were the lawyers.
24 But we've -- based on the rulings I've made --
25 whether I'm right or wrong, another Court will

1 determine -- the case has ended.

2 That's all the cases we have for this week.

3 And we appreciate your kind attention and
4 participation, so you're through for the week.

5 Thank you.

6 (The jury is dismissed at 10:41 AM.)

7 THE COURT: Now, these two very heavy books,
8 you're welcome to retain.

9 MR. JANICK: Thank you, Your Honor.

10 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Circuit Court for York County, South Carolina, on the 20th of July, 2016.

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

September 22nd, 2016

*s/Bethanie K. Creppon*Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE FAMILY COURT

Emma Davis,

Plaintiff,

-vs-

Willie Lee Ball a/k/a Willie
Lee Young, a minor under the
age of seventeen (17) years,
and the South Carolina Depart-
ment of Social Services,

Defendants.)

DECREE OF ADOPTION
DOMESTIC CASE No. 85-DR-12-276

FILED
IN A DEPT. 185
FAM. COURT
SEP. 24 1985

This matter came to be heard by the Court on September 24, 1985, pursuant to a Summons and Verified Complaint dated July 10, 1985. Service was made on the Defendants above-named as evidenced by the Affidavit of Helen M. Lee which is made a part of this record and by the Affidavit of Service by Mail of Tyre D. Lee, Jr. Also contained in the record is the Court Appearance and Answer of Defendant Social Services. The record additionally includes a Petition requesting the appointment of a Guardian ad Litem to protect the interests of the minor Defendant above-named. By previous Order of this Court dated September 23, 1985, F. Gregory Delleney, Esq., was appointed Guardian ad Litem. The Answer of the Guardian ad Litem, dated September 24, 1985 was duly filed with the Court and is made a part of this record.

Present at the hearing were the Plaintiff and her attorney, Tyre D. Lee, Jr., the minor Defendant, and F. Gregory Delleney, Esq., the duly appointed Guardian ad Litem for the above-named minor Defendant. Defendant Social Services was not present nor represented by counsel and appeared only as set out in their

04619



R 0617

"Court Appearance and Answer" as appears in the record of this case.

FINDINGS OF FACT

AFTER considering the verified pleadings, affidavits and taking testimony, the Court, by a clear preponderance of the evidence, finds the following salient facts:

1. That all parties necessary for a proper adjudication of this matter are present or their absence is accounted for.
2. That the Plaintiff and minor Defendant are citizens and residents of Chester County, South Carolina, and have so resided for more than one (1) year prior to the commencement of this action; and Defendant Social Services is a State agency charged with the care, custody and control of said minor Defendant.
3. That the minor Defendant, Willie Lee Bell, was born January 13, 1969, in Chester County, South Carolina; that his natural mother is deceased and that the parental rights of his natural father were terminated by Order of this Court on March 17, 1980.
4. That the South Carolina Department of Social Services was granted the care, custody and control of the above named minor Defendant by an Order of Court; that said minor was placed with the Plaintiff during the month of February, 1977, and has continued to reside with Plaintiff since that time; that the Plaintiff has come to love said minor as if he were a child of Plaintiff's own body; that it is the desire of the Plaintiff that the relationship of parent and child be established between Plaintiff and said minor Defendant; that Plaintiff recognizes and accepts all obligations and rights arising from such relationship; and that

Plaintiff asks this Court to issue its Decree of Adoption allowing Plaintiff to adopt said minor Defendant and establish this child's birth accordingly.

5. That Defendant, Social Services, has no objection to said adoption taking place.

6. That the Plaintiff is physically, emotionally, financially, and otherwise able to provide a good home for said minor Defendant and it would appear to be in the best interests of said minor Defendant if Plaintiff were allowed to adopt this child; and that Plaintiff should be allowed to change said Defendant's name from Willie Lee Bell a/k/a Willie Lee Young to Willie Lee Bell

7. That said minor Defendant has resided with the Plaintiff since the time mentioned above under the supervision of Defendant Social Services and because of such supervision, the the Court should waive the requirement of a report by said agency and waive the requirement of the entry of an interlocutory Decree and waiting period of six (6) months and grant a final Decree of Adoption, such being in the best interests of said minor Defendant.

CONCLUSIONS OF LAW

7ES
UPON making the above findings, I conclude that this Court has Jurisdiction of both the parties and subject matter in this action. I further conclude that under the provisions of Section 20-7-420 of the 1976 S.C. Code of Laws, as amended, this Court has the authority to terminate parental rights, Order a change of names, Order the issuance of an amended birth certifi-

ciate, and issue a Decree of Adoption.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the requirement of a report by the Department of Social Services and the requirement of the entry of an interlocutory Decree and waiting period of six (6) months are hereby waived.

IT IS ALSO ORDERED that the Plaintiff be allowed to adopt the above minor Defendant and establish this child's birth accordingly.

IT IS FURTHER ORDERED that the name of the minor Defendant be changed from Willie Lee Bell a/k/a Willie Lee Young to Willie Lee Bell.

IT IS ALSO ORDERED that the Division of Vital Records of the South Carolina Department of Health and Environmental Control shall issue an amended birth certificate for the above-named minor Defendant as set out by this Decree.

AND IT IS SO ORDERED.

Thomas E. Foster
Thomas E. Foster, Presiding Judge
Family Court of the Sixth Circuit

Chester, South Carolina
September 24, 1985

CERTIFICATE

I hereby certify that this Decree complies with the requirements of Rule 27 (c) of the Rules of the Family Court of South Carolina.

Dated: Sept 24, 1985

Thomas E. Foster
Thomas E. Foster, Presiding Judge
Family Court of the Sixth Circuit

(3) Give correct copy of decree
properly filed in this office.

Thomas E. Foster
Clerk of Court
Chester County, SC
Date: 09/24/85

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

BIRTH CERTIFICATION

STATE FILE NUMBER: 139-69-000887

NAME OF REGISTRANT: WILLIE LEE BELL

DATE OF BIRTH: JANUARY 13, 1969

SEX: MALE

PLACE OF BIRTH: CHESTER, SOUTH CAROLINA

COUNTY OF BIRTH: CHESTER

MOTHER'S MAIDEN NAME: EMMA DAVIS

MOTHER'S PLACE OF BIRTH: SOUTH CAROLINA

FATHER'S NAME: NO FATHER LISTED

FATHER'S PLACE OF BIRTH: NOT LISTED

DATE RECORD FILED: JANUARY 22, 1969

DATE ISSUED: MAY 12, 2014

SPECIAL INSTRUCTIONS:

NA

5C03323497

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.
Revised Date: 07/16/2013



04611



STATE OF SOUTH CAROLINA CERTIFICATION OF VITAL RECORD

STATE OF SOUTH CAROLINA
Department of Health and Environmental Control
Bureau of Vital Records
CERTIFICATE OF DEATH

1. DECEASED'S LEGAL NAME (Last, first, middle initial, and suffix)
Ermya M. Davis

2. SEX
Female

3. DATE OF BIRTH
08/08/1941

4. PLACE OF BIRTH (City, State, and Country)
Chester Co. SC

5. PLACE OF DEATH (City, State, and Country)
Chester

6. DATE OF DEATH
2/16/10

7. TIME OF DEATH
10:04

8. PLACE OF DEATH (Specify hospital, nursing home, or other institution)
Blackstock MC

9. PLACE OF DEATH (Specify street, city, state, and zip code)
203 Ligon St. Chester SC 29706

10. SIGNATURE OF DECEASED'S NEXT OF KIN
Willie Bell

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SC 00770892

ISSUED FEB 17 2010

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

C. Earl Hunter
C. Earl Hunter
Commissioner and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

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Revised Date: 05/01/2008

030810

DEFENDANT'S
EXHIBIT
977-151
7/20/10



Miss Emma 'Monk' Davis, 68

AA+A

SHARE

Tuesday, February 16, 2010 at 12:00 am

The funeral for Miss Emma "Monk" Davis of [REDACTED] St. was held at 1 p.m. Tuesday, Feb. 16, at Mount Zion Baptist Church in Blackstock. The Rev. Michael Clea officiated, the Rev. Moses Lightner delivered the eulogy and Evangelist Noreen Y. Ruff and the Rev. J.D. McClurkin assisted. Burial followed in the church cemetery.



Miss Emma 'Monk' Davis, 68

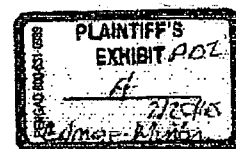
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Miss Davis, 68, died Thursday, Feb. 11, 2010, at Piedmont Medical Center.

Born in Chester County on [REDACTED] 1941, she was a daughter of the late Monroe Davis Sr. and Marie Young Davis. She attended the public schools of Chester County and was formerly employed with Phillips Products of Chester.

Survivors include a son, Willie Ball and his wife, Claudene, of Chester; her companion, Andrew Strong of the home; two brothers, Monroe Davis Jr. of Chester and Michael Young and his wife, Laverne, of Blackstock; four sisters, Atean Jordan and Rosa Lee Hall and her husband, Joe Louis, all of Chester, Dorothy Davis of Hartford, Conn. and Maggie Davis of Brooklyn, N.Y.; two grandchildren; devoted and special nieces and nephew, Linda Gilmore, Aaliyah Hicklin and

BELL 00233



R 0623

Jaheem Strong, all of Chester; and five devoted friends, Annette Strong of Chester and Gennette Strong, Debbie Strong, Mary A. Featherstone and Rose Poster, all of Blackstock,

She was preceded in death by a brother, William Davis.

King's Funeral Home, 135 Cemetery St., Chester, was in charge of arrangements.

BELL 00234

R 0624



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Rock Hill hospital settles second major malpractice case this year

Published August 7, 2013

By Jenny Zou — jzou@heraldonline.com

Emma Davis of Chester entered Piedmont Medical Center more than three years ago to have a pacemaker implanted. The procedure was supposed to take a few hours, and she was expected to go home the same day.

Instead, she died in the operating room after physicians improperly inserted a breathing tube and failed to properly monitor her oxygen levels, according to a lawsuit filed by Davis' family.

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Last week, Piedmont and affiliated medical groups agreed to pay Davis' family \$2.2 million to settle the lawsuit, also named in the case was Dr. Vincent Patel, the cardiologist who operated on Davis. He is affiliated with PMC.

The suit is the second major malpractice case the 268-bed hospital has closed this year. In March, another claim was settled for \$2.3 million.

Hospital spokeswoman Amy Faulkenberry said Davis' case was not typical for Piedmont, which recently was recognized for its patient care by

BlueCross BlueShield of South Carolina.

The hospital could not comment on the specifics of legal matters or any individual doctors affiliated with PMC, she said.

"Not a day goes by that I don't think about it," Davis' niece, Tanisha Gilmore, said of her aunt's death. "A simple mistake can cost someone their life — and I don't want another family to go through what I've been through."

Gilmore, the personal representative of Davis' estate, sued along with Davis' widower, Andrew Strong.

Davis, 58, was scheduled to have the pacemaker implanted on the morning of Feb. 10, 2010. The surgical procedure has become minor enough that patients aren't always required to stay overnight.

"Mrs. Davis walked into Piedmont that day expecting to be home by dinner," according to the

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know it that a York County civil court. "She ended up in the morgue."

The suit alleged that Patel and the hospital's medical staff failed to take the necessary precautions to prevent her wrongful death, including proper monitoring.

Efforts to reach Patel were unsuccessful.

The complaint makes reference to two periods during the surgery when Davis' oxygen levels dropped dangerously low.

When someone is under sedation, an oxygen reading of less than 90 percent is a "significant problem," according to the lawsuit. At one point during Davis' procedure, her oxygen level dropped to 80 percent, but her medical team did not react for four minutes, the lawsuit alleged.

Initially, a breathing tube was placed into Davis' esophagus, which leads to the stomach. It should have been placed in the trachea, which leads to the lungs, according to the lawsuit.

The mistake was discovered and a bag was used to ventilate Davis, which raised her oxygen level to 100 percent.

A breathing tube was again inserted, and oxygen was incorrectly placed in the esophagus, according to the lawsuit. But this time, Davis' oxygen level was not monitored for 19 minutes. It was not determined that her oxygen level had dropped to 80 percent.

Within minutes, Davis died, according to the lawsuit.

"The cause of death in this case was the misplaced tube," the lawsuit states. "The failure to discover it was misplaced indicates the failure to properly monitor oxygen levels, and the failure to fix the misplaced tube after having learned the fact."

Additionally, the lawsuit alleged that hospital staff tried to cover up the medical error that led to Davis' death by failing to notify her family and not following proper procedure. No incident report was filed with the state Department of Health and Environmental Control, and no autopsy was ordered.

The lawsuit also alleged that Patel "falsely and fraudulently certified the death certificate."

Gibson, Davis' niece, said the family was told the next day that Davis' death was heart failure because of other respiratory problems. The family was not told that doctors had inserted a breathing tube during the procedure.

"She was like my grandmother," said Gibson, 30. "She basically kept the family going."

Attorney Chad McGowan of McGowan, Houd & Feiner, the firm that brought both lawsuits against Piedmont Healthcare Center, declined to comment on either case settled this year.

In the previous case, Piedmont surgeon Robert Ranzilji and a private surgical group settled a negligence lawsuit for \$2.3 million in March. The case involved a York County woman who suffered from a leaking mediastinal tube.

The complaint alleged that Ranzilji, a surgeon who was affiliated with Piedmont at the time of the 2006 incident, inserted an H-shaped tube that started leaking.

The patient had been admitted to the hospital for a hiatal hernia, a condition in which the stomach bulges through an opening in the diaphragm — a muscle that separates the chest from the abdomen.

Ranzilji had installed the feeding tube because of the patient's digestive issues.

A feeding tube is problematic because it can lead to severe infections. The tube leaked for several days, and the patient developed sepsis, a blood infection. The patient's medical bill because of the tube was more than \$1 million.

A few days after the tube started leaking, Ranzilji discovered that the tube had been misplaced but waited another day to fix "the life-threatening problem," according to the lawsuit.

Ranzilji has since sued the Piedmont Medical Center for what he called negligence. The hospital stripped him of his privileges to perform abdominal surgery following a review, according to a

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STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF: CHESTER)

APPLICATION/PETITION FOR
SUBSEQUENT ADMINISTRATION

IN THE MATTER OF:)

EMMA M. DAVIS)

(Decedent))

CASE NUMBER: 2010-ES-12-00059 -2

*ONLY COMPLETE THIS SECTION IF FILING
PETITION FOR SUBSEQUENT ADMINISTRATION

Petitioner(s)

vs.

Respondent(s)

LOIS H. RODNEY
JUDGE OF PROBATE
2011 MAR 20 P 2 45
PROBATE COURT
CHESTER COUNTY S.C.

☒ INFORMAL

☐ FORMAL

The undersigned states as follows:

1. Subsequent administration of the above Estate is needed because:

☒ The following additional property in the above estate has been discovered. A description of the property and its approximate value at the date of Decedent's death is: POTENTIAL LITIGATION WITH AN UNKNOWN VALUE

☐ Other reason:

2. ☐ I served as Personal Representative under the previous administration and fiduciary bond requirement:

- ☐ was waived by Decedent's Will
- ☐ was waived pursuant to the filing of Waivers of Bond
- ☐ was waived by the Court
- ☐ was required and an appropriate bond is attached

☒ I did not serve as Personal Representative under the previous administration; my priority for this appointment is:

- ☐ named as Primary Personal Representative in Will
- ☐ named as Alternate Personal Representative in Will
- ☐ nominee of above Primary Personal Representative in Will
- ☐ nominee of above Alternate Personal Representative in Will
- ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- ☐ other devisee of Decedent (describe): or nominee of said devisee
- ☐ surviving spouse of Decedent or nominee of said spouse
- ☒ other heir of Decedent (describe): SOLE SURVIVING HEIR, SON or nominee of said heir
- ☐ creditor (Forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- ☐ other (describe):

*NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO A PETITION, YOU MUST ALSO FILE
A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.



VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 21ST day of
FEBRUARY, 2014.

Ashtley Hella
Notary Public for South Carolina
My Commission Expires: 11/1/2021

Signature: Willie Bell
Print Name: WILLIE BELL
Address: [REDACTED]
CHESTER, SOUTH CAROLINA 29706
Telephone (Work): _____
(Home): _____
(Cell): 803-899-1173
Email: _____
Relationship to Decedent/Estate: SON, SOLE SURVIVING HEIR

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: HEARING WAIVED.
TIME: _____
PLACE: _____

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this 20th day of March, 2014

Lois H. Roddey
Lois H. Roddey, Probate Court Judge

ORDER FOR SUBSEQUENT ADMINISTRATION

IT IS HEREBY ORDERED that Willie Bell be appointed Personal Representative to administer property not previously administered as indicated in the above application/petition.

- ☐ Bond previously waived
☐ Previous bond waivers on file
☐ Other:

Executed this 20th day of March, 2014

Lois A. Roddey
Lois H. Roddey, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate and to submit to the Court's jurisdiction in this matter.

Signature: Willie Bell
Print Name: WILLIE BELL
Address: [REDACTED]
CHESTER, SOUTH CAROLINA 29706
Telephone (Work): _____
(Home): _____
(Cell): 803-890-1173
Email: _____

Attorney: JOHN R. ALPHIN
Address: 2110 N. BELTLINE BLVD.
COLUMBIA, SOUTH CAROLINA 29204
Telephone: 803-252-4800
Email: JALPHIN@STROMLAW.COM

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

BIRTH CERTIFICATION

STATE FILE NUMBER: 139-69-000887

NAME OF REGISTRANT: WILLIE LEE BELL

DATE OF BIRTH: JANUARY 13, 1969

SEX: MALE

PLACE OF BIRTH: CHESTER, SOUTH CAROLINA

COUNTY OF BIRTH: CHESTER

MOTHER'S MAIDEN NAME: EMMA DAVIS

MOTHER'S PLACE OF BIRTH: SOUTH CAROLINA

FATHER'S NAME: NO FATHER LISTED

FATHER'S PLACE OF BIRTH: NOT LISTED

DATE RECORD FILED: JANUARY 22, 1969

DATE ISSUED: SEPTEMBER 18, 2013

SPECIAL INSTRUCTIONS:

NA

1015 H. PROFFY
JUNIOR, CLERK
2014 MAR 20 P 2 45
CHESTER COUNTY S.C.

SC02983213

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 03/21/2012



RETAINER AGREEMENT

This is an agreement between McGowan, Hood & Felder, LLC (hereinafter "attorneys") and (hereinafter "client"). This agreement covers legal service for claims relating to injuries suffered by client. This agreement covers any claim that client may have against any potentially liable party for injuries, resulting damages and any liability insurance coverage.

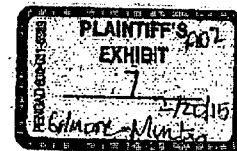
The attorneys will work on behalf of client to settle this case. They will discuss significant case developments with the client. The attorneys will discuss offers of settlement with the client. Only the client has the right to accept or reject these offers. Client authorizes attorneys to obtain any necessary information to successfully prosecute this claim. Client also authorizes attorneys to discuss this case with medical service providers and other people if attorneys decide it is necessary.

The client shall keep the attorneys advised of clients whereabouts at all times, shall appear on reasonable notice at any and all depositions and Court appearances, and shall comply with all reasonable requests of the attorneys in connection with the preparation and presentation of the aforesaid claim and cause of action of the client. Client's cooperation is a basis of this agreement, and a failure to cooperate by client, disappearance for six (6) months or more without contacting the attorneys or leaving a forwarding address, is a material breach of this agreement, and adequate cause for attorney's withdrawal without further notice to client.

An attorney fee will be charged for handling this case. The fee will be as follows: 40(%) of all actual damages and all punitive damages received by way of settlement, verdict or order (with any accrued interest) in connection with this case. This fee is based upon gross recovery of compensation before costs incurred or advanced have been deducted and returned to Attorneys.

Costs and expenses will be incurred for the litigation of this action. Clients agree that the attorneys are the most reasonable individual to decide when and where to expend costs and expenses. All costs will be reimbursed to attorneys from the proceeds of the case. Costs include, but are not limited to, expert fees, nursing review expenses from a nurse employed by attorneys, filing fees, telephone and facsimile expenses, deposition expenses, copy costs, court costs, probate fees, probate attorneys fees, lien resolution attorneys fees, trial presentation costs and travel expenses. Some costs and expenses do not become due until after settlement of your case.

The client agrees that the attorneys may associate counsel to help prosecute this action if they feel it is necessary. If attorneys associate other counsel for prosecution of the claim in this case, the client understands the attorneys are jointly responsible for all actions taken on client's behalf. The client understands that this association of two or more attorneys or their firms will not increase the attorneys' fees in this case.



Client understands that this litigation may at some point involve probate matters, lien resolution issues or other legal matters not covered by this retainer. The attorneys do have lawyers they can recommend for probate, lien resolution, tax or other matters not covered by this agreement and client agrees that attorneys may retain these lawyers in regard to this litigation if the attorneys deem it helpful to the client's case. These probate, lien resolution, tax or other lawyers charge a legal fee for their services. Client understands that these fees from probate, lien resolution, or any other matter not covered by this retainer agreement will be expenses of the litigation and will be deducted from client's overall recovery as part of the expenses or costs incurred on this case. Client agrees and understands that attorneys do not provide tax advice and that client is responsible for consulting with a tax professional regarding tax implications of any recovery obtained for client.

At the time of initial disbursement of legal fees, the attorneys will withhold an additional 5% of your total disbursement for unknown costs and expenses. This is your money. The attorneys are legally obligated to hold this money in trust and it will be used solely to pay any costs and expenses that are incurred due to the litigation but which are unknown at the time of disbursement (for example, an expert who submits his bill 30 days after resolution of case).

In recognition of my attorneys co-ownership interest in the proceeds of this legal matter, and to secure payment by me to Attorneys of all expenses, court costs and attorneys fees I am obligated to pay under this retainer agreement, I hereby grant to attorneys a lien applicable to any and all recoveries on my claims or causes of action, whether by settlement, verdict, order or otherwise. I understand that the lien may be used to protect my attorneys' fee for reasonable compensation for work done in the event I discharge my attorneys prior to settlement, verdict, order or otherwise. Client further agrees that the value of any of their claims or causes of action are speculative and are dependent upon the services of counsel for its potential to be realized. The attorneys retain a lien against the proceeds of any settlement, verdict, order or court ordered award in the amount of reasonable legal fees and costs due hereunder.

If client ends this Agreement before a settlement, jury verdict or order becomes final, the attorneys are entitled to reasonable legal fees for services provided. The attorneys have a lien on your claim, suit, or recovery for these legal fees, for costs advanced and/or for qualified expenses incurred on your behalf for this case. The amount of the lien shall not be less than 40(%) of the most recent total offer(s) of settlement conveyed by Defendant(s).

The parties agree that the 40(%) fee of the latest offer received is a reasonable fee since the offer would have been generated as a result of the work product of attorneys prior to separation between attorneys and client. If no offer has yet been received at the time of separation between attorneys and client, the attorneys are entitled to a lien based on the amount of work done on the file to date.

The lien based on work done before any offer is tendered will be reimbursed at a rate consistent with fees paid on similar cases. The lien will apply to any future funds received on the case. The lien will be paid before client receives money from any subsequent attorneys or insurance concern on this case. The parties agree that the lien from this contract is superior to any subsequent fee paid to other attorneys or client in regard to this specific case.

The client understands that during the course of the investigation or litigation of a negligence claim, facts may arise that would make it impossible to proceed with the investigation. The client further understands that the attorneys are in the best position to determine whether to further prosecute the claim. The client agrees that upon notification by the attorneys that they do not feel it is feasible for them to continue prosecuting the claim, the attorneys may withdraw from representation under this agreement.

The attorneys do not promise or guarantee that the client will receive any compensation from this claim. However, if the attorneys do not recover compensation or remuneration on this claim or in this case, the client is not responsible for any legal fees for attorney's services.

The attorneys will represent the client in court for the trial of this case. This agreement covers the institution of a lawsuit if the attorneys and client agree that a lawsuit is proper and justified under the circumstances. This agreement does not cover appeals to the higher courts. The attorneys will handle an appeal in this action if they decide that an appeal is justified under the circumstances. Any further action requiring an appeal, however, will necessitate that a separate retainer agreement is signed by attorneys and client before the institution of the appeal. If the attorneys and client both agree that if an appeal is necessary and enter into a separate agreement for that appeal, the fee charged for the case will change from 40% to 50%.

The client agrees that the attorneys may use any information or facts of this case on their website or any other matter disseminated to the general public. When the client signs in the area so designated below, they stipulate that this agreement has been discussed with them, they understand its contents and agree to its provisions.

Tamisha Adams
Client

Attorney(s)

Client

Attorney(s)

3/15/2010
Date

(McGOWAN, HOOD, & FELDER, LLC)

W. Jones Andrews, Jr.
John G. Felder, Jr.
S. Randall Hood
Chad A. McGowan (SC, GA, NC)
William A. McKinnon (SC, DC)
T. Travis Madlock
Daniel "Ernie" Peaglar
Robert V. Phillips
Kevin H. Strick
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Writer's E-mail:
cmcgowan@mcgowanhood.com

Bill
TD

February 24, 2010

Diane West
Risk Manager
Piedmont Medical center

VIA HAND DELIVERY

RE (Emma Davis) ^{PT} died 2/11/2010 at PMC

Dear Mrs. West

I hope this finds you well. Please be advised that I represent the estate of Mrs. Emma Davis who died during a procedure at PMC on February 11, 2010. I enclose a copy of the PR paperwork and the records authorization.

Kindly produce to me the entire medical record as well as any other records that relate to Mrs. Davis's care at PMC. This request includes the chart, images from the cath lab, incident reports, the DHEC incident report that should have been filed earlier this week, and any other document or thing of any description.

If PMC withholds anything on claim of privilege, I respectfully demand that any such withheld materials be retained so a court can pass on any claims. Thank you and call with any questions.

Kindest regards.

Sincerely,


Chad McGowan
Attorney for the Estate of Emma Davis



MEDICAL INFORMATION RELEASE

IS CAM/bi	LAB
IS Enc	EKG
HP	OTHER
CP	CLINIC
PATH	COMPLETE
XTL	DATE
RELEASED BY	SOS

FEB 24 2010
2-1-10

35275132

Rec'd
2-24-10

680621

McGOWAN004395

04854

R 0636

Pete Strom

From: Chad McGowan <cmcgowan@mcgowanhood.com>
Sent: Monday, November 04, 2013 4:21 PM
To: Pete Strom
Subject: Re: Wille Bell et al

Pete:

I spoke with Thomas Pendarvis about this and he reminded me of Rule 1.6 of the RPC. That rule prohibits me from releasing any information without client consent.

While I'd like to help, I don't think Rule 1.6 allows it. I understand you are trying to be diligent and don't begrudge what you are trying to do.

Of course I have a complete file, paper and electronic which I will keep pending subpoenas or client authorization.

Chad McGowan
McGowan, Hood, & Felder LLC
803-327-7800 (office)
803-984-8866 (cell)
Sent from my iPhone

On Nov 4, 2013, at 4:04 PM, "Pete Strom" <petestrom@stromlaw.com> wrote:

Chad,
I have not heard from anyone regarding Mrs. Gilmore. I need to go ahead and file something to protect the assets. Can you send me the names of everyone you are aware of that received money out of the settlement and the amount?

Thanks,
Pete Strom

Attorney at Law

<image002.png>

Strom Law Firm, L.L.C.
2110 N. Beltline Blvd. Columbia, SC 29204
Tel: (803) 252-4800 :: Fax: (803) 252-4801 :: Cell: (803) 414-1700
PeteStrom@StromLaw.com :: www.StromLaw.com

<image003.png><image004.png><image005.png><image006.png><image007.png><image008.png>

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From: Chad McGowan [<mailto:cmcgowan@mcgowanhood.com>]
Sent: Friday, November 01, 2013 3:15 PM
To: Pete Strom
Subject: Wille Bell et al

Pete:

Ms. Gilmore will be getting counsel for this matter. I believe that since I represented the estate as a whole, and not any individual heir, it would be wrong for me to try to represent one heir or heirs against another.

Also, I think I am probably a material witness to the underlying case which would make it inappropriate for me to purport to represent anyone in particular. I have advised Ms. Gilmore to find independent counsel and she expressed to me that she would do so.

I am of course available to discuss the underlying case with you and how everything came about from my end whenever you wish—I do not believe there are any privilege issues of any significance.

Last, and mostly as an aside, I understand that the Chester Probate Court arranges for and publishes the notice to creditors in general, and in this case.

I am sure we will have an opportunity to discuss this further.

Thanks.

Chad McGowan
McGowan, Hood, and Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
803-327-7800
803-328-5656 (fax)
www.mcgowanhood.com

This email is intended only for the recipient to whom it is addressed. No one else has any right to rely upon it for any reason. If you received it in error, please let me know and delete any copies. Thank you.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Tanisha Gilmore, as the Personal
Representative of the Estate of
Emma Davis, and Andrew Strong,

Plaintiffs,

v.

Amisub of SC, Inc. d/b/a Piedmont
Medical Center; Carolina Cardiology,
Vasanti Patel, MD, Ellenora Issac, RN,
Gary Miller, RN, Debra Swartzman, RN,
Norine Kuiper, CVT, Robert Baker MD,
and Anesthesia Associates of Rock Hill,
PA

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No: 10-CP-45-3899

AMENDED
Complaint for Damages
Jury Trial Demanded

FILED-RECEIVED
2012 JUN 25 AM 9:39
DAVID HAMILTON
C.C.P. & G.
YORK COUNTY, SC

The Plaintiff, by and through his undersigned counsel, for an Amended
Complaint against the Defendants, does hereby allege as follows:

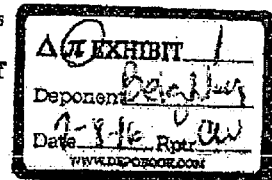
PARTIES

Plaintiff

1. The Plaintiff, Tanisha Gilmore, is the duly appointed Personal Representative of the estate of Emma Davis. At all times relevant hereto, Tanisha Gilmore brings this action as PR of the estate for the Survival and Wrongful Death actions. Plaintiff Andrew Strong, being married to Emma Davis, brings this action for his loss of consortium. Plaintiffs are citizens and residents of Chester County, South Carolina.

Defendants

2. Defendant Amisub of SC, Inc. d/b/a Piedmont Medical Center, is organized under the laws of the State of South Carolina with its principal place of



MC90WAH000571

01018

R 0639

business in York County, SC. Defendant Amisub, at all times relevant hereto, was the entity employing certain nurses, including nurses Isaac, Miller, and Swartzman, and Kuiper, CVT and other medical staff at a facility known as the Piedmont Medical Center who at all times relevant hereto, were employees acting within the scope of their employment with Defendant Amisub.

3. Defendants Isaac, Miller, Swartzman, and Kuiper were at all times complained of herein employed by Amisub at the Piedmont Medical Center, and all of their acts and omissions complained of herein were in the scope and course of their employment with Defendant Amisub.

4. Carolina Cardiology, PA is a corporation organized and existing under the laws of South Carolina with its principal place of business in York County, SC. At all times relevant hereto, Defendant CCPA was the employer of Vasant Patel, MD, who was acting within the course and scope of his employment.

5. Defendant Vasant Patel, MD is a physician licensed by the state of South Carolina and holds himself out to the public as a specialist in the field of cardiology. At all times relevant hereto, Defendant Patel was acting within the scope of his employment with Defendant CCPA.

6. Defendant Anesthesia Associates of Rock Hill, PA is a professional association organized and existing under the laws of South Carolina with its principal place of business in York County, SC. At all times relevant hereto, Defendant AARH was the employer of Robert Baker, MD, who was acting within the scope and course of his employment.

7. Defendant Robert Baker, MD is a physician licensed by the state of South Carolina and holds himself out to the public as a specialist in the field of anesthesiology. At all times relevant hereto, Defendant Baker was acting within the scope of his employment with Defendant AARH.

FACTUAL ALLEGATIONS

8. On February 26, 2010, Emma Davis went into the PMC cardiac lab for the purpose of having a pacemaker placed. The intent was for an outpatient procedure that normally takes about 45 minutes to complete.

9. This procedure requires conscious sedation, which requires a high level of care on the part of the medical team. Conscious sedation uses powerful drugs to render a person essentially helpless. These drugs, including Fentanyl and Versed have profound effects on the human body.

10. The drugs used during conscious sedation are dangerous.

11. As a result, certain rules must be followed for the sake of patient safety.

These safety rules include:

- a. that the patient must be closely monitored;
- b. the staff, nurses and doctors alike, must be highly vigilant to the first signs of a problem;
- c. the staff must be act immediately at the first sign of a problem;
- d. no more of the drugs than is absolutely necessary should ever be used.

e. When there is a problem, it must be responded to with life saving measures, known in the medical community as the "ABC's", which stands for airway, breathing, circulation.

f. Thus, when a patient has an adverse reaction to the dangerous drugs, the first priority is to make sure there is a proper airway for the patient.

12. Failing to follow one or more of these rules, or failing to follow other commonly accepted safeguards for patient care, can cause a patient to needlessly suffer injury or even die.

13. In this case, on the morning of February 10, 2010, Mrs. Davis was scheduled to have a pacemaker placed as an out patient procedure. This means that the procedure was set to take a couple of hours and Mrs. Davis was supposed to come home in good condition later that day.

14. Mrs. Davis walked into Piedmont that day expecting to be home by dinner. She ended up in the morgue.

15. According to the medical records obtained, Mrs. Davis was taken back at around 6:32. At around that time, Mrs. Davis's oxygen level was normal at 95%, and her blood pressure was significantly high.

16. Generally speaking, and with Mrs. Davis in particular, normal oxygen levels are 95% or better. That is, less than 95% is concerning, and less than 90%, while under conscious sedation, is a significant problem that must be watched for and if it occurs, must be fixed immediately.

17. At around 7:45, Mrs. Davis's vital signs were again measured, and this revealed that Mrs. Davis had a normal oxygen level, but high blood pressure. Significantly, Mrs. Davis was noted to have no pain or anxiety due to the procedure.

18. At 8:06 am, Mrs. Davis is given 1 mg of versed and 50 mcg of Fentanyl. Neither before, and certainly not after these powerful drugs were given, did Mrs. Davis have any pain or anxiety.

19. At 8:55, Mrs. Davis was again given 1 mg of Versed and 50 mcg of Fentanyl. Again, Mrs. Davis had no reports of pain or anxiety. At 9:06, Dr. Patel started the pacemaker procedure by making a pocket for the device in Mrs. Davis's skin.

20. At 9:13, Dr. Patel ordered and the nurses administered another 50 mcg of Fentanyl. At 9:16 her oxygen level was 100% (very good) but she did continue to have markedly high blood pressure, 164/127. At 9:16 Mrs. Davis received another 1mg of Versed.

21. At 9:21, there was clear evidence of a significant change in Mrs. Davis's condition. At 9:21, her oxygen level dropped to 87% and her blood pressure dropped to 120/90.

22. No medical person in attendance responded to this obvious change. In fact, Dr. Patel continued with the procedure unabated.

23. The next readings at 9:26 were even worse. Mrs. Davis had an oxygen level now down to 80% and her blood pressure dropped further to 108/94. The medical team did nothing to respond to this for another 4 minutes when they finally started to bag her in an effort to increase her oxygen status.

24. The medical team called a code shortly thereafter, and gave a number of drugs that were designed to counteract the Fentanyl and Versed already given.

25. According to the note dictated by Dr. Patel approximately 9 hours after Mrs. Davis died, the first person to respond to the code was an Emergency Room Physician named Dr. Ramos.

26. Dr. Ramos set out to put in a breathing tube, also known as a Endotracheal tube (or, ET tube).

27. The purpose of the ET tube is to have an open airway for the patient so they can get air and be able to breathe. An ET tube must be placed in the trachea, not the esophagus in order to work. Everyone in the medical field who works around these tubes knows this.

28. As a result, it is critical that the placement of the ET be confirmed. It is the standard of care to confirm the placement of the ET is first in the trachea and second, not so far down that only one lung gets air.

29. It is a rule of medicine that the ET tube placement must be accurately verified. Violating that rule means that patients can needlessly suffer and die.

30. There are various methods used to confirm placement of an ET tube. They include listening for breath sounds, CO2 monitors, looking for condensation in the mask, and in a situation like here, visually confirming placement with the fluoroscopy that was readily at hand.

31. The goal, and the standard of care is that the ET placement must be positively confirmed.

32. In Mrs. Davis's case, Dr. Ramos put in the ET tube and soon thereafter discovered that it was in the esophagus or otherwise misplaced. That is, Dr. Ramos or someone else attempted to confirm placement of the ET tube but could not. As a result, the ET tube was removed and the patient was ventilated using a bag. Discovering that the ET tube was in the wrong place, and removing it was the proper thing to do.

33. According to the records, Mrs. Davis got her oxygen level back up to 100% using the bag alone. This oxygen level was recorded as 100% at 9:47 am, record PMC 0024.

34. At this point, at 9:47 am, Dr. Baker then placed an ET tube into Mrs. Davis.

35. The standard of care required Dr. Baker to properly place the ET tube and to positively confirm its placement.

36. Similarly, the standard of care required repeated, close, if not continuous oxygen level monitoring. This requirement of monitoring the patient is placed on the attending cardiologist, the nursing staff and hospital employees, and the anesthesiologist.

37. The records reflect that for a full 11 minutes there was no oxygen level monitoring from 9:47 am to 9:58 am. The oxygen level dropped from 100% to 74% during this time. PMC 0024.

38. Then there was another 8 minute period when there was no monitoring between 9:58 to 10:06, during which time the oxygen level dropped from 74% to 50%. PMC 0024.

39. The failure to monitor the oxygen level during these absent periods was below the standard of care by the Defendants.

40. According to the dictation of Dr. Patel, Dr. Patel and those in attendance did a fluoroscopy of the chest prior to Mrs. Davis dying. This is significant because the fluoroscopy clearly would have, did, and does show that the ET tube placed by Dr. Baker was erroneously placed in the esophagus. This is evident on the actual films, i.e. is visible, and the stomach and duodenum are shown as being full of air. Thus, Dr. Patel and those in attendance would have had actual knowledge that the reason Mrs. Davis was dying was because the tube was in the wrong area.

41. No one took any effort to place the tube in the proper location even after it was obvious it was misplaced. We know this because there is a series of 95 fluoroscopy images taken after Mrs. Davis died showing that the tube is in the esophagus, and the stomach and duodenum are full of air. We know these images were taken at a time when Mrs. Davis was dead because there is no heart or lung movement on the moving pictures. Additionally, there is no indication of CPR occurring in these images.

42. At 10:14 am, Mrs. Davis lay dead on the table. There is clear fluoroscopic evidence of the cause of death being a doctor caused misplaced ET tube. There were significant lapses in monitoring the oxygen levels. The cause of death in this case was the misplaced tube, the failure to discover it was misplaced initially, the failure to properly monitor the oxygen levels, and the failure to fix the misplaced tube after having learned that fact.

43. The death of Mrs. Davis was preventable and caused by the negligence of the medical providers then in attendance. Those in attendance, the physicians and hospital employees knew or should have known that the actual cause of death was neglect in this case instead of an underlying medical condition.

AFTER THE DEATH OF MRS. DAVIS

44. After someone dies in a hospital setting, the standard of care requires the doctors and other hospital employees to be honest, truthful, and not misleading with the family about the circumstances of the death.

45. If a cause or a contributing factor in the death was medical negligence or misadventure, the hospital employees and the physicians have a duty and obligation (ie, the standard of care requires), that they reveal to the family the fact that there was medical negligence or misadventure.

46. Misleading the patient's family, by overt statements or by keeping silent, is below the standard of care.

47. This duty and obligation of honesty extends to not only verbal conversations but also to areas like the completion of the final paperwork and the death certificate.

48. Further, when someone dies unexpectedly in a hospital, there are requirements that the hospital must follow. For instance, the hospital employees are obligated to file incidents reports, the hospital must file a report with DHBC, and the hospital must conduct what is known as a root cause analysis. These procedures are to make the truth known, allow for the investigation of why someone unexpectedly died, and allow for improvements in care to prevent similar issues in the future.

49. There are also internal policies that must be followed in the initial stages after an unexpected death. One of these is the death discharge checklist, PMC 0006. In this document, the nurse is supposed to arrange for an autopsy if certain conditions are met. These include:

a. "Deaths in which autopsy may help to explain unknown or unanticipated medical complication to the attending physician"

b. "All deaths in which if the cause of death or a major diagnosis is not known with reasonable certainty on clinical grounds." [sic]

c. "Unexpected and unexplained deaths occurring during or following any dental, medical, or surgical diagnostic procedure and/or therapy"

d. "Natural deaths that are subject to, but not waived by, a forensic medical jurisdiction, such a person arrival at hospitals, deaths occurring in hospitals within 24 hours of admission, and deaths in which the patient sustained or apparently sustained an injury during hospitalization." [sic]

50. The purpose of this autopsy requirement is to allow for obtaining facts regarding to true cause of death of the patient. If an autopsy is not done, those facts can be lost forever and the truth never surface.

51. In the case of Emma Davis, there was a civil conspiracy to cover up the true cause of Mrs. Davis's death so to assist those responsible in avoiding their responsibility.

52. The hospital employees and the physicians in attendance were willing participants in the conspiracy to cover up the cause of Mrs. Davis's death. The evidence of this cover-up includes:

a. Dr. Patel, having the true knowledge in hand or readily available, did not reveal to the family on the morning of February 11, 2010 that Mrs. Davis had a misplaced ET tube.

h. No hospital employees on February 11 told the family the true circumstances of Mrs. Davis's death.

i. One of the hospital employees who was in the room at the time in fact lied to the family and stated that "Mrs. Davis would have died even if she was at home because of her breathing problems."

j. The anesthesiologist never informed the patient's family of the true cause of death being a misplaced ET tube.

k. Defendant Swartzman did not call for an autopsy even though it was required under hospital policy.

l. Dr. Patel did not call for an autopsy even though required under hospital policy and the circumstances.

m. Dr. Patel never mentioned in any of his dictated reports or medical records the misplaced ET tube.

n. Dr. Baker never made any note of any kind about the procedures he performed, even though required by law and hospital policy.

o. No Code Blue record was ever created as is standard procedure.

p. Dr. Patel falsely and fraudulently certified the death certificate under penalty of perjury, omitting from it any mention of the misplaced ET tube.

q. Upon information and belief, the hospital never filed a report to DHHC as required by law.

r. and in other ways as may be discovered during this case.

53. The acts in paragraph 52 above are evidence of a conspiracy to cover up the negligence in this case. This conduct is inexcusable, abhorrent, and is evidence of a

consciousness of recklessness on the part of the medical providers leading to the death of Mrs. Davis.

54. As a direct and proximate result of the acts and/or omissions of Defendants, Mrs. Davis did not receive proper treatment for her illness in a timely fashion. Mrs. Davis's condition was completely treatable and with proper, standard of care medicine, Mrs. Davis would not have died when she did and would have had a near normal life expectancy. Further, with proper care, Mrs. Davis would not have suffered and died the way she did.

55. The injuries to and death of Mrs. Davis were the direct and proximate result of and was caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and hospital staff under similar circumstances and thereby rendered inappropriate medical care to Mrs. Davis by deviating from and falling below the prevailing and acceptable standards of care in one or more of the following particulars, as follows:

AS TO DEFENDANT AMISUB:

- a. In failing to properly institute the conscious sedation protocol;
- b. In giving too much medication, and without proper documentation;
- c. In failing to properly respond to the obvious signs of distress;
- d. In failing to question the actions of Dr. Patel when he was ignoring the obvious signs of distress in Mrs. Davis;

- e. In failing to call a code sooner, despite what Dr. Patel was doing;
- f. In failing to insure the ET tube was properly placed;
- g. In failing to properly monitor the oxygen levels between 9:47 am and 10:14 am;
- h. In failing to discover and or bring to the physician's attention the misplaced ET tube;
- i. In covering up and concealing the true cause of Mrs. Davis' death;
- j. In not calling for an autopsy as required;
- k. In not making proper DHEC and root cause analysis reports;
- l. In lying to the family that Mrs. Davis would have died even if she was at home that day due to some underlying "breathing problem"; and
- m. In such other ways as may be shown at trial

AS TO DEFENDANTS Carolina Cardiology and Vasant Patel, MD

- n. In failing to properly institute the conscious sedation protocol;
- o. In giving too much medication, and without proper documentation;
- p. In failing to properly respond to the obvious signs of distress;
- q. In failing to call a code sooner;
- r. In failing to insure the ET tube was properly placed;
- s. In failing to properly monitor the oxygen levels between 9:47 am and 10:14 am;
- t. In failing to discover the misplaced ET tube;
- u. In covering up and concealing the true cause of Mrs. Davis' death;

- v. In not calling for an autopsy as required, especially in light of Dr. Patel's inability to certify the cause of death as being homicide, natural, or accident;
- w. In falsely and fraudulently certifying the death by omitting any mention of the misplaced ET tube; and
- x. In such other ways as may be shown at trial.

AS TO ROBERT BAKER AND ANESTHESIA ASSOCIATES, PA

- y. In failing to insure the ET tube was properly placed;
- z. In failing to properly monitor the oxygen levels between 9:47 am and 10:14 am;
- aa. In failing to discover the misplaced ET tube;
- bb. In covering up and concealing the true cause of Mrs. Davis' death;
- cc. In not calling for an autopsy as required;
- dd. In failing to tell the family the true circumstances surrounding Mrs. Davis's death; and
- ee. In such other ways as may be shown at trial.

FOR A FIRST CAUSE OF ACTION

(SURVIVAL ACTION)

- 56. Plaintiff reiterates paragraphs 1-55 above as if set forth verbatim herein.
- 57. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by

Defendants, Mrs. Davis suffered from severe debilitating injuries which resulted in her permanent injury and disability, and conscious pain and suffering, as a result of which Mrs. Davis is entitled to recover a sum to compensate her estate for her 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 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.

FOR A SECOND CAUSE OF ACTION

(Wrongful Death)

58. Plaintiff reiterates paragraphs 1-57 as if set forth verbatim herein.

59. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Davis 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 her 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.

FOR A THIRD CAUSE OF ACTION

WHEREFORE, Plaintiffs, respectfully pray for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law.


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Rock Hill, South Carolina
6-22-12
October 2010

PLAINTIFF DEMANDS A JURY TRIAL

State of South Carolina	)	
	)	
County of York	)	
	)	
Tanisha Gilmore, as	)	10-CP-46-3899
Personal Representative of	)	
the Estate of Emma Davis,	)	
and Andrew Strong,	)	
	)	
Plaintiffs,	)	Deposition
	)	
vs.	)	of
	)	
	)	Andrew Strong
Amisub of South Carolina,	)	
Inc., d/b/a Piedmont	)	
Medical Center; Carolina	)	
Cardiology, Vasant Patel,	)	
MD, Ellenora Issac, RN,	)	
Gary Miller, RN, Debra	)	
Swartzman, RN, Robert	)	
Baker, MD, and Anesthesia	)	
Associates of Rock Hill,	)	
PA,	)	
	)	
Defendants.	)	

Deposition of Andrew Strong, taken before Angela M. Barrett, a notary public in and for the State of South Carolina, commencing at the hour of 9:49 a.m., Monday, August 29, 2011, at the office of McGowan, Hood & Felder, L.L.C., 1539 Health Care Drive, Rock Hill, South Carolina.

Reported by
Angela M. Barrett

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Also Present: Tanisha Gilmore

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EXHIBITS

No exhibits were marked during this deposition.

1

STIPULATIONS

2

It is stipulated by and between counsel for

3

the respective parties that all objections are

4

reserved until the time of trial, except as to

5

the form of the questions.

6

This deposition is being taken pursuant to the

7

South Carolina Rules of Civil Procedure.

8

9

The reading and signing of this deposition is

10

waived by the deponent and counsel for the

11

respective parties.

12

Whereupon,

13

Andrew Strong, being duly sworn and cautioned

14

to speak the truth, the whole truth, and

15

nothing but the truth, testified as follows:

16

EXAMINATION

17

BY MR. GUNN:

18

Q Mr. Strong, I'm -- we met a minute ago. My -- my

19

name is Billy Gunn, and I'm a lawyer over in

20

Spartanburg. And I'm a lawyer for Piedmont Medical

21

Center, and I'm going to ask you a series of

22

questions today.

23

Have -- have you ever done a deposition like

24

this before?

25

A No, sir.

1 Q Okay. All right. Let me tell you what the ground
2 rules are. I'm going to ask you a series of
3 questions, a few about yourself personally, a -- a
4 few about your -- your wife, maybe some about her
5 medical history and what you might know about that,
6 some questions about February 10th, 2010, the day
7 that she passed. Just -- just things along those
8 lines.

9 If I ask you a question that -- the -- the
10 first important rule is this; if I ask you a
11 question that you don't understand, doesn't seem to
12 make sense, the rules say you're supposed to ask me
13 or if somebody else is asking the questions, that
14 person. In other words, whoever asks you the
15 question that needs clarification, that's who you
16 ask to clarify it. You -- you probably can figure
17 that out but -- but the rules say we're supposed to
18 tell you about that.

19 A Yeah.

20 Q -- and so that's what I'm -- the reason I'm telling
21 you. The other thing, I -- I don't believe we're
22 going to be here very long. I -- I usually try to
23 get to the point. But if you do need to take a
24 break, you -- you -- you tell me and we'll do that.
25 This is not some sort of contest to see whether you

1 or I can -- can sit here the --

2 A Yeah.

3 Q -- longest. The only rule is if -- if you do -- if
4 you do -- if we do take a break for whatever
5 reason, you're -- you're not supposed to discuss
6 your testimony and what's going on in the lawsuit
7 with anybody. But I think we can probably get
8 through without much of a break.

9 If you need to look at a document, you're
10 entitled to do that. I don't believe that'll come
11 up, but sometimes documents are important in a
12 case. And -- and I like to tell people that it's
13 not a closed-book test.

14 A Yeah.

15 Q So if you've got document that'll help you be
16 accurate about something, you're entitled to take a
17 look at it.

18 Give me your full name, if you would, please,
19 sir.

20 A Andrew Strong.

21 Q Andrew Strong?

22 A Yeah.

23 Q What is your date of birth, Mr. Strong?

24 A Eighth -- eighth month, 8th day, '50.

25 Q 8/8/50?

1 A Yeah.

2 Q Okay. So -- so it sounds like you are 61 --

3 A -- one.

4 Q -- years old? All right.

5 And are you a native of Chester County?

6 A Yeah.

7 Q And have you lived in Chester County all your life?

8 A Yeah.

9 Q Okay. And do you work?

10 A I was working logging in Newberry and got laid off
11 about four years ago.

12 Q Okay. You -- you have not worked in the last --

13 A No.

14 Q -- four years?

15 A No.

16 Q Where were you working when you were logging?

17 A JC Doolittle, Pomaria.

18 Q In Pomaria?

19 A Yeah.

20 Q And -- and when you say you were "logging", does
21 that mean you were a -- a truck driver, or what
22 were you doing?

23 A Dragging.

24 Q What does a --

25 A Cutting.

1 Q What does a drag -- what do you do when you --
2 A Cutting.
3 Q -- dragging?
4 A Cutting down.
5 Q Okay. And -- and how long were you with JC
6 Doolittle of Pomaria?
7 A Twenty-six years.
8 Q All right. Did Mr. Doolittle go out of business or
9 what?
10 A He retired.
11 Q He retired?
12 A Yeah.
13 Q All right. And -- and was that the reason you were
14 laid off? Because he retired?
15 A Yeah.
16 Q All right. What -- what -- before you -- before
17 you worked for Mr. Doolittle, what did you do?
18 A J.P. Steven in Great Fall.
19 Q J.P. Stevens in Great Falls?
20 A Yeah.
21 Q And -- and -- and what --
22 A Cotton mill.
23 Q All right. How long were you with J.P. Stevens?
24 A Twelve years.
25 Q That gets us back 38 years or so. What'd you do

1 before that?

2 A Nothing but cotton field.

3 Q All right. You -- you ever been in the military
4 service?

5 A No, sir.

6 Q How far did you go in school?

7 A Seventh grade.

8 All right. I take it, even though you only
9 went through seven grades of formal education, that
10 -- that you've probably learned to read and write
11 reasonably well from the "school of hard knocks."
12 Can you -- can you read document -- most documents?

13 A Not too many of them.

14 Q Can you read -- can you read a newspaper okay?

15 A Yeah.

16 Q Okay. All right. Now, after -- after being laid
17 off with Mr. Doolittle four years ago, I -- have
18 you -- have you had any type employment?

19 A No. Nothing more but working on cutting trees and
20 stuff --

21 Q Okay. Just --

22 A -- out of people's yard and stuff.

23 Q Just some little side work --

24 A Yeah.

25 Q -- here and there?

1 A Yeah.

2 Q How -- what's the state of your health? How are

3 you healthwise?

4 A High blood and gout.

5 Q Okay.

6 A Legs swell up and --

7 Q Right. Anything else?

8 A Yeah. I think I got a skip in my heart.

9 Q Some sort of irregular heart rhythm?

10 A Yeah.

11 Q All right. You on any type of disability?

12 A Oh, no.

13 Q You have any source -- source of income?

14 A No. No, sir.

15 Q Okay. Where do you live, Mr. Strong?

16 A Chester.

17 Q What's your street address?

18 A ~~1114 1/2 N. Main Street~~ Street.

19 Q ~~1114 1/2 N. Main~~?

20 A Yeah.

21 Q ~~1114 1/2 N. Main~~?

22 A Yeah.

23 Q And who do you live there with?

24 A By myself.

25 Q Now, Ms.-- Ms. Emma Davis, who had the -- the

1 lawsuit is about, as you know about Emma's passing.

2 When did -- when did you and Emma first get
3 together?

4 A Oh, probably in '79, probably. I was in the mill
5 then. Probably in '79 or '80.

6 Q All right. And how did -- how did it come about
7 that y'all -- y'all met and got together?

8 A Riding around down to a family house and used to go
9 out on the weekend.

10 Q Okay. All right. And -- and y'all started seeing
11 each other about '79 or '80?

12 A Yeah.

13 Q And -- and when did y'all actually begin to -- to
14 live together?

15 A Probably -- I don't really know what date it was
16 but --

17 Q Just do the best you can for me.

18 A It's probably in '81 or '82.

19 Q Okay. At some point in the -- in -- in the early
20 '80s -- 1981, 1982, or so -- the two of y'all took
21 up residence together?

22 A Yeah.

23 Q And -- and -- and did you and Ms. Davis live
24 together continuously from 1981 or 1982, whenever
25 you moved in together, until her death --

1 A Until --

2 Q -- in --

3 A -- her death.

4 Q -- 2010?

5 A Yeah.

6 Q All right. And -- and -- and at the time of her

7 death, did -- did y'all live together at 203 and

8 1/2 Ligon Street?

9 A Yeah.

10 Q Did -- did you and Emma ever have any children?

11 A No. No children.

12 Q Have -- have you ever had any children?

13 A Unh-unh.

14 Q All right. Never -- never been a father?

15 A Unh-unh.

16 Q Okay. And what -- what was her date of birth? Do

17 you know right off?

18 A I got it, though.

19 Q Well, that -- that's okay. You don't have to look.

20 It's -- it's on her hospital records.

21 A Yeah. Nineteen something.

22 Q I think we're going to find it's probably about

23 1940.

24 A Eleven month, 12th of 1941.

25 Q It's --

1 A Eleven month, 12th of '41.

2 Q All right. So -- so she was -- she was a little

3 bit older than you. About --

4 A Yeah.

5 Q About nine years older --

6 A About --

7 Q -- than --

8 A -- nine years.

9 Q All right. Have you ever been -- have you ever

10 been married before?

11 A No.

12 Q So -- so the -- well, let me go back and ask you --

13 did -- did you and Emma hold yourself out to -- to

14 other people as husband and wife?

15 A Yeah.

16 Q Did -- did she have any -- did she ever use the

17 name Strong?

18 A Unh-unh.

19 Q She always used her own --

20 A -- own --

21 Q -- own --

22 A -- name.

23 Q -- name, Emma Davis.

24 A Emma Davis.

25 Q Did -- did y'all have any sort of official

1 documents about --

2 A No.

3 Q -- about your marriage?

4 A No.

5 Q Did -- did you --

6 A Always was together all the time.

7 Q Okay. Did you consider her to be your wife?

8 A Yeah.

9 Q Do you know whether she considered you to be her

10 husband?

11 A Yep. I know she did.

12 Q Okay.

13 A We usually to do this thing together.

14 Q Right. Now, let me ask you -- had -- had -- before

15 the two of y'all resided -- began to reside

16 together in about 1981 or 1982, do you know whether

17 she had ever been married?

18 A No. She ain't never been married.

19 Q She'd never been married, okay.

20 What -- what did she have in the way of

21 children?

22 A She liked to -- she kept mostly everybody's

23 children and liked them, keep them for them.

24 Q Okay. But I -- I -- what I'm talking about is --

25 is children that were actually hers -- children

1 that she gave birth to. Did she have any children?

2 A No. No. She didn't have none.

3 Q She -- she didn't have any children.

4 A No.

5 Q Never did, even before y'all got together.

6 A Unh-unh.

7 Q Okay. Now, the -- the address where you live at

8 203 and 1/2 Ligon Street; how long had y'all lived

9 at -- at that address?

10 A Twenty -- about 25 or 26 years.

11 Q All right. And -- and is that a house that you --

12 that you own or that you --

13 A Own.

14 Q You own that house?

15 A Yeah. Trailer.

16 Q Beg your pardon?

17 A Double-wide trailer.

18 Q Oh. It's a trailer.

19 A Yeah.

20 Q It's a mobile home.

21 A Mobile home.

22 Q Okay. And what about the lot? Whose lot is that?

23 A Bobby Lee. Bobby Lee from Chester.

24 Q Bobby Lee?

25 A Yeah.

1 Q And -- and do you -- Mr. -- pay Mr. Lee rent, or
2 what do you do? How you --
3 A Pay him rent.
4 Q All right. What -- how much is your rent?
5 A Sixty dollar.
6 Q A month.
7 A Yeah.
8 Q Okay. All right. And I -- and I presume you got
9 utilities there, water and -- and --
10 A Yeah.
11 Q -- and -- and electricity. And you pay those?
12 A Yeah.
13 Q Are they in your name?
14 A Unh-unh. They ain't in my name.
15 Q Beg your pardon?
16 A No, sir. They're not in my name.
17 Q Whose name are they in?
18 A In Emma.
19 Q In -- in Emma's name.
20 A Yeah.
21 Q And you still just --
22 A Yeah.
23 Q -- go ahead and pay them? Okay.
24 A No.
25 Q And -- and -- and while Emma was alive, were the

1 bills in her name?

2 A Yeah.

3 Q All right. Tell me a little bit about your family,
4 Mr. Strong. What -- what people do you have down
5 there in Chester County?

6 A Sisters. There's a -- I got four brothers and
7 seven sisters stay down there.

8 Q Four brothers and --

9 A -- seven sisters.

10 Q So you're one of 12 children?

11 A Eleven.

12 Q Eleven.

13 A And most of all my kin people stay down there.

14 Q They -- all of -- all of your kin people live in
15 Chester County?

16 A Yeah.

17 Q Do you have any kin people in York County?

18 A No. Not -- no. Only thing -- no. Not really.

19 Q Okay. How about -- how about -- tell me a little
20 bit about Emma Davis's family. What -- what does
21 she have in the way of family down in Chester --

22 A (Inaudible) --

23 Q -- County?

24 A -- in Chester County. All of them stay down there
25 together. She got -- I think she got a sister stay

1 in Connecticut.

2 Q Connecticut?

3 A Yeah.

4 Q All right.

5 A But all the rest of them stay in Chester County.

6 Q Do -- do you know how many -- how many siblings she

7 had -- brothers and sisters?

8 A Let me see. I think four or five of them.

9 Q Four or five brothers and sisters?

10 A She got one brother and two sisters. Yeah.

11 Q All right.

12 A Libby.

13 Q Okay. Do -- do you know whether Emma at the time

14 of her death had any -- any kin people in York

15 County?

16 A I don't know whether she got any kin people in York

17 County or not.

18 Q Okay. And the reason I'm asking you about that is

19 when we try this case it'll be with a -- with a

20 York County jury.

21 A Uh-huh.

22 Q And -- and -- and we like to, you know, know --

23 know who's on the jury and whether they've got any

24 distance relationship to anybody in -- if -- if she

25 doesn't -- if she doesn't have any --

1 A I don't think -- she ain't got no kin people in
2 York, I --
3 Q Okay.
4 A -- don't think.
5 Q Well, that's -- that's fair enough.
6 How -- how far did Emma go in school?
7 A I really don't know.
8 Q Okay. Y'all never discussed that?
9 A No. I really don't know.
10 Q Was she pretty -- was she pretty good at reading
11 and writing?
12 A Yeah.
13 Q Okay. Tell me what -- tell me what work she did
14 outside the home.
15 A Well, she worked at -- what is it? Phillips
16 something.
17 Q Phillips Fibers?
18 A It might be. They done changed the name there now.
19 Q What do they do there?
20 A Used to make windows and doors for trailers.
21 Q Okay. Is it -- is that in Chester County?
22 A Yeah.
23 Q And how long did she work at -- do you know what
24 they've changed the name to?
25 A No. I -- I don't know.

1 Q Okay. Was she working at the time of her death in
2 February of 2010?

3 A No. She wasn't working. She had done come out on
4 disabled.

5 Q But she was disabled at the time?

6 A Yeah.

7 Q How long had she been disabled?

8 A I really don't -- I really don't know the real
9 date.

10 Q Can you -- can you make any estimate for me?

11 A Let me see. I figure about four or five years.

12 Q Before her death, okay. That -- that's -- that's
13 good enough.

14 Now, let me -- let me find out a little bit
15 about her medical history and what you can tell me
16 about that. At the time of -- of Emma's death she
17 was under the care of a -- a cardiologist or heart
18 doctor, was she not?

19 A Yeah.

20 Q And that was Dr. Patel and his group?

21 A Yeah.

22 Q Carolina Cardiology.

23 And -- and do you -- can you estimate for me
24 how long she had been under the -- the care of
25 those doctors?

1 A I really don't know.

2 Q Been several years?

3 A Probably is.

4 Q All right.

5 A That's some --

6 Q And do you -- I know you don't have medical

7 training.

8 A No.

9 Q But -- but do you know what -- what the nature of

10 her -- of her heart problems was?

11 A No.

12 Q All right. What -- what other -- what other

13 medical treatment had you known her to get during

14 the time y'all had been together?

15 A I know blood medicine and --

16 Q Is that high blood?

17 A Yeah.

18 Q All right. And who -- who --

19 A Yeah.

20 Q Who treated her for her high blood?

21 A Sam Stone.

22 Q All right. I know Dr. Stone is a -- is a -- is he

23 still alive?

24 A Yeah.

25 Q All right. Is he still practicing?

1 A Yeah.

2 Q Okay. He's a family practice doctor down in

3 Chester --

4 A Yeah.

5 Q -- County; isn't he?

6 Q Is -- is that Lowrys Family Medicine?

7 A He -- he might -- that might be the name of it.

8 Q All right.

9 A I --

10 Q Was that her -- was that her family doctor --

11 A Yeah.

12 Q -- or primary care doctor?

13 A That was her family doctor.

14 Q All right. Did she go to him right regularly?

15 A Yeah.

16 Q Okay. We know about Dr. Stone. We know to -- know

17 about the -- the cardiologist.

18 What other doctors --

19 A There's another --

20 Q -- did she go to?

21 A -- one. Let me see what -- I really don't know his

22 name.

23 Q What kind of doctor is he?

24 A She went to one for treatment for her breathing. I

25 don't know --

1 Q A pulmonologist or a chest doctor?

2 A Yeah. I don't know what his name was, though.

3 Q Where was he?

4 A Chester.

5 Q She went to some -- some chest doctor in -- in --

6 in Chester.

7 A Yeah.

8 Q All right. Did she -- did she have regular

9 appointments established with that doctor?

10 A Yeah.

11 Q And did -- and was she a smoker?

12 A No. She ain't smoke.

13 Q Okay. All right.

14 A She --

15 Q We know about the cardiologist. We know she saw

16 her -- her doctor, Sam Stone, regularly. She had

17 high blood. We know that she saw a -- a chest

18 doctor.

19 The chest doctor -- can you -- can you tell me

20 from a layman's or nondoctor standpoint what she

21 saw that chest doctor for?

22 A I think it was for breathing, because she had a --

23 one of them breathing machine, I think. I don't

24 know.

25 Q Did she have one of those things she slept with at

1 night to help her breathe?

2 A Yeah.

3 Q Okay. A -- a CPAP machine? Did she sleep with a--

4 A Yeah.

5 Q -- mask on?

6 A Yeah.

7 Q Okay. Did that help her a good bit?

8 A Yeah. It helped her good.

9 Q Okay. What -- what other -- what other health
10 problems do you know about her having other than
11 the heart problems and the breathing problems?

12 A I don't know no more.

13 Q That -- that's the only ones you know? At the --

14 A Yeah.

15 Q -- time of her death was she on some medications?

16 A Yeah.

17 Q She was on some blood pressure medication, I
18 assume?

19 A Yeah.

20 Q All right. What else was she on?

21 A I think breathing pills, too, or -- I really don't
22 know.

23 Q Okay. Well, that's all right.

24 The -- the -- the home that you and Ms. Davis
25 occupied there at 203 and 1/2 Ligon Street in

1 Chester, did anybody ever live there with y'all?

2 A No.

3 Q Just the two of y'all lived there the whole time

4 continuously.

5 A Yeah. And he had a son she raised. He used to

6 stay there. But he left out and got married.

7 Q Okay. What was his name?

8 A Willie Bell.

9 Q Willie Bell?

10 A Yeah.

11 Q All right. Now, was that her -- that -- was that

12 her natural son?

13 A No. She -- his mama got killed, and she took him

14 in and --

15 Q Okay.

16 A -- raised him. She took him in and raised him.

17 Q All right. So kind of a foster child?

18 A Yeah.

19 Q All right. And -- and Willie Bell -- what -- what

20 did you say happened to Willie Bell's mother --

21 natural --

22 A She --

23 Q -- mother?

24 A She got killed.

25 Q Got cute?

1 A Yeah. Got -- got shot.
2 Q Oh, okay. Shot dead?
3 A Yeah.
4 Q When was that?
5 A Oh, that been back way back. Probably in -- he was
6 about -- he probably about four or five years old
7 when she got him.
8 Q Okay.
9 A Been back a good little while. I don't know.
10 Q Was -- was Emma friends with Willie Bell's mother?
11 Is that how she --
12 A They were cousins.
13 Q They were cousins, and --
14 A Yeah.
15 Q -- that's how she ended up raising Willie?
16 A Yeah.
17 Q All right. So was -- well, did -- did Willie as a
18 child live there some while you and Emma were --
19 were -- were together?
20 A Yeah. A little while.
21 Q Okay.
22 A Till he got married.
23 Q Till he got married, okay.
24 Can you -- can you estimate for me when he got
25 married?

1 A Probably been about -- I don't really know. I'm
2 trying to think how old his children are. I don't
3 know how old his children is.

4 Q Is Willie still around?

5 A Yeah.

6 Q And he's down in Chester?

7 A Yeah.

8 Q And he's got children of his own.

9 A Yeah.

10 Q Okay. So it was -- it was some time ago, I mean,
11 more than ten or fifteen years ago --

12 A Yeah.

13 Q -- that he moved out. All right.

14 Did -- did -- did Ms. Davis -- did -- did she
15 -- did she have any other foster children like
16 Willie --

17 A No.

18 Q -- Bell?

19 A No. She ain't had no more.

20 Q Okay. All right. Let me -- let me ask you about
21 the things that happened on February 10th of 2010.
22 That's what we're having this lawsuit about and --
23 and I'm going to ask you about that.

24 My understanding is that she went to the
25 hospital that day to have a -- have a pacemaker

1 installed. Is that what you believe?

2 A Yeah. Yeah. That's what she said she was going
3 for.

4 Q Okay. Tell me -- tell me about going up there that
5 day and what all -- everything you remember about
6 it, if you would.

7 A All I know she was happy when she went.

8 Q Uh-huh.

9 A And she wanted -- she wanted it did.

10 Q Beg your pardon?

11 A She wanted it did --

12 Q Uh-huh.

13 A -- so -- it wasn't like -- she wasn't sick or
14 nothing, though.

15 Q Well, the -- the -- the installation of this
16 pacemaker -- I -- I presume she'd been having some
17 problems with her heart that -- that -- that made
18 this, at least in her doctor's opinion, a good idea
19 to have it installed.

20 A Yeah.

21 Q Do you know what -- do you know what problems she'd
22 been having with her heart?

23 A All I know is she wobbled. She said she'd get
24 tired quick.

25 Q Okay.

1 A But I can remember we used to fish a lot. We used
2 to walk about two or three miles down to the pond
3 till after she started -- breath started getting
4 short and she quit.

5 Q Okay. So -- so at -- at least as far as you
6 understand it, what -- what led to this pacemaker
7 installation that was going to take place on
8 February 10th was her shortness of breath?

9 A Yeah.

10 Q All right. And -- and the -- the -- the procedure
11 on the 10th, did -- did you go to the hospital with
12 her that morning?

13 A Yeah.

14 Q Did -- did you drive over, or how did y'all get
15 over there?

16 A Sister drove over.

17 Q Your -- your sister took -- took you and Emma in
18 there.

19 A Yeah.

20 Q And -- and the records make it look like you got
21 there pretty early that morning; is that --

22 A Yeah.

23 Q -- fair?

24 A Probably about 5:30. I think the appointment was
25 at six o'clock.

1 Q Uh-huh. Had -- had either one of y'all ever been
2 to Piedmont Medical Center before?
3 A Unh-unh. I don't -- I don't think so.
4 Q Okay.
5 A I know she been in Columbia. I don't know about --
6 Q Okay. What had she been in Columbia for?
7 A Heart doctor.
8 Q The Heart doctor?
9 And -- and she'd been in the hospital in
10 Columbia?
11 A Yeah.
12 Q Do you remember which hospital that was?
13 A I think it was Richland Memorial.
14 Q Okay.
15 A I think. I don't know.
16 Q About -- about when was that, Mr. Strong?
17 A It been a good little while ago. Probably five or
18 six years. It been a good little while.
19 Q Okay. All right. Do you know any other
20 hospitalizations she had while y'all were together?
21 A No. No. Nothing but Chester.
22 Q Chester?
23 A Yeah.
24 Q What had she been in the hospital in Chester for?
25 A See, I think she went for bronchitis or something.

1 Q Okay. Was that Dr. -- did Dr. Stone --
2 A Yeah.
3 Q -- admit her?
4 A Yeah.
5 Q Okay.
6 A He --
7 Q All right. So you -- so y'all went over to the --
8 to the hospital -- to Piedmont Medical Center on
9 the morning of February 10th, 2010. And -- and
10 your sister took the two of y'all over there. Did
11 anybody else go with y'all?
12 A One of her sisters.
13 Q One of her sisters?
14 A Yeah. Then the rest of them come.
15 Q All right. Who was her sister that went?
16 A Atlean Jurden (phonetic).
17 Q Say that again, please, sir.
18 A Atlean Jurden (phonetic).
19 Q Atlean Jurden (phonetic)?
20 A Yeah.
21 Q Okay. And did -- did Ms. Jurden (phonetic), did
22 she stay there all --
23 A Stay there --
24 Q -- all throughout --
25 A -- the whole --

1 Q -- the day?

2 A Yeah. The whole time.

3 Q Okay. Now, who else -- during the period of time

4 that y'all were there on the 10th at the hospital,

5 who else came?

6 A Linda Ann Gilmore.

7 Q Who -- who Gilmore?

8 A Linda Ann.

9 Q Linda Ann?

10 A Yeah.

11 Q And -- and what -- what kin is Linda Ann Gilmore?

12 A That's a niece.

13 Q Niece? Okay. Who else -- who else showed up that

14 day?

15 A Tanisha Gilmore.

16 Q Tanisha?

17 A Most all of them.

18 Q And that's Tanisha who's in the room with us today.

19 A Yeah.

20 Q Okay. And -- and Tanisha is a -- a niece?

21 A Yeah. Yeah.

22 Q Okay. Anybody else show up besides Ms. Jurden

23 (phonetic), Ms. Linda Ann Gilmore, and Tanisha

24 Gilmore?

25 A And her sisters. There a bunch of people come up

1 there. I don't know. Most all of them know her.

2 Q Okay. Well -- well, Tanisha may -- may be able to
3 give us a -- a good recollection of that --

4 A Yeah.

5 Q -- or I might come back to it. We'll -- we'll get
6 to that later.

7 All right. Y'all show up there that morning
8 bright and early. And -- and just kind of pick up
9 and tell me in your own words what all you remember
10 happening.

11 A All I know, we sat out there till about seven.
12 That's when they called her back.

13 Q Till about 7 a.m.?

14 A Yeah. That morning.

15 Q Uh-huh.

16 A Then they called her back in the room. Then we
17 stayed out there, I think, till about ten --
18 probably was about then. And they come back and
19 said they couldn't get her heart to raise up or
20 something.

21 Q All right. Let -- let me stop you at that point
22 and ask you a question or two.

23 Y'all were in a -- in a -- in a waiting room
24 of some type --

25 A Yeah.

1 Q -- out there?

2 A Yeah.

3 Q All right. And you say somebody came out and said

4 they couldn't get her heart started up or something

5 of that --

6 A Yeah.

7 Q -- nature.

8 And -- and who was that? Do you remember?

9 A I don't know who she was.

10 Q Was it a --

11 A It's --

12 Q Was it a --

13 A It's --

14 Q Was it a --

15 A -- some --

16 Q -- nurse?

17 A It's some lady work at the hospital.

18 Q Okay. A female.

19 A Yeah.

20 Q Okay. And can -- can you be -- just -- just be as

21 specific as you can about what this lady said. I

22 don't want to -- see, part of what I'm doing here

23 today is I don't want to be surprised later on. So

24 -- so I want you to tell me as best you can what

25 this lady said.

1 A I really don't know. Because I ain't sat there
2 long no way. I went out the door.
3 Q Okay. You -- you don't -- you can't be -- you
4 can't be definite about what she said other than
5 maybe to tell me if -- it wasn't good news,
6 whatever it was.
7 A No. It wasn't good news -- what she said.
8 Q Okay.
9 A But --
10 Q All right. What -- now, this -- this -- this woman
11 came out about ten something -- ten -- ten -- ten
12 whatever and -- and said something about her heart
13 that didn't seem to be good --
14 A It wasn't --
15 Q -- news.
16 A It wasn't right or something.
17 Q Okay. And -- and can you tell me what happened
18 next after that?
19 A Well, we sat around in there a little while. Then
20 she come back out and called us in the room.
21 Q Now, was this this same woman?
22 A Yeah.
23 Q Okay.
24 A I went back there where she was. She was laying
25 there then.

1 Q She was what?

2 A She was just laying there on the table.

3 Q Emma was?

4 A (Nods head up and down.)

5 Q Okay.

6 A And I left back out and went back out the door.

7 Q Okay. Now, this is after Emma had passed.

8 A Yeah.

9 Q Okay. And -- and -- well, was this where they were

10 just providing Emma -- you and Emma's family a

11 chance to be with her for a few minutes?

12 A No. She was already dead when we went back there.

13 Q Well, that's what I mean. Just to --

14 A Yeah.

15 Q Just to come back and --

16 A Yeah.

17 Q -- pay your respects --

18 A Yeah.

19 Q -- sort of.

20 A That's all.

21 Q Okay. All right. Now, when -- when you went back

22 on this second occasion that you just told me about

23 after Emma had already died, do you -- did the --

24 did this hospital employee, did -- did -- or this

25 woman, this female, did -- did she tell you

1 anything else about what had happened to Emma at
2 that time?

3 A Unh-unh.

4 Q Okay. Did -- did you ever have any conversation
5 with Dr. Patel?

6 A No. I ain't never talked to him.

7 Q Okay. Did you ever see Dr. Patel, or do you know?

8 A No.

9 Q Okay. The -- the woman that -- that appeared to
10 you to be a -- a hospital employee, is there any
11 way you can describe for me what she looked like?

12 A All I know is she was kind of tall and had blond
13 hair. That's all I know.

14 Q Okay. All right.

15 A Because really I ain't too much paid her no
16 attention no way.

17 Q Okay. All right. After -- after Emma passed, I
18 presume, y'all went on back home?

19 A Yeah.

20 Q Okay. And then -- and then you -- you buried her
21 within a few days?

22 A I think -- I think we buried her that Thursday or
23 Friday -- one day.

24 Q All right. Now, tell -- what day of the week was
25 -- was Monday the day she passed?

1 A Let me see what day it was.

2 Q Well, that's --

3 A I --

4 Q -- okay.

5 A I -- I really don't --

6 Q Yeah. We -- we can look at a calendar and tell.

7 I --

8 A Yeah. Because it's -- I think it was February

9 the --

10 Q It was February the 10th.

11 A -- 10th, I -- yeah.

12 Q We -- we can look at a calendar. It was a weekday

13 that she passed; wasn't it?

14 A Yeah.

15 Q I mean, it wasn't a weekend.

16 A Yeah. It was --

17 Q Okay.

18 A -- on Monday, I believe.

19 Q All right. And then -- and then she was buried --

20 you -- your best recollection, the Thursday or

21 Friday immediately after that?

22 A Yeah.

23 Q All right. Okay.

24 A Yeah.

25 MR. GUNN: Mr. Strong, that's probably all the

1 questions I got. Some of the other lawyers
2 are probably going to have some questions for
3 you. And I appreciate you answering mine.
4 And they're going -- they're going to ask you
5 a thing or two.

6 THE DEPONENT: All right.

7 Q Let me ask you -- you told me you'd never been in
8 the military service.

9 A Unh-unh.

10 Q Okay. You ever been a party in any other lawsuits?

11 A Unh-unh.

12 Q Okay. You ever -- have you ever been arrested or
13 convicted of anything?

14 A Yeah.

15 Q Okay. What -- what have you been arrested or
16 convicted of?

17 A Driving.

18 Q Driving under the influence?

19 A (Nods head up and down.)

20 Q When was that?

21 A Probably in '70 -- about -- I think about in '70.

22 Q Okay. Is that a DUI First?

23 A Yeah.

24 Q Okay. Is that -- is that your only scrape with the
25 law?

1 A Yeah.

2 Q Okay.

3 MR. BRADLEY: (To Mr. Gunn) Was the date of
4 the -- the date of Emma's -- was the date of
5 the death on February 11th?

6 MR. MCGOWAN: (To Mr. Bradley) That's what's
7 in the records.

8 MR. GUNN: (To all counsel) Okay.

9 Q Excuse me. I -- I've been using February the 10th
10 as the date of Emma's passing. My understanding is
11 it was February the 11th. Does that sound more
12 like the date to you or -- or is it --

13 A Yeah. Probably some -- yeah. It -- it was up in
14 there somewhere.

15 Q Yeah. Okay. When -- whenever it was, it was.

16 A Yeah.

17 Q Okay.

18 MR. GUNN: Thank you, sir. Appreciate it.

19 THE DEPONENT: Welcome.

20 EXAMINATION

21 BY MR. BEIGHLEY:

22 Q Mr. Strong, I'm George Beighley. I represent Dr.
23 Patel. I have a few questions to follow up on.

24 The mobile home that you and Ms. Davis lived
25 in, who -- who owned that mobile home?

1 A We bought it. It was in her name.

2 Q The -- the title of it was in her name?

3 A Yeah.

4 Q Did Ms. Davis leave a will?

5 A Unh-unh.

6 Q And is the -- is the mobile home in -- whose name

7 is the mobile home in now?

8 A Tanisha Gilmore.

9 Q That's her -- her niece?

10 A Yeah.

11 Q Did you make a claim in the probate court when Ms.

12 Davis passed away as her common-law husband?

13 A Yeah.

14 Q Okay. Was that -- was -- did the family court --

15 or the probate court rather, acknowledge that

16 claim?

17 A Yeah. Family.

18 Q I mean, the -- I should have said the probate. The

19 -- the court that handles estates, did -- did they

20 acknowledge you as her common-law husband?

21 A Yeah.

22 A Okay. So how -- how did the title to the mobile

23 home go to the niece instead of to you if there was

24 no will and you were her husband?

25 A I just put it in her name. I put all my stuff in

1 her name.

2 Q In -- in Ms. Gilmore's name?

3 A (Nods head up and down.)

4 Q Why -- why did you do that?

5 A I just did it. She was -- she was helping me --

6 Q Okay.

7 A -- take care of my work and stuff.

8 Q All right. Did y'all have a telephone number in

9 the phone book?

10 A Got a phone, but it ain't -- the number ain't in

11 the phone book.

12 Q And you -- I think you said the utilities were in

13 Ms. Davis's name?

14 A The phone in my name.

15 Q The phone is in your name?

16 A Yeah.

17 Q Was it in your name before Ms. Davis passed away?

18 A Yeah.

19 Q And water and power were in Ms. Davis's --

20 A Davis.

21 Q -- name?

22 A Yeah. Ms. Davis.

23 Q Did you ever, when you would go out in public,

24 introduce yourselves as husband and wife to people

25 that you would meet on the street?

1 A Yep.

2 Q Did you?

3 A (Nods head up and down.)

4 Q You have to answer verbally so she can -- so -- if

5 you don't speak she can't put it in the record,

6 sir.

7 A Okay.

8 Q You need to answer that question. I think you were

9 indicating affirmative, but you need to say it so

10 she'll put it in the record.

11 A Yeah. We -- I would introduced each other like

12 husband and wife. We --

13 Q How many times do you remember Ms. Davis being

14 admitted to the hospital in the years you were

15 together?

16 A I figure about two or three times.

17 Q Can you remember, or what's your best memory of the

18 number of times she went to the emergency room?

19 A No, sir. I can't remember.

20 Q Do you know that she did go on occasion?

21 A Yeah. She -- I -- I really don't know.

22 Q All right. Did you go with her to visit any

23 doctor's office?

24 A Sometime.

25 Q Which -- which doctors did -- do you --

1 A I used --

2 Q -- remember --

3 A -- to go with Sam Stone with her most time.

4 Q All right. Did you ever go to any office visits

5 with Dr. Patel?

6 A Unh-unh.

7 Q Did you ever meet Dr. Patel before the procedure?

8 A No. I done saw him, though, but I never did talk

9 to him.

10 Q And where did you see him?

11 A At his office.

12 Q When -- when was that?

13 A It been a good little while because I been -- I

14 really don't know, tell you the truth.

15 Q And -- and what -- what was the reason that you saw

16 Dr. Patel at his office?

17 A I just used to go with her. Sit in there when she

18 go to the doctor and stuff.

19 Q So you went to the office when she had an

20 appointment?

21 A Yeah. Sometime.

22 Q With Dr. Patel?

23 A Yeah.

24 Q And you say you saw him, but didn't talk to him?

25 A No. I never did do no talking to him no way.

1 Q And -- and this visit was in -- in the office
2 where? In Chester?
3 A Yeah. Chester.
4 Q Okay.
5 A Right behind the hospital.
6 Q And you had just accompanied her over there, but
7 you didn't go in the examining room and --
8 A No.
9 Q -- talk with him about what was going on or --
10 A No. I never did do no --
11 Q Okay.
12 A -- talking.
13 Q Now, on the day of the -- the procedure, the 11th,
14 you -- did you see Dr. Patel that day?
15 A No. I ain't seen him.
16 Q Didn't see him at all?
17 A Unh-unh.
18 Q Okay. Who was your sister, and what was your
19 sister's name that drove you and -- and Ms. Davis
20 to the hospital?
21 A Ganette Strong.
22 Q And where does she live?
23 A Blackstock, South Carolina.
24 Q And we know that you told us that Atlean Jurden
25 (phonetic) was there.

1 A Yeah. All us come there together.

2 Q So those were the folks that were there at the

3 beginning. Right?

4 A Yeah.

5 Q And then later on Linda Ann Gilmore and Tanisha

6 Gilmore came.

7 A Yeah.

8 Q Do you remember anyone else being present at the

9 hospital that day?

10 A Rosa Hall. My brother, Monroe Davis.

11 Q That's your brother?

12 A That's her brother --

13 Q Her --

14 A -- Emma.

15 Q -- brother.

16 A Yeah.

17 Q And how is Rosa -- who is Rosa Hall?

18 A Her sister.

19 Q Okay. Anybody else you can remember?

20 A It was a bunch of people up there. I really don't

21 know.

22 Q Are you --

23 A But --

24 Q -- have you told me the ones you do remember?

25 A Yeah.

1 Q Okay. You said that around ten a lady came out and
2 said they couldn't get her heart started back up?
3 A Yeah.
4 Q And once you heard that, you didn't sit there very
5 long. You went outside --
6 A Yeah. I --
7 Q -- is that --
8 A -- went --
9 Q -- right?
10 A -- outside.
11 Q And how long would you say you were out there
12 before you came back in?
13 A Probably 15 or 20 minutes, then we come back in.
14 Then they called us all back in the room.
15 Q And that's when she was on the table so you could
16 pay your last --
17 Q Yeah.
18 Q -- respects?
19 And you didn't stay very long there. I think
20 you said --
21 A No.
22 Q -- you went back outside.
23 A I -- yeah. I -- I went back.
24 MR. BEIGHLEY: I may have a few more questions
25 for you in a minute. I'm going to let Mr.

1 Bradley ask you some. Thank you.

2 THE DEPONENT: All right.

3 EXAMINATION

4 BY MR. BRADLEY:

5 Q My name's Ward Bradley. I represent Dr. Baker.

6 Did you ever meet Dr. Baker?

7 A No.

8 Q If you saw him, would you even recognize him?

9 A No. I wouldn't know him if I saw him.

10 Q Okay. Do you know anything that Dr. Baker did
11 wrong?

12 A Nope. I couldn't -- I don't know too much about no
13 medicine stuff no way.

14 Q Right.

15 A And --

16 Q Sir, do you -- do you know your social security
17 number? Can you give us your social security
18 number?

19 A 250-92-5209.

20 Q And do you have a driver's license?

21 A Unh-unh.

22 Q Do you have a South Carolina ID card?

23 A Yeah.

24 Q Do you know the number for that card?

25 A 002464402.

1 Q Okay. And why do you not have a driver's license?

2 A Got them took, DUI.

3 Q And that was in 1970?

4 A Yeah.

5 Q You just haven't ever had it reinstated --

6 A Unh --

7 Q -- since then?

8 A -- unh. And I ain't never tried back no more for

9 them.

10 Q That -- was Ms. Davis on disability at the time she

11 passed away?

12 A Yeah.

13 Q What was her disability? Do you know?

14 A I don't really know.

15 Q Was she receiving disability payments from the

16 government?

17 A Yeah.

18 Q Okay. Okay. But you don't know why?

19 A No.

20 Q Do you know how long she'd been on disability?

21 A No. I've -- let me see. It been on a good little

22 while. Because I got out of -- I been out of work

23 over -- this is going on the fifth year or so. Had

24 to be about ten or eleven years.

25 Q Okay. But you don't know what it was that was

1 wrong with her that --

2 A No.

3 Q -- she qualified?

4 A No.

5 Q Did she have a lawyer that helped her apply for

6 that disability?

7 A I reckon.

8 Q Do you --

9 A I don't --

10 Q Do you know who that might've been?

11 A I don't know for really.

12 Q Okay. All right. I understand that you were laid

13 off about four years ago from your job hauling

14 trees?

15 A Yeah.

16 Q Now, are you drawing any kind of government

17 payments now?

18 A No. I ain't drawing nothing now. I was on

19 unemployment, then they cut that.

20 Q Would you be drawing any social security from Ms.

21 Davis?

22 A Unh-unh.

23 Q Are you entitled to any of her benefits?

24 A No.

25 Q Okay.

1 MR. BRADLEY: I don't have any more questions.

2 Thank you.

3 MR. GUNN: All right. Thank you, sir.

4 FURTHER DEPONENT SAITH NOT.

5 Signing waived.

6 (Whereupon, there being no further

7 questions, the deposition was

8 concluded at 10:36 a.m.)

9 (*This transcript may contain quoted material.

10 Such material is reproduced as read or quoted

11 by the speaker.)

12 (**Certificate accompanies sealed original

13 only.)

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PIEDMONT MEDICAL CENTER
Rock Hill, South Carolina

DATE OF ADMISSION: 11/01/99
DATE OF DISCHARGE: 11/04/99
PATIENT'S AGE: 57
DATE OF BIRTH: 11/11/41

Ms. Emma Davis is a 57-year-old woman referred for diagnostic cardiac catheterization. For complete admission evaluation, please see the dictated history and physical examination.

HOSPITAL COURSE: Ms. Davis underwent a diagnostic cardiac catheterization which demonstrated the following hemodynamics:

1. Right atrial pressure is 25 mmHg.
2. Right ventricular pressure was 82/34 mmHg.
3. The pulmonary artery pressure is 92/52 mmHg.
4. Pulmonary capillary wedge pressure was 41 mmHg.
5. The cardiac index was 2.4 liters per minute per meter squared.
6. The left ventricular end diastolic pressure was 44 mmHg.
7. Left ventricular ejection fraction is estimated at 25 to 30%.
8. The coronary arteries were normal.

The films were reviewed. Hemodynamics reviewed. It was felt that Ms. Davis would best benefit from inpatient care for decompensated congestive heart failure. She was placed on continuous infusion of Lasix at 10 mg an hour. Daily electrolytes and renal function were monitored. She did well with this regimen and had a good diuresis. Her breathing improved, and her edema resolved. On 11/4, she is considered hemodynamically stable for discharge.

DISCHARGE INSTRUCTIONS: Include the following:

1. Diet: 2 gram sodium, low fat, low cholesterol weight reduction diet.
2. Activity: To tolerance.
3. Medications: Ms. Davis will be discharged home on many of the same medications as prior to admission which include the following:
 - a. Ecotrin one tab p.o. qd.
 - b. Atacand 32 mg p.o. qd.
 - c. Norvasc 5 mg p.o. qd.

In addition, the following medication changes were made:

1. Lasix was changed to 80 mg p.o. b.i.d.
2. KCl was changed to 20 mEq p.o. b.i.d.

PATIENT: DAVIS, EMMA
MR#: ROOM#:
PHYSICIAN: Jeffrey C. Sloan, M.D.

DISCHARGE SUMMARY

Page 1

ORIGINAL

MCBOWAN003048

PMC (11.1.1999) = 005

03495

R 0705

PATIENT INFORMATION	
Date <u>4-8-09</u>	Time: <u>1300</u>
Information Given By: ☒ Patient ☐ Other (Identify): _____	
Accompanied By: ☒ Self ☐ Parent ☐ Spouse ☐ Relative ☐ Other: _____	
Person/Organization having legal responsibilities: ☒ Self ☐ Parent ☐ Other: _____	
☐ Healthcare POA: <u>none</u> ☐ On Chart ☐ Power of Attorney: <u>none</u>	
Emergency Contact Name: <u>Bob Andrew Strong (friend)</u> Phone: <u>209-5300 cell</u>	
Emergency Contact Name: _____ Phone: _____ Cell: _____	
Language Spoken: ☒ English ☐ Spanish ☐ Other: _____ Interpreter Services Needed ☐ Yes ☒ No	
Other Communication Needs: ☒ N/A ☐ Braille ☐ Sign Language ☐ Special Communication Device	
Age Specific Considerations: ☐ Early Adult (18-29 yrs) ☐ Young Adult (30-44 yrs) ☐ Middle Adult (45-65) ☒ Geriatric (65+)	
ADMITTED VIA:	
☐ Ambulatory ☒ ED	☐ Oral ☐ Rectal ☐ Axillary
☐ Wheelchair ☐ MD Office	B/P <u>149/85</u> Pulse <u>71</u> Resp <u>20</u> Pulse Ox <u>99</u> %
☐ Stretcher ☐ Home	Height <u>58</u> Weight <u>219.2</u> ☐ Standing ☐ Seated ☐ Bed
PATIENT LEARNING NEEDS	
What grade did you complete? <u>8th grade</u>	
How do you learn best? ☒ Reading ☒ Demonstration	
☐ Video ☐ Discussion ☐ TV ☐ Other _____	
What concerns do you have about learning?	
☐ Emotional ☐ Physical ☐ Cultural ☐ Language ☒ None	
Do you understand your illness/treatment plan? ☒ Yes ☐ No	
☒ Verbalizes understanding ☐ Not knowledgeable	
☐ Unable to assess ☐ Disinterested	
FAMILY / SIGNIFICANT OTHER LEARNING NEEDS	
(Identify: _____) ☒ N/A	
What grade did you complete? _____	
How do you learn best? ☐ Reading ☐ Demonstration	
☐ Video ☐ Discussion ☐ TV ☐ Other _____	
What concerns do you have about learning?	
☐ Emotional ☐ Physical ☐ Cultural ☐ Language ☒ None	
Do you understand your illness/treatment plan? ☐ Yes ☐ No	
☐ Verbalizes understanding ☐ Not knowledgeable	
☐ Unable to assess ☐ Disinterested	
PAIN SCREENING	
1. Is the patient responsive? ☒ Yes ☐ No (If yes, continue with question #2) (If no, skip to questions #13 and 14)	
2. Did you have pain on admission? ☐ Yes ☒ No	
3. Are you having pain now? ☐ Yes ☒ No (If yes, to either #2 or #3, continue below)	
4. Did you receive/take something for pain? ☐ Yes ☒ No If yes, what? _____ what time? _____	
5. On a scale of 0-10, please rate your current pain level? <u>0</u>	
6. Where is your pain? _____	
7. What type of pain is it? ☐ Burning ☐ Stabbing ☐ Crushing ☐ Cramping ☐ Aching ☒ Other _____	
8. Is the pain ☐ Intermittent ☐ Constant	
9. Is the pain ☐ Sharp ☐ Dull ☐ Pressure ☐ Radiating	
10. What helps to relieve the pain? _____	
11. What makes your pain worse? _____	
12. How does the pain affect your daily lifestyle? _____	
13. Does the unresponsive patient respond to pain? ☐ Yes ☒ No	
14. How does the unresponsive patient respond to pain? ☐ Localize ☐ Withdrawal ☐ Grimacing ☐ Other _____	



Admission Screening

CH 201 (7/04)

DAVIS, EMMA
ACCT 1071911 MR/0000033836 04/08/2009
ROGER ANDRAS DOB: 11/12/1941 0671F
CHS/CHS REGIONAL MEDICAL CENTER 0104

MCGOWAN003409 CRMC - (DOS 4.8.09) - 0071

03856

R 0706

Emma Davis - 68 yr.
white Bell - son.

new procedure
by Patel

2/11/10 -- in Am -

no breathing problems when taken side.
male & female nurse -
white male, black female nurse.

back @ 6:20 am - to prep
≈ 8 am taken back to op.

≈ 9:30 am - white nurse (female) commented
says - energy - stopped breathing
would have to hook up to machine -
said Emma was "fighting".

another female doctor white - said not
breathing at all needed touch.

≈ 5 minutes later said she passed.

Dr. Patel - offered

the sheet to close
tried to shut her but
didn't work.

Tanisha Gilmore

Chisler SC 29706
803-379-4776(c)

689302



MCOWAN006190

06008

**For Plaintiff's Exhibit 14b,
see Record p. 633
(Duplicate of Plaintiff's Exhibit 7)**

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE

CLIENT QUESTIONNAIRE

(Personal Injury)

Date completed by Client: _____

Date Supplemented/Completed by Attorney: _____ Esq.

Date of incident complained of: 7/11/10

Statute of Limitations: 7/11/13

PERSONAL INFORMATION FOR THE PERSON INJURED OR DECEASED

Name: Emma Davis - Bernick

Address: _____

Home Phone: _____ Work: _____

Cell Phone: _____ Pager: _____

E-mail Address: _____

Date of birth: [REDACTED] 41

Social Security #: _____

Driver's License # and State: _____

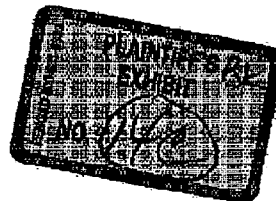
Emergency Contact Information & Relationship in case of emergency:

If you have ever been known by any other name (e.g. maiden name) please indicate your prior full name and the date of name change.

married by Willie Bell (maybe) - son - 803 -

⊕ - Andrew Strong - potential common law husband - 30 yrs lived together -

803-209-5300 (cell)
803-571-3953 (home)



ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE
**INFORMATION ABOUT THE PERSON WHO IS SEEKING TO SERVE IN A
REPRESENTATIVE CAPACITY OR IS ASSERTING A LOSS OF CONSORTIUM
CLAIM (PR OF THE ESTATE, PARENT OF MINOR CHILD, FAMILY MEMBER
OF INCAPACITATED PERSON, SPOUSE OF INJURED PARTY, ETC.)**

Name: _____

Address: _____

Home Phone: _____ Work: _____

Cell Phone: _____ Pager: _____

E-mail Address: _____

Date of birth: _____

Social Security #: _____

Relationship to Injured Person: _____

In What Capacity do they seek to prosecute this case (PR, next friend, LOC,
etc): _____

Why are They Seeking to Sue the Defendant: _____

Emergency Contact Information & Relationship in case of emergency (for PR,
next friend, Spouse if asserting a LOC Claim, etc.): _____

FAMILY INFORMATION FOR THE INJURED PERSON

Marital Status: Married _____ Single, never married _____

Divorced _____ Separated _____ Widowed _____

If married or separated, name of Spouse: _____

Date of birth of Spouse: _____

Date & Place of marriage: _____

① Brenda Foster -
niece to Ms. Davis
803- 379- 1417 (c).
@ hosp after she passed.
spoke w/ gmt on phone.

② ~~Lyn~~ Linda Culmore
209- 1035 (c)
niece to Mr. Davis
@ Hosp -

③ - Dessie Strong
Andrew Strong's sister
803- 209- 1183 (c).
@ Hosp after she passed.

④ Rosa Hall
sister to Ms. Davis
803- 581- 5171 (h).
@ Hosp for most of it.

⑤ Aileen Jordan.
sister to Ms. Davis
@ Hosp for whole thing
803- 379- 3886.

⑥ Jeanette Strong.
sister to Andrew.
803- 209- 8214
@ Hosp for whole thing.

⑦ Robin McClure.
niece to Ms. Davis
209- 6464
~~@ Hosp~~ Not @ Hosp

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE

Were you married at the time of your injury? Yes ___ No ___

If yes, were you married to your present spouse? Yes ___ No ___

If no, please provide name of former spouse: _____

Children

NAME	AGE	DATE OF BIRTH
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EMPLOYMENT INFORMATION FOR THE INJURED PERSON

Employer (name, address): _____

Position/Title: _____

Wages/Salary: _____ # hours per week: _____

Dates of employment: _____

Days lost from work due to injury/illness: _____

Did you: 1) Receive Worker's Compensation? Yes ___ No ___

If yes, state: Length of time _____ Amount _____

2) Receive disability benefits? Yes ___ No ___

If yes, state: Length of time _____ Amount _____

3) Use sick/vacation days? Yes ___ No ___

If yes, state: How many _____

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE

If no longer working, last date of work: _____

Previous Employers (last 5 years) with addresses and dates:

Additional sources of employment/income: _____

HEALTH INSURANCE INFORMATION FOR THE INJURED PERSON

Who is your health insurance carrier? _____

Who do you receive benefits through? _____

Policy number _____

EDUCATION INFORMATION FOR THE INJURED PERSON

Please state all of your educational experience below beginning with your high school.

Name of School/Institution	City and State	Date Degree Rec'd

_____	_____	_____
_____	_____	_____

Were you attending school at the time of your injury/illness? Yes ___ No ___

School name _____

School address _____

Program of Study _____

Time lost, if any _____

**ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE
HEALTH CARE PROVIDERS FOR THE INJURED PERSON**

Please provide the names, addresses and dates of treatment for all your doctors, hospital visits, nursing care, physical therapy, massage, etc. If you had any different primary care physicians than you have now in the past ten years, please also list them.

NAME	ADDRESS	DATES OF TREATMENT
1. Sam Stone, MD		
2. Carolina Cardiology	about 1 yr.	
3. PMC	Paincenter- 4/11/10	
4. Chester Regional -		Nov 09 CHF
5. Providence - St. Hart Center		
6.		
7.		

List family members, friends or independent witnesses who can furnish us information which may be helpful in evaluating the case.

WITNESSES

[Indicate at right [Y] [N] if a written statement made to any person]

	Names	Phone Numbers	Addresses	
1.	_____	(h) _____ (w) _____	See box of shot _____	[Y] [N]
2.	_____	(h) _____ (w) _____	_____	[Y] [N]

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE

3. _____ (h) _____ [Y] [N]
(w) _____

4. _____ (h) _____ [Y] [N]
(w) _____

MEDICAL EXPENSES FOR THE INJURED PERSON

Do you have unreimbursed out-of-pocket medical expenses? Yes _____ No _____

TYPE OF EXPENSE	AMOUNT
Physicians' charges	
Hospital charges	
Nursing services	
Dental services	
Ambulance services	
X-ray/Radiology services	
Physical therapy and rehab	
Psychiatric therapy	
Medical supplies (not medicine)	
Prescriptions	
Prosthetic devices	
Other	

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE
CONFINEMENT OF PERSON DUE TO HIS/HER INJURIES

If you were ever confined to a bed, home or hospital for your injuries/illness alleged to be caused by the malpractice, please complete the following. (If not applicable, please indicate N/A.)

LENGTH OF TIME (provide dates)

1) Bed	_____

2) Home	_____

3) Hospital	_____

PHARMACIES WHO FILLED PRESCRIPTIONS FOR THE INJURED PERSON

Please list the names and addresses of pharmacies from which you obtained medications/prescriptions relative to your injury/illness.

NAME	ADDRESS
_____	_____
_____	_____

MEDICATIONS USED BY THE INJURED PERSON

Please list the medication you are taking and if they are new since your injury (may use separate sheet of paper if needed)

NAME	NEW SINCE INJURY
_____	Yes ____ No ____
_____	Yes ____ No ____
_____	Yes ____ No ____
_____	Yes ____ No ____
_____	Yes ____ No ____
_____	Yes ____ No ____

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE
PERSON WHO CAUSED ACCIDENT OR INJURIES TO POTENTIAL CLIENT

Please identify the person, company or hospital that you believe injured you.

BASIS OF YOUR CLAIM OF NEGLIGENCE

Please indicate why you believe the above person, company or hospital did something wrong which caused your injury.

CURRENT SYMPTOMS OF THE INJURED PERSON

Please list in detail the symptoms you currently suffer either continuously or intermittently since your injury, indicate how often you experience each of these symptoms, rate the pain you suffer on a scale from 1-10 with 1 being the least pain you have ever suffered and 10 being the most, and specify what if any medications or treatments you are taking or receiving for these symptoms.

PROGNOSIS FROM DOCTORS OF THE INJURED PERSON

**ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE**

If your doctors have indicated to you whether they believe your symptoms are likely to be permanent or whether they believe that your symptoms will resolve over time, please indicate what you were told.

LIMITATIONS/ALTERATIONS IN LIFESTYLE OF THE INJURED PERSON

Please list activities that you are no longer able to perform or perform with difficulty.

PRIOR GENERAL HISTORY OF THE INJURED PERSON

Prior to this injury, have you ever sought medical treatment at any time in your life for similar symptoms? If yes, to the best of your ability provide the approximate date and the health care provider involved and describe the circumstances.

**ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE**

Other than the injury you are complaining of, do you have any other significant health problems not related to this injury? If yes, please describe in detail including any medications you are taking.

Since the date of your injury, have you been involved in any other accidents or incidents that may have aggravated your symptoms? If yes, describe in detail.

Have you ever received any type of mental health counseling? If yes, where and when.

Have you ever been injured on the job and filed a workers' compensation claim? If yes, provide the date and details of claim.

Is there any significant family history for the type of symptoms that you listed above that you are currently experiencing related to this injury?

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE

Have you ever used tobacco products of any type? Yes: ____ No: ____

If yes, indicate the time period of use, the product type (e.g. cigarettes) the approximate number consumed per day

Do you regularly drink alcoholic beverages? If yes, what type, how often and how many per day or week.

Have you ever received any treatment for any type of substance abuse (alcohol or drugs)? If yes, where and when.

PRIOR COURT EXPERIENCE OF THE INJURED PERSON

Have you ever been convicted of a crime other than a traffic ticket? If yes, please describe in detail the offense, date of conviction, sentence and jurisdiction where the conviction occurred.

Have you ever been a plaintiff in a lawsuit? If yes, indicate the date, nature of the legal action and result.

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE

Have you ever filed for bankruptcy or do you have a present intention to do so?
If yes, provide details.

OTHER INFORMATION

Please indicate provide any additional information that you believe would be helpful to us in evaluating your possible injury claim that you have not already provided above. In a malpractice case, if another doctor told you there was a mistake in treatment, list the name of the doctor and what was said.

If the victim is deceased, has an estate been opened? If so, please attach a copy of the Certificate of Appointment showing who is responsible for the estate.

Date of Death 2/11/10

If the victim was under 18 years of age, please complete the questions below.

Father's name: _____

Mother's name: _____

If parents of minor are divorced or separated, list the custodial parents name, address and phone number.

If the victim is incompetent to handle his/her own affairs, has someone been appointed guardian or conservator for the victim? If so, give name, address, and phone number of person appointed and send copies of documents showing the appointment.

ALL INFORMATION SUPPLIED IN QUESTIONNAIRE IS CONFIDENTIAL
AND PROTECTED BY ATTORNEY CLIENT PRIVILEGE

Have you talked with any other attorney regarding your complaint of negligence or harm? Yes _____ No _____

If answer is yes, please state the attorney you talked with and whether you have signed a fee contract with that attorney.

Name: _____

Address: _____

Phone: _____

Signed a fee contract with that attorney? Yes _____ No _____

Where did you hear about this firm?

Attorney _____ Friend _____

Yellow Pages _____ Yes _____ No _____ If yes, which telephone Book? _____

Webpage or internet _____

Other: _____

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION
(HIPAA Compliant)

Patient Name: Emma M. Davis

Date of Birth: 02/21/41

Social Security No.: _____

The following health provider is authorized to provide medical records and disclose patient identifiable health information:

Name: Piedmont Medical Center

Phone: _____

Address: _____

Facsimile: _____

The above named health provider is authorized to discuss my medical treatment and health information with my attorneys, McGowan, Hood, & Felder, LLC. The above named health provider is NOT authorized to discuss my medical treatment or health information with
INSURANCE COMPANY.

The scope of the health information to be provided or disclosed is as follows:

All medical records for all dates of service for all medical conditions and treatment from the above named health care provider, as well as all medical records for all dates of service for all medical conditions and treatment from other health care providers and facilities. This is including all diagnostic testing including but not limited to radiological films. All billing records regarding the referenced incident. All medical release authorizations, notes, memoranda, correspondence, claim forms, reports and insurance documents regarding the referenced incident.

The health information is authorized to be provided to:

McGowan, Hood, & Felder, LLC

or their agent

1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800 Telephone
(803) 328-5656 Facsimile

1517 Hampton Street
Columbia, SC 29201
(803) 779-0100 Telephone
(803) 787-0750 Facsimile

P.O. Drawer 1778
Anderson, SC 29622-1778
(864) 225-6228 Telephone
(864) 231-9011 Facsimile



Additionally, this authorization allows any employee of the law firm of McGowan, Hood, & Felder, LLC, including nurse Christina Knight to speak with any employee of the above-named medical provider. My attorneys are authorized to act on my behalf regarding all insurance and legal matters. The patient identifiable health information received pursuant to this release authorization is to be used for the following purpose:

No-fault (PIP) insurance claims, liability claims, underinsured motorist claims, workers' compensation claims and all other insurance or legal matters related to my injuries or health condition.

RIGHT OF REVOCATION: I have the right to revoke this release authorization at any time. The revocation must be in writing and be delivered to MCGOWAN, HOOD, & FELDER, LLC. The revocation will not apply to records and information that have already been provided.

EXPIRATION: Unless earlier revoked, this authorization will expire upon the termination of the representation by MCGOWAN, HOOD, & FELDER, LLC.

PATIENT RIGHTS: I have the right to inspect or copy the information to be disclosed, to inspect and amend my medical records, and to an accounting of the use and disclosure of my health information to any third party, as provided in CFR 164.524. My treatment, payment, enrollment or other eligibility for benefits may not be affected by, or conditioned upon, my signing or my failing to sign, this authorization. I further understand the information in my medical record may include information relating to sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may include information about behavioral or mental health services and treatment for alcohol and drug abuse.

RE-DISCLOSURE: I understand that there is a potential for unauthorized re-disclosure of the information and that the re-disclosed information may not be protected by federal confidentiality rules.

PHOTOCOPIES OF THIS RELEASE ARE VALID AND MAY BE USED IN LIEU OF THE ORIGINAL.

DATE: 2/24/10

SIGNATURE: Tanisha Gilmore PL

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MATTER OF EMMA M DAVIS

IN THE PROBATE COURT
CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2010ES1200059

This is to certify that
TANISHA GILMORE

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE

In the above matter and that this appointment, having been executed on the 19th day of February, 2010 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

NONE

Executed this 19th day of February, 2010

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

Lois H. Roddey
LOIS H. RODDEY, JUDGE OF PROBATE

FORM #141PC (1/91)
62-1-305, 62-5-103, 62-6-304, 62-6-421, 62-7-201

MCGOWAN003158

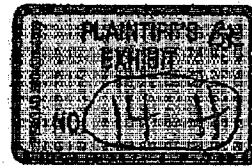
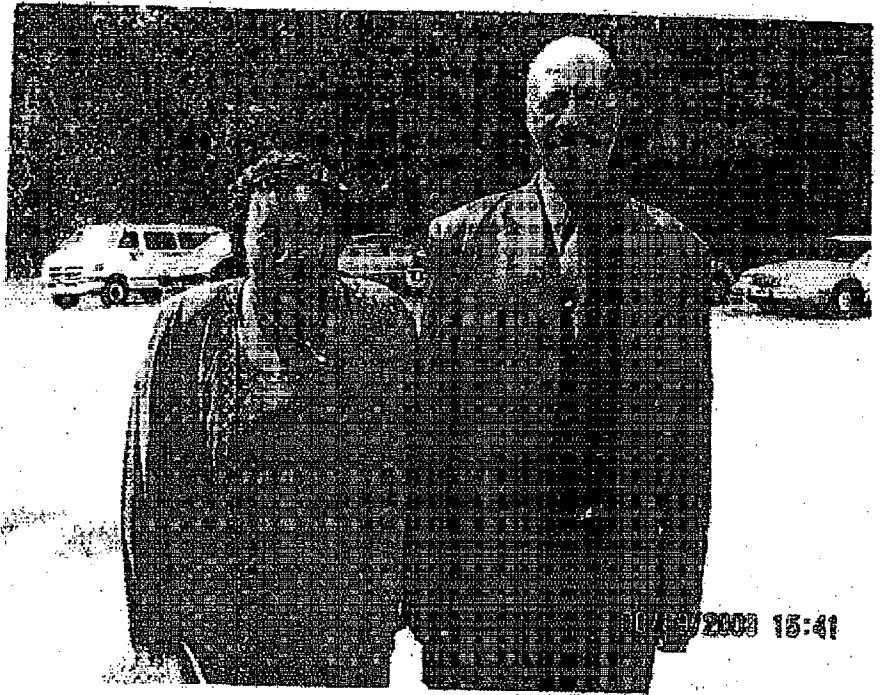
PMC (11.1.1999) - 00115

03605

R 0724

**For Plaintiff's Exhibit 14f
see Record p. 636
(Duplicate of Plaintiff's Exhibit 8)**

**For Plaintiff's Exhibit 14g,
see Record p. 623
(Duplicate of Plaintiff's Exhibit 3)**



WWW.SNAP18H.COM - Baltimore MD
4385585008 41-1 17-14798 06 02/23/10



Privileged

Memo

To: File
From: Chad
CC:
Date: 4/14/2014
Re: Death of Emma Davis, DOB 11/12/41. Died 2/11/2010

Background facts

Emma Davis (DOB 11/12/41) died on 2/11/2010.

Davis was going to have a pace maker inserted at PMC on Feb 11. She was in decent health and was told that she had CHF in the past. She was seen in November, 09, at the SC heart Center in Cola and given some kind of test. She was told then that she did not need a pacemaker.

She then started with Carolina Cardiology- Dr. Patel. She was to get a pacemaker at PMC.

She arrived at 6:00 am with 2 family members. She was prepped and taken back around 8:30am by a white male nurse and a black female nurse. Somewhere around 9:30 am, a white female nurse came out and stated that there was an emergency. Ms. Davis stopped breathing and they would have to hook her up to a machine. Nurse said Emma Davis was "fighting" them.

A few minutes later another nurse came out and said that Davis was not breathing and needed a trach.

A few minutes after that, Dr. Patel called the family together and stated that her heart rate started to drop, they shocked her and could not get her back.

NOTE: This is the case where both I and a family member received an anonymous call from a Male caller who stated he worked at the hospital. He originally asked me to contact the family. I told him I could not do that due to the ethical rules, but that if the family called me, then I could investigate.

The family received a call shortly after that, so I am told, telling them that "mistakes were made" and "you need to investigate this." A family member called me and set up an appointment.

The family is extended, with Andrew Strong being the 30 year+ live in common law husband of the Ms. Emma Davis. There is a surviving son, Willie Bell who may or may not have been formally adopted.

I suspect a drug overdose in the pre-op anesthesia. We may need to exhume.

Family is going to get Andrew Strong appointed as PR from Chester. Will go from there.

EXPERTS

- A. William "Bill" Maisel, MD (See affidavit)— (Had to step down as expert d/t taking a job with FDA)—NOT USING beyond NOI...
- B. Krista Graves, RN—her opinions are along the lines of Maisel's at this time. She is a little confused as to what actually occurred during the pacer, were they sedating her BEFORE the doc arrived....continued to administer sedation with out supporting documentation for such....ACLS was a mess.....delayed with recognizing the decrease in RR and sats.....giving Narcan in the middle of the code...why was that not initial...A_B_C's.....willing to ride this boat to see the sites and what may come out in discovery.....
- C. Leonard Ganz, MD (did a fellowship under Bill Maisel)—Similar to Maisel—not as strong on the conscious sedation but does entertain the thoughts.... Problem is we do not have a COD no autopsy. Due to the "sex" in the case is willing to ride along and see what may come out through depositions. (NOT USING)
- D. John Miller, MD - (Indiana) (CARDS)— misplaced ETT. Hypoxic insult and death. He does not feel the drugs used for conscious sedation were out of the reasonable SOC not the procedure.... Commented on how well she did for 10 years. Feels the tube was misplaced which lead to hypoxemia and her death.
- E. Andrew Selwyn, MD (CARDS)—
- F. Alan Lisbon (ANES)—Affidavit

**For Plaintiff's Exhibit 14j,
see Record p. 707
(Duplicate of Plaintiff's Exhibit 14a)**

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Tanisha Gilmore, as the Personal
Representative of the Estate of
Emma Davis, and Andrew Strong,

Plaintiff,

v.

Amisub of SC, Inc. d/b/a Piedmont
Medical Center; Carolina Cardiology,
Vasant Patel, MD, Ellenora Isaac, RN,
Gary Miller, RN,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No. 10-CP-

Response to Standard Interrogatories

TO: ALL DEFENDANTS:

RESPONSES TO STANDARD INTERROGATORIES

0 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:

Tanisha Gilmore,
c/o Plaintiff's counsel

Brenda Foster, niece to Ms. Davis
Linda Gilmore, niece to Ms. Davis
Robin McClurken, niece to Ms. Davis
Andrew Strong, common law husband of 30 yrs
Debbie Strong, sister to Andrew Strong
Jeanette Strong, sister to Andrew Strong
Rosa Hall, sister to Ms. Davis



REC'D 04/24/10 00305

00752

R 0731

Medical Providers of Emma Davis
As revealed in the medical records

All treating physicians and nurses

- 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: Medical Records from:

Piedmont Medical Center

Medical Bills from FMC

All docs in Plaintiff's possession are on the CD attached to the NOI served on Defendants.

- 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: Please see medical records.

- 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

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

RESPONSE: Medical bills from all medical providers
Future medical expenses

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:

William H. Maisel, MD
Cardiologist
See CV and Affidavit

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:

The family members will testify to their knowledge of the facts and their loss of Emma Davis.

The medical providers are expected to testify in accord with their medical records.


Chad A. McGowan
McGowan, Hood, and Felder
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
(803) 328-5656 Facsimile

May 24, 2010
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE MATTER OF EMMA DAVIS

McGOWAN, HOOD & FELDER, LLC AND CHAD
MCGOWAN, ESQ,

Petitioners,

vs.

WILLIE BELL, Successor Personal Representative of the
Estate of Emma Davis,

Respondent.

IN THE PROBATE COURT

2010-ES-12-00059-2

**PETITIONERS MCGOWAN, HOOD &
FELDER, LLC AND CHAD
MCGOWAN'S ANSWERS TO
RESPONDENT'S FIRST REQUEST
TO ADMIT**

Petitioners McGowan, Hood & Felder, LLC and Chad McGowan (hereinafter collectively referred to as "Petitioners") respectfully submit their Answers to Respondent's First Request to Admit:

GENERAL OBJECTIONS

The following objections apply to all of Respondent's requests for admission and are incorporated to all of the answers and objections herein.

1. By submitting the present Answers to Respondent's Requests to Admit, Petitioners do not seek to waive or act inconsistently with its pending Motion for Protective Order, but rather to act consistent with and in accordance with the South Carolina Rules of Procedure. *E.g., Bonnett v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981); *Mailsources, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 375-376, 588 S.E.2d 639, 642 (2003).

2. Petitioners object to the filing and service of Respondent's Requests to Admit as a violation of Judge Roddey's December 17, 2014 order.

588133

1



R 0734

REQUEST TO ADMIT NO. 1:

Please admit that there existed a conflict of interest in Petitioners' simultaneous representation of both Andrew Strong, as the alleged common law husband, and the Estate of Emma Davis.

ANSWER:

Objection.

In accordance with S.C. ST §62-1-109, Petitioners represented Tanisha Gilmore, in her capacity as Personal Representative of the Estate of Emma Davis, but did not represent the Estate of Emma Davis.

The phrases "conflict of interest," "simultaneous representation," "alleged common law husband," and "the Estate of Emma Davis" are so vague, ambiguous, confusing, misleading, argumentative, speculative, lacking in foundation, or constituting an incomplete hypothetical as to render the foregoing Request to Admit incapable of answer in its present form.

Without waiving the foregoing objections, and expressly reserving any other objections which may be applicable to the foregoing Request to Admit, Petitioners state for their Answer:

Petitioners admit that in accordance with S.C. ST §62-1-109, they represented Tanisha Gilmore, in her capacity as Personal Representative of the Estate of Emma Davis.

Further answering, Petitioners deny that they represented the Estate of Emma Davis.

Further answering, Petitioners deny that there existed a conflict of interest in their representation of Andrew Strong, as the alleged common law husband of Emma Davis, and Tanisha Gilmore, in her capacity as Personal Representative of the Estate of Emma Davis.

Further answering, to the extent not previously answered, Petitioners deny that there existed a conflict of interest in Petitioners' simultaneous representation of both Andrew Strong, as the alleged common law husband, and the Estate of Emma Davis.

REQUEST TO ADMIT NO. 2:

Please admit that Petitioners were aware of the existence of Willie Bell at the time Petitioners began representation of both Andrew Strong, as the alleged common law husband, and the Estate of Emma Davis.

ANSWER:

Objection.

In accordance with S.C. ST §62-1-109, Petitioners represented Tanisha Gilmore in her capacity as Personal Representative of the Estate of Emma Davis, but did not represent the Estate of Emma Davis.

The phrases "aware of the existence of Willie Bell," "at the time Petitioners began representation," "alleged common law husband," and "the Estate of Emma Davis" are so vague, ambiguous, confusing, misleading, argumentative, speculative, lacking in foundation, or constituting an incomplete hypothetical as to render the foregoing Request to Admit incapable of answer in its present form.

Without waiving the foregoing objections, and expressly reserving any other objections which may be applicable to the foregoing Request to Admit, Petitioners state for their Answer:

Petitioners admit that in accordance with S.C. ST §62-1-109, they represented Tanisha Gilmore in her capacity as Personal Representative of the Estate of Emma Davis.

Further answering, Petitioners deny that they represented the Estate of Emma Davis.

Further answering, Petitioners admit they were aware of the existence of Willie Bell at the time Petitioners began representation of both Andrew Strong, as the alleged common law husband of Emma Davis, and Tanisha Gilmore, in her capacity as Personal Representative of the Estate of Emma Davis.

Further answering, to the extent not previously answered, Petitioners deny that they were aware of the existence of Willie Bell at the time Petitioners began representation of both Andrew Strong, as the alleged common law husband, and the Estate of Emma Davis.

REQUEST TO ADMIT NO. 3:

Please admit that Petitioners, prior to their representation of the Estate of Emma Davis, had been provided information that Willie Bell could possibly be the adopted son of Emma Davis.

ANSWER:

Objection.

In accordance with S.C. ST §62-1-109, Petitioners represented Tanisha Gilmore in her capacity as Personal Representative of the Estate of Emma Davis, but did not represent the Estate of Emma Davis.

The phrases "prior to their representation," "the Estate of Emma Davis," "had been provided information," and "could possibly be the adopted son of Emma Davis" are so vague, ambiguous, confusing, misleading, argumentative, speculative, lacking in foundation, or constituting an incomplete hypothetical as to render the foregoing Request to Admit incapable of answer in its present form.

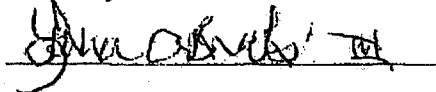
Without waiving the foregoing objections, and expressly reserving any other objections which may be applicable to the foregoing Request to Admit, Petitioners state for their Answer:

Petitioners admit that in accordance with S.C. ST §62-1-109, they represented Tanisha Gilmore in her capacity as Personal Representative of the Estate of Emma Davis.

Further answering, Petitioners deny that prior to their representation of Tanisha Gilmore in her capacity as Personal Representative of the Estate of Emma Davis they had been provided information that Willie Bell could possibly be the adopted son of Emma Davis.

Further answering, to the extent not previously answered, Petitioners deny that prior to their representation of the Estate of Emma Davis, they had been provided information that Willie Bell could possibly be the adopted son of Emma Davis.

As to Objections:



Respectfully submitted,



JANIK L.L.P.

LOVIC A. BROOKS, III (913)

BRIAN C. GAMBRELL (68253)

1122 Lady Street, Suite 1025 (29201)

P.O. Box 136

Columbia, SC 29202

(803) 764-0759 · (440) 838-7601 (facsimile)

Email: Lovic.Brooks@Janiklaw.com

Brian.Gambrell@Janiklaw.com

STEVEN G. JANIK (81464)
CRYSTAL L. MALUCHNIK (100961)
1000 William Hilton Parkway, Suite 103
Hilton Head Island, SC 29928
(843) 715-9311 • (440) 838-7601 (facsimile)
Email: Steven.Janik@Janiklaw.com
Email: Crystal.Maluchnik@Janiklaw.com

January 30, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Tanisha Gilmore, as the Personal
Representative of the Estate of
Emma Davis, and Andrew Strong,

C/A No. 2010-CP-46-03899

Plaintiff,

vs.

Amisub of SC, d/b/a Piedmont Medical
Center; Carolina Cardiology, Vasant Patel,
MD, and Anesthesia Associates of
Rock Hill, PA,

Defendants.

PETITION FOR APPROVAL OF
SETTLEMENT

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED

2013 AUG -1 AM 11:37

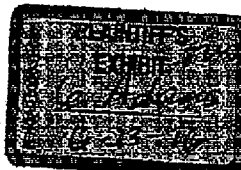
The Plaintiffs, Tanisha Gilmore as Personal Representative of the Estate of her late Great Aunt Emma Davis, and Andrew Strong, the Common Law Husband of the deceased, hereby petition this Court, pursuant to South Carolina Code §§ 15-51-41 and 15-51-42 for approval of a settlement involving wrongful death and survival claims against the above-captioned Defendants.

1. The Plaintiff Tanisha Gilmore is the duly appointed Personal Representative of the Estate of Emma Davis.
2. The Plaintiff Andrew Strong has claimed a Common Law Marriage to Emma Davis.
3. Plaintiffs asserted wrongful death, survival claims and Andrew Strong asserted Loss of Consortium claims against Defendants arising out of medical care rendered to Ms. Davis in February of 2010. Plaintiffs have asserted a variety of deviations from the standards of care

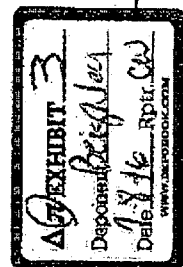
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R 0739

against the various defendant health care providers. These claims are more fully set forth in the Amended Summons and Complaint filed in this action on or about June 22, 2012. All survival claims have been dismissed by previous Order of this Court.

4. Plaintiffs are informed that Defendants Vasant Patel, MD, Carolina Cardiology and Anesthesia Associates are each insured by the South Carolina Joint Underwriters Association in the amount of \$200,000.00 in primary coverage and have additional coverage under the South Carolina Patient Compensation Fund, as provided by State law. Plaintiffs are informed that Defendant AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center is self insured up to \$5,000,000.00 retained limit with excess coverage.

5. The sole heir and beneficiary of the Estate of Emma Davis is Andrew Strong.

6. The parties by and through their attorneys and respective representatives have agreed to a compromise settlement of all claims arising out of this Complaint and Amended Complaint.

7. The terms of the Settlement are as follows:

A. Defendants AMISUB of SC, Inc., d/b/a Piedmont Medical Center, Carolina Cardiology, Vasant Patel, MD, will pay to Plaintiffs a total of two million, two hundred thousand and no/100 dollars (\$2,200,000.00); and

B. This payment will be made as follows:

1. \$600,000.00 paid by the South Carolina Joint Underwriters Association (JUA) and the South Carolina Patient's Compensation Fund (PCF) on behalf of Vasant Patel, MD and Carolina Cardiology as follows:

- a. \$100,000.00 on or before September 10, 2013;
- b. \$100,000.00 on or before October 10, 2013;

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- c. \$100,000.00 on or before November 10, 2013;
- d. \$100,000.00 on or before December 10, 2013;
- e. \$100,000.00 on or before February 28, 2014;
- f. \$100,000.00 on or before March 31, 2014.

C. Payment of one million six hundred thousand and no/100 dollars (\$1,600,000.00) by AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center by August 3, 2013.

D. Reimbursement of one hundred thousand and no/100 dollars (\$100,000.00) in Plaintiffs' litigation expenses paid by the South Carolina Joint Underwriters Association on behalf of Defendant Anesthesia Associates of Rock Hill, P.A.

8. The Plaintiffs are satisfied with the settlement as set forth above and seek Court approval of the same. Further, Plaintiffs seek approval of attorneys' fees in this matter. Plaintiffs retained as counsel Chad A. McGowan of the firm of McGowan, Hood & Felder, LLC, of Rock Hill, South Carolina. Pursuant to the fee agreement, Plaintiff agreed to pay an attorney's fee of 40% of the gross settlement amount. Plaintiffs are well satisfied with the advice and legal counsel they have received in this matter. Therefore, Plaintiffs seek Court approval of an attorneys' fee of \$920,000.00.

9. The fee agreement between the Plaintiffs and counsel further provides that counsel be reimbursed for all expenses reasonably incurred in the course of this representation. The total costs and expenses incurred in this matter are \$106,172.03 which are set forth in detail in the attached statement. Plaintiffs seek Court approval for reimbursement to Plaintiffs' counsel for expenses in the amount incurred.

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R 0741

10. Petitioner Tanisha Gilmore petitions the Court for approval of a PR Fee of \$25,000.00 dollars which constitutes 1.09 % of the gross recovery in this case.
11. Plaintiffs seek the Court's approval for an equal allocation between the wrongful death and loss of consortium claims.
12. Ms. Davis' estate has no creditor(s) of record. Plaintiffs are aware of no valid health care liens. In the event any should exist or be found to exist, Plaintiffs agree to satisfy them and hold Defendants harmless.
13. Plaintiffs understand, agree and assert to the Court that this settlement is not an admission of liability, wrongdoing or any fact or circumstance out of which the lawsuit arises.
14. Plaintiffs understand and agree that neither Defendants nor their Attorneys shall have any obligation whatsoever to trace or follow the application of the funds paid and upon payment by the respective parties making payment, such parties shall be forever released from all claims.
15. Plaintiffs respectfully request authority upon approval of the terms of this settlement, as set forth above, to execute an appropriate release dismissing the pending matter with prejudice.

WHEREFORE, Plaintiffs pray unto the Court for the following relief:

- A. Approval of the settlement as set forth in this Petition;
- B. Approval of attorney's fees and costs as set forth in this Petition;
- C. Approval of the allocation as set forth in this Petition; and
- D. Authorization for Plaintiff to execute appropriate releases.
- E. For such other and further relief as the Court deems just and proper.

Tanisha Gilmore
Tanisha Gilmore, as Personal Representative
of the Estate of Emma Davis

Andrew Strong
Andrew Strong

July 24, 2013

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R 0743

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Tanisha Gilmore, as the Personal
Representative of the Estate of
Emma Davis, and Andrew Strong,

C/A No. 2010-CP-46-03899

Plaintiff,

vs.

ORDER APPROVING SETTLEMENT

Amisub of SC, d/b/a Piedmont Medical
Center; Carolina Cardiology, Vasant Patel,
MD, and Anesthesia Associates of
Rock Hill, PA,

Defendants.

FILED-RECEIVED
2010 AUG -1 AM 11:37
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter comes before the Court pursuant to South Carolina Code §§ 15-51-41 and 15-51-42 for the approval of a settlement involving wrongful death and loss of consortium claims brought by Plaintiffs against the above-captioned Defendants. As set forth in the Petition, Plaintiff's claims for survival have previously been dismissed by this Court.

Plaintiffs assert that the Defendants deviated from the standards of care in the management of Ms. Davis and in the manner in which Ms. Davis was treated at AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center, on or about February 11, 2010, as more fully set forth in the Plaintiffs' Summons, Complaint, and Amended Complaint filed in this matter.

The Court is informed that the parties have negotiated a proposed settlement in this matter in the amount of Two Million Two Hundred Thousand and no/100 dollars (\$2,200,000.00), and for payment and reimbursement of litigation expenses incurred by the



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R 0744

Plaintiffs' of One Hundred Thousand and no/100 dollars (\$100,000.00), subject to the approval of the Court. The payments are to be made as follows:

1. Defendants AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center, Carolina Cardiology, Vasant Patel, MD, will pay to Plaintiffs a total of Two Million, Two Hundred Thousand and no/100 dollars (\$2,200,000.00); and

2. The payment will be made as follows:

a. \$600,000.00 paid by the South Carolina Joint Underwriters Association (JUA) and the South Carolina Patient's Compensation Fund (PCF) on behalf of Vasant Patel, MD, and Carolina Cardiology as follows:

1. \$100,000.00 on or before September 10, 2013;
2. \$100,000.00 on or before October 10, 2013;
3. \$100,000.00 on or before November 10, 2013;
4. \$100,000.00 on or before December 10, 2013;
5. \$100,000.00 on or before February 28, 2014;
6. \$100,000.00 on or before March 31, 2014.

b. Payment of One Million Six Hundred Thousand and no/100 dollars (\$1,600,000.00) by AMISUB of South Carolina, d/b/a Piedmont Medical Center by August 3, 2013.

c. Reimbursement of One Hundred Thousand and no/100 dollars (\$100,000.00) in Plaintiffs' litigation expenses paid by the South Carolina Joint Underwriters Association on behalf of Defendant Anesthesia Associates of Rock Hill, P.A.

The Petitioner seeks the Court's approval of the proposed settlement. The Court is

informed that Plaintiff Andrew Strong, Ms. Davis' Common Law Husband, is the sole heir/beneficiary of the Estate of Emma Davis.

The Court has reviewed this matter in light of the best interest of the Estate and the Beneficiary. The Court finds the settlement to be in the best interest of the Estate and Beneficiary and approves the settlement as recommended.

Plaintiffs further seek Court approval of attorney's fees in this matter. Plaintiff is represented by Chad A. McGowan and of the firm of McGowan, Hood & Felder, LLC, of Rock Hill, South Carolina. Plaintiffs' fee agreement with counsel provides for a 40% contingency fee of the gross settlement amount, which provides for a fee of \$920,000.00 in this matter. Plaintiffs have informed the Court that they are well satisfied with the advice and assistance of their counsel in this matter and request that the Court approve these Attorneys Fees. The Court finds the request reasonable under the circumstances and approves the attorney's fee of \$920,000.00 dollars. Plaintiffs further seek approval for reimbursement of costs in the amount of \$106,172.03. An itemization of these costs was attached to Plaintiffs' Petition for Approval of Settlement. The Court finds the costs in this action to be reasonable and approves the same.

Plaintiffs additionally seek Court approval for the allocation of settlement proceeds. Plaintiff proposes that 50% of the settlement proceeds be allocated to the wrongful death action and 50% to the loss of consortium claim. The Court finds this allocation reasonable and approves the same.

Finally, the Plaintiffs seek approval of a \$25,000.00 PR Fee for Tanisha Gilmore. The Court finds that this fee, 1.09 % of the gross recovery, is reasonable and therefore approves the same.

The Court is informed that there are no known health care liens and there are no outstanding claims against the Estate. Plaintiff agrees to be responsible to satisfy any such lien should any be forthcoming and to hold Defendants harmless for the same.

Plaintiffs have been advised and are aware that Defendants and their counsel have no obligations whatsoever to trace or follow the application of the funds paid. The Court finds and rules that neither Defendants nor their counsel have any such obligation to trace or follow the application of the funds and upon payment by the respective parties as outlined above, such parties shall be forever discharged from such claims.

Finally, the Plaintiffs seek the Court's approval to sign appropriate releases and to dismiss this action with prejudice. The Court finds this request to be reasonable and grants the Plaintiffs authority to dismiss this action with prejudice.

AND IT IS SO ORDERED.


Circuit Court Judge
Sixteenth Judicial Circuit # 4

York, South Carolina

July 24, 2013

Willie Lee Bell
\$ 100,000

Aileen Jordan
\$ 5,000

Rosa Lee Hall
\$ 5,000

Linda Gilmore
\$ 100,000

Sennette Strong
\$ 5,000

Tanisha Gilman
\$ 200,000

Debbie Strong
\$ 5,000

Annette Strong
\$ 5,000



**Emma Davis
Settlement Statement**

<i>Incoming</i>	From Piedmont	\$ 1,600,000.00	
	JUA/PCF for docs	\$ 700,000.00	
	TOTAL IN		\$ 2,300,000.00
 <i>Less:</i>	 Attorney's Fee (40%)	 \$ (920,000.00)	
	Costs	\$ (100,172.03)	
	Loan Paybacks (Mike Maloney)	\$ (15,500.00)	
	TOTAL OUT		\$ (1,041,672.03)
	 NET AVAILABLE		 \$ 1,258,327.97
 <i>Less:</i>	 PR Fee	 \$ (25,000.00)	
	NET To Mr. Strong		 \$ 1,233,327.97

We have read, understood, and agree to the disbursement

Tanisha Gilmore
Tanisha Gilmore, PR

Andrew Strong
Andrew Strong, Beneficiary

July __, 2013

492893

589302

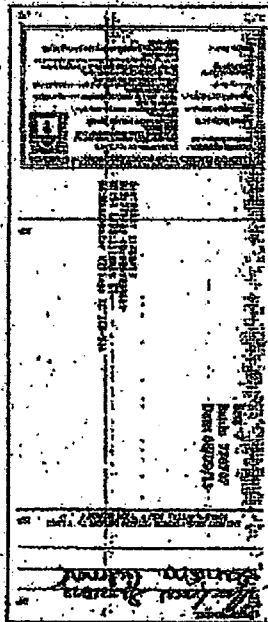
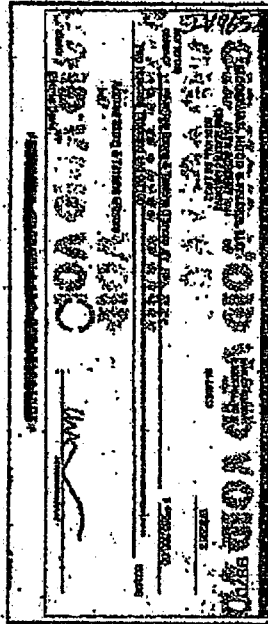


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R 0749

Check number: 9870 | Amount: \$200,000.00



MC GOWAN005202

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MATTER OF EMMA M DAVIS

IN THE PROBATE COURT
CERTIFICATE OF DISCHARGE

CASE NUMBER: 2010ES1200059

Recorded- Book 2
Page 501

This is to certify that
the personal representative(s)
in the above estate
appear(s) to have completed the administration, and this
Court has closed this estate
by order dated FEB. 21, 2011

It appears appropriate
that the sureties on the bond in this estate
be discharged from future liability thereon

IT IS THEREFORE ORDERED
that the sureties on the bond of the
personal representative(s) be and are hereby discharged,
the bond is cancelled, and the security instrument
recorded in the Office of the Clerk of Court (or RMC)
Book _____, at page _____ be and is hereby released
and cancellation of said instrument is authorized

Executed this 21st day February, 2011

Lois H. Roddey
LOIS H. RODDEY, JUDGE OF PROBATE



FORM #142PC (1/89)
62-3-1007

BELL 00009

R 0751

Acknowledgment and Agreement

I have elected to get a cash advance against the possible proceeds of the Emma Davis case. I have been specifically advised that:

- 1.) The cost of these funds is very high. I am getting an advance of \$1,500, but will have to pay back \$3,000 - double the amount. The money will have to be paid back at the time any funds in this case are disbursed. The amount of pay back will be the same whether the case settled in 10 days, 100 days, or 1000 days. The quicker the advance is paid back the higher will be the cost of funds.
- 2.) My attorney thinks this is a bad idea because the cost of funds is so expensive.
- 3.) While my attorney has helped to arrange this advance, through his father-in-law Mike Maloney, neither my attorney nor his firm will receive any benefit of any kind from this advance.
- 4.) I can if I want get another attorney's advice on borrowing money under these terms. I also know that any other attorney will probably agree that this is a bad idea because the cost of funds is so expensive.
- 5.) If for some reason I do not recover in the case, I will not have to pay any funds back.

Even knowing how expensive the funds are, I still want to go through with it.

Andrew Strong

Andrew Strong

I irrevocably direct my attorney to pay any amounts owed under this advance from trust at the time of disbursement.

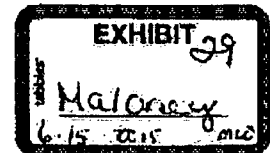
Andrew Strong

Andrew Strong

November 19, 2012

Rock Hill, SC

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589302



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EXHIBIT
DFT 1

**For Defendants' Exhibit 2,
see Record p. 623
(Duplicate of Plaintiff's Exhibit 3)**

Piedmont Medical Center

* PMC-ND *

PMC-ND EZ-7012 R1K

Funeral Home Release/Release of Body

I, the undersigned, wish the services of Kings Funeral Home (Funeral home)
for Emma M. Davis and authorizing the Supervisor in charge to make such arrangements.

H. Ballard RN 2/11/10 Willie Bell 12/11/2010
(Witness RN/Date) (Signature/Date)
Family may be reached at Willie

Phone numbers <u>803-581-3963</u> <u>Cell 209-9472</u>	
Autopsy per Family request Yes ☐ No ☒ Undecided ☐	
Supervisor notified ☒ Organ Donor: Yes ☐ No ☒ Death Certificate attached: Yes ☒ No ☐	
Name of Deceased <u>Emma M. Davis</u>	Date and Time of Death <u>2/11/10 1014</u>
Place of death (Hospital/ Street address) <u>Piedmont Medical Center</u> <u>222 S. Heilberg Ave.</u>	City or Town/ County <u>Rock Hill</u> <u>York County</u>
Person notified of death <u>Dr. Vasant Patel</u>	Address <u>196 Audiology Dr.</u> <u>Rock Hill, SC 29732</u>
Person certifying death/signing certificate	Coroner/ Medical Examiner Notified Yes ☐ No ☒ Coroner Case Yes ☐ No ☒ Pending ☐
Name and Address of Funeral Home Assuming Custody of the Body: <u>Kings Funeral Home</u> <u>Cemetery St. Chester, SC</u>	

H. Ballard, RN
RN/Date

Cath Lab
Nursing Unit

Patient has radiologic implants Yes ☐ No ☒

To comply with notice requirements of SC Code of Laws Section 44-29-20 for protection of healthcare providers, mortuary, and other personnel, this body: Is ☐ Is not ☒
potentially infected with a dangerous, contagious, or infectious disease as designated by the SC Department of Health and Environmental Control. Please observe all appropriate Standard (Universal) Precautions (especially wearing gloves) while in contact with these remains. If a bona fide exposure to blood or body fluids occurs, immediately notify the healthcare facility's infection control practitioner or SC DHEC at 888-847-0902.

☐ This body should be bagged, as indicated in section B or D.

☐ This body has been diagnosed as or strongly suspected of being infected with Transmissible Spongiform Encephalopathies (TSE).

This information is strictly confidential and must not be disclosed except as allowed by law.

Coroner Case Yes ☐ No ☒ Undecided ☐
A copy is to be placed on the patient records

Funeral Home Release

FORM 1001 REV 01/01/00



DOB: 11/12/1941
ACCT#: 020284592 MR#: 000187830
DAVIS, EMMA M 68Y F
Patel, Vasant 02/11/2010



KING'S FUNERAL HOME
 155 Cemetery Street
 Charleston, South Carolina 29405
 (803) 553-2025 • (803) 553-2024

AUTHORIZATION

I hereby designate the above-named funeral establishment to take charge of funeral arrangements for: James D. King and I authorize the release and removal of the remains to said funeral establishment for the purpose of embalming.

I represent that I am the next of kin, or am acting as an authorized agent for the next of kin.

Signed: Lebbie Bell
 Relationship: Son

Co-Signed: _____
 Relationship: _____

WITNESS: _____ DATE: 2-11-10

FOR VERBAL (TELEPHONE) AUTHORIZATION:

Authorization from _____
 Relationship _____
 Date _____ Time _____ Received by _____



**For Defendants' Exhibit 5
see Record p. 625
(Duplicate of Plaintiff's Exhibit 4)**

*Home Going Service
In Loving Memory
of
Miss Emma "Monk" Davis*



Sunrise To Earth
1941

Sunset To Glory
2010

1:00 P.M.

Tuesday, February 16., 2010

Mt. Zion Baptist Church

2824 Columbia Road

Blackstock, South Carolina

Reverend Michael Clea, Pastor/ Officiating

Reverend Moses Lightner/Eulogist

Assisting

Evangelist Noreen Y. Ruff



Miss Emma "Monk" Davis

Final Viewing of Loved One

Hymn

Prayer of Comfort

Selection

Acknowledgments..... King's Funeral Home

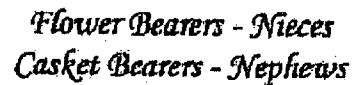
Words of Comfort.....Rev. Moses Lightner

Funeral Director In Charge

Recessional

Mt. Zion Baptist Church Cemetery

Benediction



1941

2010

The Obituary

*A precious one from us is gone, a voice we love is still
A place is vacant in our hearts, that can never be filled*

Miss Emma "Monk" Davis entered into eternal rest on Thursday, February 11, 2010, at Piedmont Medical Center in Rock Hill, SC. She joined hands with the Master and departed this earthly life. Born in Chester County on November 12, 1941, she was the daughter of the late Monroe Davis, Sr. and Marie Young Davis.

Emma confessed Christ at an early age and became a member of Armenia Baptist Church, she later joined Mt. Zion Baptist Church, and attended Christian Faith Outreach Ministry in Chester, SC. She attended the public schools in Chester County, and was formerly employed by Phillips Products of Chester, SC.

To know Emma was to love her. She was a loving and kind-hearted person and was always willing to lend a helping hand to mankind. She enjoyed sharing her love and concern with nieces, nephews, and cousins. She will be greatly missed by her family and friends and all those who knew and loved her.

Emma was preceded in death by a brother, William Davis.

Emma leaves to be remembered and to cherish loving memories, one son, Willie (Claudene) Bell of Chester, SC; her companion, Andrew Strong of the home, two brothers, Monroe Davis, Jr. of Chester, SC; and Michael (Laverne) Young of Blackstock, SC; four sisters, Atlean Jordan of Chester, SC; Dorothy Davis of Hartford, Connecticut; Maggie Davis of Brooklyn, New York and Rosa Lee (Joe Louis) Hall of Chester, SC; two grandchildren, two special and devoted nieces, Linda Gilmore and Aaliyah Hicklin, a special and devoted nephew, Jaheem Strong all of Chester, SC; five devoted friends, Annette Strong of Chester, SC; Gennette Strong, Debbie Strong, Mary A. Featherstone and Rose Foster all of Blackstock, SC; host of other nieces, nephews, cousins, other relatives and friends.

Acknowledgement

The family of Miss Emma "Monk" Davis sincerely appreciates every act of kindness extended to us during our time of bereavement it helped to ease our aching hearts. May God richly bless each of you.

- The Family -

Memories





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R 0762

Dear Monk,

I'm too young to know what's
going on, but I do know that
You have left me so all alone.

What we shared know one
could take it away.

Monk I love you
so very much, but God
Loves you best.

Sleep on Monk take your rest
God only takes the best.

Love,
Jaheem Strong

Aunt Monk,

No farewell words were spoken

No time to say goodbye

You were gone before we knew it

And only God knows why

A hollowed place within our hearts

Is where you'll always stay

Although you're out of sight,

I feel your presence every

day and night.

We will always Love You,
Brenda, James, Nisha and Aashyah

Service of Comfort
King's Funeral Home
135 Cemetery Street

Chester, South Carolina 29706
(803) 385-2020 1-800-449-5101

Mr. Moses J. Caldwell, Jr. Director/Mortician

4400 Beatties Ford Road, Charlotte, North Carolina
2367 Douglas Road, Great Falls, South Carolina

1-704-394-2722
1-803-482-6075

"SERVICE ABOVE SELF"

AS A SAFETY PRECAUTION, HEDGE DRIVING IN THE PROCESSION ARE REQUESTED TO TURN ON THE HEADLIGHTS ON YOUR VEHICLES
BURN & COPY EXPRESS, CHESTER, SOUTH CAROLINA 803 581-0090

**For Defendants' Exhibit 7,
see Record p. 709
(Duplicate of Plaintiff's Exhibit 14c)**

**For Defendants' Exhibit 8,
see Record p. 728
(Duplicate of Plaintiff's Exhibit 14)**

South Carolina ONLY

20048201

Requested Effective Date: 1 / 1		JJ818411	
District: 99	Agent: 37	Agent Number: 06336	Client Number: 11074

Application to: LIBERTY NATIONAL LIFE INSURANCE COMPANY

PART I - EMPLOYEE INFORMATION

Employee Name	First	Middle	Last	Social Security No.	MODE: ☒ BB (Attach Auth. & VSA Check) ☐ PD Franchise# ☐ WD LNL Emp.#
Emma		Davis			

Mailing Address	Apt. #	Employer of Applicant	Home Telephone Number
St		Home Health - Lake County, Ga	803-581-3983
Chester	SC	2706	

Is the insurance applied for intended to replace or change any coverage now in force with this or any other company? If "Yes," comply with the applicable Replacement Regulation or Rule. Yes ☐ No ☒

Old LNL Policy#

(a) Is the applicant/Employee presently at work on a full-time basis? ☐ ☒ W
(b) Is Automatic Premium loan desired on all policies applied for? ☐ ☒ B

(c) A recorded interview may be necessary as part of the underwriting of this application.

The most convenient time and place for the phone interview is:

☐ Home Phone # from above will be used Preferred Time ☐ BAM - Noon ☐ BPM - 9PM ☐ Noon - 6PM
☐ Office Phone # 803-581-3983 E-mail address: @**IF COVERAGE ON EMPLOYEE IS DESIRED, COMPLETE REMAINDER OF PART I AND PART III**

1. Sex	☐ M ☒ F	Date of Birth	Age Last Birthday	Height	Weight
		141	64	5 ft 3 in	220 lbs
PLAN: ☐ With ADB and PW	Premium	1. ☐ Weekly	3. ☐ Semi-Monthly	Amount received with application	
☒ No ADB and PW	\$ 50.00	2. ☐ Bi-Weekly	4. ☐ Monthly	\$ 50.00	
(Include base premium plus extra benefits applied for.)					

Beneficiary: Andrew Strong	Relationship: Common Law Husband	Age: 54

PART II-DEPENDENT INFORMATION (COMPLETE PART II & PART III FOR EACH DEPENDENT APPLYING FOR COVERAGE)

2. Proposed Insured	First	Middle	Last	Social Security No.	Relationship to employee
Sex	☐ M ☒ F	Date of Birth	Age Last Birthday	Height	Weight
		1	1	ft. in.	lbs.
PLAN: ☐ With ADB and PW	Premium	1. ☐ Weekly	3. ☐ Semi-Monthly	Amount received with application	
☐ No ADB and PW	\$	2. ☐ Bi-Weekly	4. ☐ Monthly	\$	
(Include base premium plus extra benefits applied for.)					
Beneficiary	Relationship				Age

3. Proposed Insured	First	Middle	Last	Social Security No.	Relationship to employee
Sex	☐ M ☒ F	Date of Birth	Age Last Birthday	Height	Weight
		1	1	ft. in.	lbs.
PLAN: ☐ With ADB and PW	Premium	1. ☐ Weekly	3. ☐ Semi-Monthly	Amount received with application	
☐ No ADB and PW	\$	2. ☐ Bi-Weekly	4. ☐ Monthly	\$	
(Include base premium plus extra benefits applied for.)					
Beneficiary	Relationship				Age

4. Proposed Insured	First	Middle	Last	Social Security No.	Relationship to employee
Sex	☐ M ☒ F	Date of Birth	Age Last Birthday	Height	Weight
		1	1	ft. in.	lbs.
PLAN: ☐ With ADB and PW	Premium	1. ☐ Weekly	3. ☐ Semi-Monthly	Amount received with application	
☐ No ADB and PW	\$	2. ☐ Bi-Weekly	4. ☐ Monthly	\$	
(Include base premium plus extra benefits applied for.)					
Beneficiary	Relationship				Age

682253
R-2620-4, 6820701

EXHIBIT

DFT 9

LIBERTY NATIONAL 000016

R 0766

PART III - ANSWER QUESTIONS 1 THROUGH 7 ON ALL PROPOSED INSURED

1. Has any Proposed Insured lost more than 14 days from his or her regular duties during the past 60 days due to illness or injury? ☐ Yes ☒ No
2. Has any application for insurance on any Proposed Insured been declined or postponed within the past 3 years? ☐ Yes ☒ No
3. Has any Proposed Insured ever been diagnosed as having an immune deficiency disorder, AIDS, the AIDS-Related Complex (ARC) or tested positively for antibodies to the HIV virus? ☐ Yes ☒ No
4. During the past (3) years, has any Proposed Insured:
- (a) Received or been recommended for treatment or counseling regarding the use of alcohol or drugs? ☐ Yes ☒ No
- (b) Used heroin, cocaine or other similar agent or narcotic drug? ☐ Yes ☒ No
5. Is any Proposed Insured bedridden or confined to a hospital, nursing home or requiring regular institutional care? ☐ Yes ☒ No
6. If any Proposed Insured has had surgery for, been treated for or been diagnosed as having any of the following, check "Yes" and check the applicable boxes:
- | | Yes | No | Within 3 Years | More than 3 but less than 5 Years | 5 Years or More |
|--|--------------------------|-------------------------------------|--------------------------|-----------------------------------|--------------------------|
| (a) Heart attack, engine, congestive heart failure, coronary artery disease, heart enlargement or cardiomyopathy? | ☐ | ☒ | ☐ | ☐ | ☐ |
| (b) Stroke, emphysema, sickle cell anemia (not trait), kidney failure, chronic hepatitis or cirrhosis of the liver? | ☐ | ☒ | ☐ | ☐ | ☐ |
| (c) Cancer (other than skin), melanoma, Hodgkin's disease, leukemia or malignant tumor? | ☐ | ☒ | ☐ | ☐ | ☐ |
| (d) Epilepsy, seizure disorder, Down's Syndrome, Alzheimer's disease, mental retardation, amnesia, muscular dystrophy or multiple sclerosis? | ☐ | ☒ | ☐ | ☐ | ☐ |
7. If any Proposed Insured has been diagnosed as having any of the following, check "Yes" and check the applicable boxes:
- | | Yes | No | Diabetes Diagnosed Within 10 Years | Diabetes Diagnosed More Than 10 Years Ago |
|---|--------------------------|-------------------------------------|------------------------------------|---|
| (a) Diabetes but has no history of high blood pressure? | ☐ | ☒ | ☐ | ☐ |
| (b) Diabetes and also has a history of high blood pressure? | ☐ | ☒ | ☐ | ☐ |

List below the number and name of any Proposed Insured for whom a "Yes" answer for any Questions 1 through 7 of Part III applies. List the number of the "Yes" question.

Proposed Insured Number	Proposed Insured Name	Question Number Answered "Yes"

I hereby declare that the statements recorded above are true and completed to the best of my knowledge and belief with respect to any Proposed Insured. I agree that: (1) the insurance on the applicant will become effective on the date of this application. If on the date of this application, the proposed dependent insured(s) is/are alive and whose health remains as stated in the application, then the insurance on such dependent will take effect on the date of application. Unless the Company has declined to issue the insurance applied for, the insurance will continue in force for sixty (60) days; (2) no agent has authority to accept risks or make or change contracts or waive the Company's rights or requirements; (3) only the information which the applicant has given in the application, or obtained in the Company's records, will be used to evaluate the eligibility for this insurance. This information will not be disclosed to any other company or person without written authorization; and (4) acceptance of a policy by the applicant will constitute ratification of any changes made by the Company under "Home Office Endorsement." I understand and agree that the Company reserves the right during the first year the policy is in force, to restrict beneficiaries to designations acceptable to the Company except with respect to a minor child of mine. This application is made with the knowledge and consent of the Proposed Insured.

Dated at Chester State of SC
 This 8 day of August, 2006
 Witness [Signature]

[Signature]
 Signature of Applicant

[Signature]
 Signature of Proposed Insured's Spouse
 (if required in your state)

AGENT'S STATEMENT

Do you have any knowledge or reason to believe that the insurance applied for herein may be to replace or change existing insurance? ☐ Yes ☒ No

I certify that I have asked each adult Proposed Insured the questions contained in this application and have recorded the answers hereon. Each adult Proposed Insured has signed the application in my presence or lives at the same address as the applicant.

R-2520-4, Ed. 9-03 [Signature]
 Print or Type Agent's Name Agent's Signature

ATTACH VOIDED CHECK and have payor (depositor) sign and date Bank Draft Authorization below.

AUTHORIZATION TO MY BANK FOR AUTOMATIC DEDUCTION

As a convenience to me, I hereby request and authorize you to pay and charge to my account, checks or electronic debits drawn on my account by and payable to the order of the Liberty National Life Insurance Company, Birmingham, Alabama, provided there are sufficient collected funds in said account to pay the same upon presentation. I agree that your rights in respect to such check or electronic debit shall be the same as if it were a check drawn on you and signed personally by me. This authority is to remain in effect until revoked by me, and until you actually receive such notice. I agree that you shall be fully protected in honoring any such check. I further agree that if any such checks or electronic debits be dishonored, whether with or without cause and whether intentionally or inadvertently, you shall be under no liability whatsoever even though such dishonor results in forfeiture of insurance.

X [Signature]
 SIGNATURE OF DEPOSITOR (as it appears on bank records)

DATE

Combine with existing draft? Check ONE box.
☐ YES ☒ NO
☐ YES ☒ NO
☐ YES ☒ NO

Insured's Name

LIBERTY NATIONAL Life Insurance Company

7-2

BRANCH/AGENCY 094-37 CLIENT 11074

Please assist the policyowner in completing the application below if the additional insurance is desired (see reverse side for bank draft). Then fill out the conditional receipt on the reverse side, detaching same for your client, and mail the completed application along with the first mode premium (unless PD) to New Business. We will forward the new policy to you for delivery to the customer.

LIBERTY NATIONAL LIFE INSURANCE COMPANY
APPLICATION TO EXERCISE OPTIONAL PURCHASE AGREEMENT

Insured's Name EMMA DAVIS	Date of Birth 08-41	OPAI Option Date 08-01-08

The undersigned does hereby elect to purchase the additional insurance permitted in accordance with the optional purchase provisions of policy number A035689625 CAREERLIFE PLUS (WITHOUT OPAI)

PLAN DESIRED Careerlife Plus	AMOUNT Min. Amt. \$2,500 - Max. Amt. \$8,897 1UI

Premiums payable ☐ MC ☐ PD ☐ WD ☐ Government Allotment
☒ Bank Draft ☐ Franchise # ☐ Monthly ☐ Quarterly ☐ Semi-Annual ☐ Annual

Are you currently disabled? ☐ Yes ☒ No

Beneficiary (revocable by owner) Andrew	Relationship Strong	Age Common Law Spouse 57

It is understood and agreed that the new policy and the insurance provided thereunder shall take effect on the application date, if the application is executed on or preceding the option date, and the insured is then alive and the first full premium has been paid or a payroll deduction authorization has been submitted with the application. No insurance will become effective unless the Application to which this receipt is attached is received by the Company at its home office. No agent has authority to accept risks or make or change contracts or waive the Company's rights or requirements. This receipt is issued on the condition that any check, draft or other order for payment of money is good and collectable. I understand and agree that the Company reserves the right during the first year the policy is in force, to restrict beneficiaries to designations acceptable to the Company. I understand that neither the new policy nor any riders attached thereto will provide coverage for any disability resulting from any illness or injury occurring prior to the effective date of the new policy.

Dated at 6/18/08

Date 6/18/08

Witness Hilliard Buchanan

Signature of Owner Emma Davis

AGENT'S IDENTIFICATION

Branch 94	Agency 37	Employee# 06336	Agent's Name Hilliard Buchanan	Amount Collected with App. 30.00

M-948, ED 8-06



LIBERTY NATIONAL LIFE INSURANCE COMPANY
Insurance Services Division • P.O. Box 258822 • Oklahoma City, Oklahoma 73128

PROOFS OF DEATH — CLAIMANT'S STATEMENT

FEB 19 2010

Please read carefully instructions on Page 3 before completing this statement.

CLAIMS

1. Deceased's Name in Full Emma Davis
List any other names by which the deceased may have been known such as maiden name, hyphenated name, nick name, alias, or derivative form of first and/or middle name _____
2. Liberty National Policy Number(s) 4035689625
3. Deceased's Birth Date 1941
4. Residence of Deceased at Death 814 St. Charles St. Charleston, S.C. 29326
City and State
5. Date of Death 2-11-2010 Cause of Death San Diego's Cardiac Center
6. Do you desire payment in a lump sum or under a Policy Settlement Option? Lump Sum
7. Is any policy less than two years old? ☐ Yes ☒ No If "Yes," complete page 4.

AUTHORIZATION

I authorize any physician, medical practitioner, hospital, clinic or medically related facility, employer, or insurance company having medical information concerning the Deceased, to permit Liberty National Life Insurance Company or its authorized representatives to review, copy, or otherwise obtain details of all such medical information, including but not limited to, drug abuse, alcoholism or psychiatric treatment. I agree that a photocopy or facsimile of this authorization shall be as effective and valid as the original.

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud and is subject to criminal and civil penalties.

For your protection California law requires the following to appear on this form: Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

FEDERAL WITHHOLDING

UNDER PENALTIES OF PERJURY EACH CLAIMANT CERTIFIES THAT:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me) and
2. I am not subject to backup withholding either because:
 - (A) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends or
 - (B) Because the IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions - You must cross out item (2) above if you have been notified by IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.

In case of multiple claimants and one claimant needs to cross out item 2, a separate Claimant's Statement, Form R-425, should be completed for each claimant.

Signature: Andrew Strong Print Name: Andrew Strong
Address: 814 St. Charles St. Charleston, S.C. 29326
City, State, Zip
Social Security #: 123-45-6789 Date of Birth: 8-8-59 Age: 59
Phone: Home (843) 247-5840 Work: 8-8-59
Relationship to Deceased: Son Date: 2-1-2010
Signature of Witness: Robert J. Caldwell, Jr. Print Name: ROBERT J. CALDWELL, JR.

Signature: _____ Print Name: _____
Address: _____
City, State, Zip
Social Security #: _____ Date of Birth: ____/____/____ Age: ____
Phone: Home (____) _____ Work: (____) _____
Relationship to Deceased: _____ Date: ____/____/____
Signature of Witness: _____ Print Name: _____

R-425, 692273-02
692279

LIBERTY NATIONAL 000003

EXHIBIT

DFT 11

135 Cemetery Street
Chester, South Carolina 29705
(803) 385-2020 or (803) 385-2021

SERVICES, FACILITIES & TRANSPORTATION

MERCHANDISE

TOTAL MERCHANDISE.....\$ 3.75

☐ Forwarding Remains to: ☐ Receiving Remains from:

TOTAL OF SPECIAL CHARGES \$ _____

**STATEMENT OF
FUNERAL GOODS AND SERVICES SELECTED**

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Gifted Copies of Death Certificate

SUMMARY

Less Credits and Payments
200,000,000

Being to Mrs. Andrew Strong
234 Jacon St.
Chgo 25 Ill 706

Reason for submission: Public Interest

by J. A. ...

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Cashier Price List and the Outer Burial Certificate. I understand that

Terms of Payment _____

Full payment is due no later than _____
If any payment is not paid when due, an automatic LATE CHARGE

of _____% per month (ANNUAL PERCENTAGE RATE _____%) on the unpaid balance will be due. I agree to pay the balance Due listed on this Statement, plus any Late Charge. In the event of default in payment to this funeral establishment, I agree to pay reasonable attorney's fees and court costs in addition to any Late Charge applicable. I understand and agree that I am assuming personal liability for the charges set forth in this Statement and that this is in addition to the liability imposed by law upon the estate of the deceased. By my signature below, I hereby agree to all of the above and acknowledge receipt of a copy of this Statement.

Subscribed and sworn to before me this 2nd day of February 1918.

Social Security Number _____

ACCEPTANCE This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement.

Wm. J. Caldwell

EXHIBIT
DFT 12

(Page 3)

AGREEMENT TO BE EXECUTED IN EVENT POLICY PROCEEDS ARE ASSIGNED

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud and is subject to criminal and civil penalties.

IT IS HEREBY AGREED by the subscribers hereto that Policies Nos. 35489625
issued or reinsured by Liberty National Life Insurance Company on the life of Emma Davis
have been duly assigned to Kings Farm Home as collateral security; that there is now due to said
Andrew Strong, Assignee, on account of said debt,
the sum of \$ 7,385.00 Dollars (\$ 7,385.00);
and that all claims under Policies may be settled by the payment of:

(A) Seven Thousand Three Hundred and Eighty Dollars (\$ 7,385.00) to said
Five hundred and no/100, Assignee, and (B) of the balance due on
and under Policies to Andrew Strong, Claimant

IN TESTIMONY WHEREOF we have hereunto set our hands this 2 day of 2 month 2010 year

1026114044
Assignee's Tax ID #

Kings Farm Home, Assignee
135 Sanctuary St, Address
Street

180313852020
Telephone Number

Charleston, City SC, State 29726, Zip

Witness Monica Caldwell Jr

Andrew Strong, Claimant

NOTICE TO FUNERAL DIRECTOR:

If assigned amount exceeds \$5,000, a copy of the itemized bill must be attached.

INSTRUCTIONS

1. Claimant's Statement (Page 1) must be executed by the beneficiary or beneficiaries named in the policy. The Social Security Number is required for each claimant.
2. If part or all of the policy proceeds are assigned, the agreement at the top of Page 3 is to be executed by the beneficiary and assignee.
3. When the beneficiary is a minor, or is otherwise incapacitated, the Claimant's Statement (Page 1) must be executed by the guardian, with letters of guardianship attached.
4. If any named beneficiary in the policy has died before the insured, a death certificate of such deceased beneficiary must be attached.
5. Where the claimant is the executor or administrator of the estate of the insured, such person will complete Claimant's Statement (Page 1), and letters testamentary or letters of administration must be attached.
6. If the claimant is a partnership, Claimant's Statement (Page 1) should be completed in the name of the partnership by a general partner; and if claimant is a corporation, in the name of the corporation by an officer of the corporation with the corporate seal affixed.
7. If the death of the insured was due to accident, suicide or homicide and any policy listed on Page 1 is less than two years old or provides for accidental death benefits, a certified copy of the coroner's verdict or report of coroner's medical examiner, dated newspaper reports and all available information must accompany this proof of death.
8. If policy is less than two years old, Page 4 must be completed.

692253
692279



** TOTAL PAGE 03 **
LIBERTY NATIONAL000004

R 0771

ASSIGNMENT OF PROCEEDS OF INSURANCE

TO: Liberty National Life Ins Co
(INSURANCE COMPANY)

I, Andrew Strong, being entitled to receive benefits

under Policy Number 35689625

issued by Liberty National Life Ins Co
(INSURANCE COMPANY)

on the life of Emma Davis, now deceased,

and having contracted with and being indebted to Kings Funeral Home
(FUNERAL HOME)

P.O. Box 768 of Clinton S.C. 29706
(CITY-STATE)

for funeral services and merchandise for the deceased in the amount of

Seven Thousand Three Hundred & Eighty Five Dollars (\$7,385.00)

do hereby set over, assign and transfer unto said Funeral Director the sum of

Seven Thousand Three Hundred & Eighty Five Dollars (\$7,385.00)

out of the proceeds of said Insurance Policy; and I hereby authorize and direct said Insurance Company to make its check payable to said Funeral Director for the assigned amount and to pay the remainder of the proceeds of said Insurance Policy, if any, to me. A statement of charges for funeral expenses for the deceased is attached hereto.

Andrew Strong (SEAL)
(BENEFICIARY)

Address 2018 Highway 1, Clinton S.C.

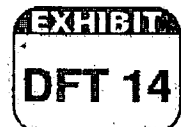
Date Signed 2-13-2015 29706

Sworn and subscribed before me

the 13th day of February, 2015

James H. Caldwell Jr.
NOTARY PUBLIC

My commission expires 2-28-2015



STATE OF SOUTH CAROLINA
COUNTY OF CHESTER
IN THE MATTER OF EMMA M DAVIS

IN THE PROBATE COURT

CASE NUMBER: 2010ES1200059

APPLICATION FOR

(Check any that apply)

INFORMAL

☐ PROBATE OF WILL

☒ APPOINTMENT

PETITION FOR

FORMAL

☐ TESTACY

☐ APPOINTMENT

Applicant/Petitioner: TANISHA GILMORE

Address: [REDACTED] CHESTER, SC 29706

Telephone: 803-581-4196

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.
NIECE OF EMMA M. DAVIS

2. Decedent Information

Name: EMMA M DAVIS
Social Security Number: [REDACTED]
Date of Birth: 1941
Date of Death: 2/11/2010
Age at Date of Death: 69
Domicile at Date of Death: CHESTER SC
(County) (State)

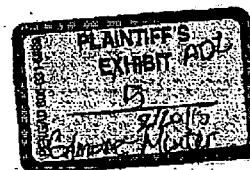
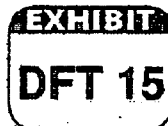
3. Venue for this proceeding is proper in this county because:

- ☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

4.a. Names and addresses of devisees, including dates of birth of minors:

Name	Date of Birth	Addresses	Relationship to Decedent

(use additional sheet if necessary)



FORM #300PC (2/2004)
62-3-203, 62-3-301, 62-3-303, 62-3-401, 62-3-402,
62-3-406

PAGE 1 OF 6

00430

623256

ADAMS007236

R 0773

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Addresses	Relationship to Decedent
ROSA HALL		CHESTER, S.C. 29705	SISTER
ATLEAN D. JORDAN		CHESTER, S.C. 29708	SISTER

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of the Will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children).
- ☒ NO ☐ YES If yes, please explain on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- ☒ NO ☐ YES If yes, please explain on page 3.
7. Has a guardian or conservator ever been appointed for this person?
- ☒ NO ☐ YES If yes, please explain on page 3.
8. Has a Personal Representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative, on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including name and address on page 3.
10. Have more than ten years passed since the decedent's death?
- ☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of TO BE DETERMINED and real estate of about the value of TO BE DETERMINED. (A full inventory and appraisal, form #350PC, must be filed within 90 days.) If decedent was a non-resident, please attach South Carolina Tax Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
- ☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

Regarding the decedent's will:

- ☐ The original is attached
- ☐ The original is in the Court's possession
- ☐ An authenticated copy of a will probated in another jurisdiction is attached
- ☐ An authenticated copy of a will not probated in another jurisdiction is attached
- ☐ The will is lost, destroyed, or otherwise unavailable; however, a description of its contents is attached

Do you believe, to the best of your knowledge, the will described above was validly executed?

☐ YES ☐ NO If no, please explain on page 3.

The date of execution of the will was: _____
codicil(s): _____

Are you aware of any instrument or document amending or revoking the will?

☐ NO ☐ YES If yes, please explain on page 3.

Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

☐ YES ☐ NO If no, please explain on page 3.

Do you believe the will defined in "1" above is the decedent's last will?

☐ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTION I (AND II) HERE
(If more space is required, use additional sheet.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

TANISHA GILMORE
116 NELLA ST
CHESTER, SC 29706

2. Priority for this appointment is:

- ☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
☐ named as Alternate Personal Representative in will or nominee of Primary Personal Representative
☐ named as nominee of Primary and/or Alternate Personal Representative
☐ other devisee of decedent (described): _____ or nominee of said devisee
☐ surviving spouse of decedent or nominee of said spouse
☐ other heir of decedent (described): _____
☐ creditor (Forty-five days after death must have passed) or nominee of creditor
☒ other (describe): NIECE
☐ nominee of any of the above

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

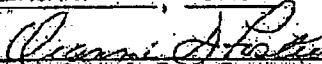
ROSA AND ATLEAN SIGNED FOR TANISHA TO BE APPOINTED

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

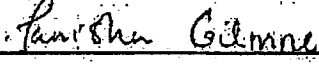
VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 18 day
FEBRUARY, 2010


Notary Public for South Carolina

My Commission Expires: 11/14/2011

Signature: 

Name: TANISHA GILMORE

Address: _____
CHESTER, SC 29706

E-mail: _____

Telephone (O): _____

(H): 803-581-4186

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this
_____ day of _____ 2010.


LOIS H. RODDEY, PROBATE JUDGE

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____

LOIS H. RODDEY, Probate Court Judge

ORDER OF FORMAL TESTACY

On the hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

- ☐ the decedent died intestate. The heirs are:
- ☐ the decedent died testate. IT IS THEREFORE ORDERED, that the Last Will and Testament of the above-named decedent, dated _____ be admitted formally to probate.

Executed this _____ day of _____

LOIS H. RODDEY, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED; that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this _____ 19th day of February, 2010.

LOIS H. RODDEY, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Tanisha Gilmore

Name: TANISHA GILMORE

Address: [REDACTED]

CHESTER, SC 29706

E-mail: _____

Telephone (O): _____

(H): 803-581-4198

Signature: _____

Name: _____

Address: _____

E-mail: _____

Telephone (O): _____

(H): _____

Attorney: _____

Address: _____

E-Mail: _____

Telephone (O): _____

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

LOUIS H. RDBEY
JUDGE OF PROBATE

IN THE PROBATE COURT
RENUNCIATION OF RIGHT TO ADMINISTRATION
AND/OR NOMINATION AND/OR WAIVER OF BOND

IN THE MATTER OF EMMANUEL DAVIS

PROBATE COURT
CHESTER COUNTY S.C.

CASE NUMBER: 2010ES12000

The undersigned hereby (check all that apply):

- ☒ renounces his/her right to serve as Personal Representative of the captioned estate.
☒ nominates the following person to serve as Personal Representative.
☒ I agree to waive bond for the person(s) nominated below:

Name: TANISHA GILMORE

Address: CHESTER S.C. 29709

I understand this is effective only to the extent the law allows for nomination and waiver of bond.

Executed this 19th day of February, 2010.

* Witnessed by:

Atlean D. Jordan

Signature: *Atlean D. Jordan*

Name: ATLEAN D. JORDAN

Address: CHESTER S.C. 29709

CHESTER, S.C. 29709

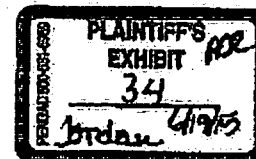
Email: _____

Telephone (O): _____

(H): _____

*Must be a disinterested party not related to the decedent, the beneficiary, or the personal representative.

FORM 5302PC (2/2004)
62-3-203, 62-3-603



05828

R 0779

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

LOUIS H. ROBBEY
JUDGE OF PROBATE

IN THE MATTER OF EMMA M. DAY FEB 19 P 3 5b

PROBATE COURT
CHESTER COUNTY S.C.

IN THE PROBATE COURT
RENUNCIATION OF RIGHT TO ADMINISTRATION
AND/OR NOMINATION AND/OR WAIVER OF BOND

CASE NUMBER: 2010ES12000

The undersigned hereby (check all that apply):

- ☒ renounces his/her right to serve as Personal Representative of the captioned estate.
☒ nominates the following person to serve as Personal Representative.
☒ I agree to waive bond for the person(s) nominated below:

Name: TANISHA GILMORE

Address: CHESTER, S.C. 29708

I understand this is effective only to the extent the law allows for nomination and waiver of bond.

Executed this 19th day of February, 2010.

* Witnessed by:

Rosa Hall

Signature: *Rosa Hall*

Name: ROSA HALL

Address: CHESTER, S.C. 29708

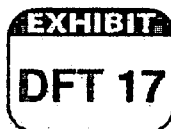
Email: _____

Telephone (O): _____

(H): _____

*Must be a disinterested party not related to the decedent, the beneficiary, or the personal representative.

FORM #302PC (2/2004)
62-3-203, 62-3-603



05829

R 0780

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MATTER OF EMMA M DAVIS

IN THE PROBATE COURT
CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2010ES1200059

This is to certify that
TANISHA GILMORE

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE

In the above matter and that this appointment, having been executed on the 19th day of
February, 2010 is now in full force and effect, including authorization to receive all
monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

NONE

Executed this 19th day of February, 2010

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

Lois H. Roddey
LOIS H. RODDEY, JUDGE OF PROBATE



MARCH 17

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE MATTER OF EMMA M DAVIS

LOIS H. RODDEY
JUDGE OF PROBATE

IN THE PROBATE COURT
INVENTORY AND APPRAISEMENT

2010 MAR 15 P. 3:58 NUMBER: 2010ES1200059

PROBATE COURT
CHESTER COUNTY S.C.

☐ SUPPLEMENTAL#

Personal Representative(s): TANISHA GILMORE

Decedent's Social Security Number: _____

Was there a will? ☐ YES ☒ NO

Decedent's Date of Death: 02/11/2010

Domicile at Death: CHESTER SC
(county) (state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 15 day of

March 2010

Deanna D. Foster
Notary Public for South Carolina

Signature: Tanisha Gilmore

Name: TANISHA GILMORE

Address: CHESTER, SC 29706

E-Mail: _____

Telephone (O): _____

(H): 803-581-4196

My Commission Expires: 11-14-2011

Attorney: _____

Address: _____

E-Mail: _____

Telephone: _____

Signature: _____

Name: _____

Address: _____

E-Mail: _____

Telephone (O): _____

(H): _____

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate.....		6,400.00
Schedule B - Stocks and Bonds.....		
Schedule C - Notes Due Decedent and Cash.....		6.49
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate.....		
Part 2 - Payable to Beneficiary.....	8,000	
Schedule E - Jointly Owned Property.....		
Schedule F - Other Miscellaneous.....		3,116.00
Other Assets Payable to Estate.....		
Schedule G - Transfers during Decedent's life.....		
Schedule H - Powers of Appointment.....		
Schedule I - Annuities and Retirement Accounts.....		
TOTAL GROSS VALUE.....	17,572.49	
ENCUMBRANCES.....	4,673.91	
TOTAL NET WORTH.....	12,898.58	

EXHIBIT
DFT 19

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description (include county and state)	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
1	MAP # 201-09-03-006-001 Mobile Home	6,400.00		6,400.00

TOTAL SCHEDULE A

(also enter under recapitulation, page 1)

6,400.00

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value
	None		

TOTAL SCHEDULE B

(also enter under recapitulation, page 1)

SCHEDULE C - Notes due to Decedent, and Money on hand and in banks (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Value
	Founders	5.58
	Founders	.91

TOTAL SCHEDULE C

(also enter under recapitulation, page 1)

6.49

(If more space is required, insert tax schedules or additional sheets of same size.)

LE D - Insurance (If none, so state.)
Life Insurance Payable to the Estate

[illegible]

TOTAL PART 1

(also enter under recapitulation, page 1).

Part 2 - Life Insurance Payable to Beneficiaries

[illegible]

TOTAL PART 2

(also enter under recapitulation, page 1)

8000

SCHEDULE E - Jointly owned Property (with right of survivorship) (If none, so state.)
NOTE: You must complete Schedule E if the decedent owned property jointly with another person.

NOTE: You must complete Schedule E if the decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is includible in the gross estate.

Percentage includible:

- 1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.
- 2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

[illegible]

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment - Property, both real and personal, over which Decedent possessed a Power of Appointment whether Testamentary or otherwise.

Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate.
If more space is required, insert additional sheets of same size.

\$ _____

TOTAL SCHEDULE H

(also enter under recapitulation, page 1)

SCHEDULE I - Annuities and retirement (IRA's, 401(k), Etc.)

Did Decedent own any accounts as described above? ☐ YES ☒ NO

If "yes", is the estate designated as the beneficiary of these accounts? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate.
If more space is required, insert additional sheets of same size.

\$ _____

TOTAL SCHEDULE I

(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

[illegible]

(also enter under recapitulation, page 1)

4623.9

(To be executed by the Probate Court Judge in those cases where it appears that the estate is NOT REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

Executed this 15 day of MARCH, 2010

Kai N. Pelt

LOIS H. RODDEY, Probate Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

CompassView Statement Items

July 7, 2016 8:51 AM

Account No: 0000124195

Check No: 0002897196

Amount: \$7,385.00

Route Code: 062001188

Batch ID: 00032410005

Item No 0004817

	LIBERTY NATIONAL LIFE BIRMINGHAM, ALABAMA	DATE 03-04-10 CHECK NO. 02897196	61-598 622
DEATH BENEFIT A035689625 497		*****\$7,385.00**	
SEVEN THOUSAND THREE HUNDRED EIGHTY FIVE DOLLARS AND NO CENTS--			
PAYEE MUST ENDORSE ON BACK			
PAY To The Drawee	KINGS FUNERAL HOME P.O. BOX 768 CHESTER SC 29706	<i>Anthony L. McWhorter</i> Authorized Signature	
COMPASS BANK OXFORD, ALABAMA			

⑈02897196⑈ ⑆062205908⑆ 001 2419 5⑈

03/04/10 08:51 6223
1253 6223 OF CR 10118
09/21/10, W. 09152917
7388448094



692258
692279

LIBERTY NATIONAL0060037

ENDORSE HERE

R 0788

CompassView Statement Items

July 7, 2016 8:52 AM

Account No: 0000124195

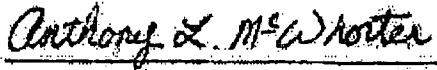
Check No: 0002897197

Amount: \$1,512.00

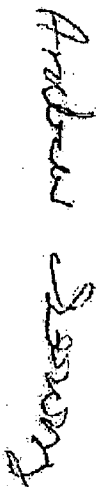
Route Code: 062001186

Batch ID: 00032410005

Item No 0004250

	LIBERTY NATIONAL LIFE BIRMINGHAM, ALABAMA	DATE 03-04-10 CHECK NO. 02897197	61-590 622
DEATH BENEFIT A035689625 497		EWS	*****\$1,512.00**
ONE THOUSAND FIVE HUNDRED TWELVE DOLLARS AND 00 CENTS			
PAYER MUST SIGN BACK			
PAY To the Order of	ANDREW STRONG [REDACTED] ST. CHESTER, SC 29706		
COMPASS BANK OXFORD, ALABAMA		 Authorized Signature	

⑈02897197⑈ ⑆062205908⑆ 001 2419 5⑈

ENDORSE HERE	
	
	
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927888179 93122618 253278439 Founders FOU	
EXHIBIT DFT 21	
LIBERTY NATIONAL0000038	

692253
692279

CompassView Statement Items

July 7, 2016 8:49 AM

Account No: 0000124195

Check No: 0002909903

Amount: \$4,642.00

Route Code: 062001186

Batch ID: 00062410004

Item No 0003385



LIBERTY NATIONAL LIFE
BIRMINGHAM, ALABAMA

DATE 08-02-10 CHECK NO. 02909903

61-590
622

DEATH BENEFIT
A035991892 497

EWS

*****\$4,642.00**

FOUR THOUSAND SIX HUNDRED FORTY TWO DOLLARS AND NO CENTS

PAYEE MUST ENDORSE ON BACK

PAY
To The
Order Of

ANDREW STRONG
ST
CHESTER SC 29706

Anthony L. McWhorter

Authorized Signature

COMPASS BANK
OXFORD, ALABAMA

⑈02909903⑈ ⑆062205908⑆ 001 2419 5⑈

577686581 88892610 >253273439< FOUNDER'S FCU



692253
692279

LIBERTY NATIONAL0000084

ENCLOSURE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

Andrew Strong

R 0790

**For Defendants' Exhibit 23,
see Record p. 633
(Duplicate of Plaintiff's Exhibit 7)**

**For Defendants' Exhibit 24,
see Record p. 636
(Duplicate of Plaintiff's Exhibit 8)**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Tanisha Gilmore, as the Personal
Representative of the Estate of
Emma Davis, and Andrew Strong,

Plaintiffs,

v.

Amisub of SC, Inc. d/b/a Piedmont
Medical Center; Carolina Cardiology,
Vasant Patel, MD, Ellenora Issac, RN,
Gary Miller, RN,
Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No: 10-CP-46- 03899

Complaint for Damages
Jury Trial Demanded

FILED-RECEIVED
2010 SEP 15 PM 2:56
DAVID J. MILLION
C.C. # 1 & GS
YORK COUNTY, SC

The Plaintiff, by and through his undersigned counsel, for a Complaint
against the Defendants, does hereby allege as follows:

PARTIES

Plaintiff

1. The Plaintiff, Tanisha Gilmore, is the duly appointed Personal Representative of the estate of her mother, Emma Davis. At all times relevant hereto, Tanisha Gilmore brings this action as PR of the estate for the Survival and Wrongful Death actions. Plaintiff Andrew Strong, being married to Emma Davis, brings this action for his loss of consortium. Plaintiffs are citizens and residents of Chester County, South Carolina.

Defendants

2. Defendant Amisub of SC, Inc. d/b/a Piedmont Medical Center, is organized under the laws of the State of South Carolina with its principal place of business in York County, SC. Defendant Amisub, at all times relevant hereto, was the



MCGOWAN000322

R 0793

entity employing certain nurses, including nurses Isaac and Miller, and other medical staff at a facility known as the Piedmont Medical Center who at all times relevant hereto, were employees acting within the scope of their employment with Defendant Amisub.

3. Defendants Issac and Miller, were at all times complained of herein employed by Amisub at the Piedmont Medical Center, and all of their acts and omissions complained of herein were in the scope and course of their employment with Defendant Amisub.

4. Carolina Cardiology, PA is a corporation organized and existing under the laws of South Carolina with its principal place of business in York County, SC. At all times relevant hereto, Defendant CCPA was the employer of Vasant Patel, MD, who was acting within the course and scope of his employment.

5. Defendant Vasant Patel, MD is a physician licensed by the state of South Carolina and holds himself out to the public as a specialist in the field of cardiology. At all times relevant hereto, Defendant Patel was acting within the scope of his employment with Defendant CCPA.

FACTUAL ALLEGATIONS

6. On February 26, 2010, Emma Davis went into the PMC cardiac lab for the purpose of having a pacemaker placed.

7. This procedure requires conscious sedation, which requires a high level of care on the part of the medical team. Conscious sedation uses powerful drugs to render a person essentially helpless. These drugs, including Fentanyl and Versed have profound effects on the human body.

8. The drugs used during conscious sedation are dangerous.

9. As a result, certain rules must be followed for the sake of patient safety.

These safety rules include:

- a. that the patient must be closely monitored;
- b. the staff, nurses and doctors alike, must be highly vigilant to the first signs of a problem;
- c. the staff must act immediately at the first sign of a problem;
- d. no more of the drugs than is absolutely necessary should ever be used.

10. Failing to follow one or more of these rules, or failing to follow other commonly accepted safeguards for patient care, can cause a patient to needlessly suffer injury or even die.

11. In this case, on the morning of February 10, 2010, Mrs. Davis was scheduled to have a pacemaker placed as an out patient procedure. This means that the procedure was set to take a couple of hours and Mrs. Davis was supposed to come home in good condition later that day.

12. Mrs. Davis walked into Piedmont that day expecting to be home by dinner. She ended up in the morgue.

13. According to the medical records obtained, Mrs. Davis was taken back at around 6:32. At around that time, Mrs. Davis's oxygen level was normal at 95%, and her blood pressure was significantly high.

14. Generally speaking, and with Mrs. Davis in particular, normal oxygen levels are 95% or better. That is, less than 95 is concerning, and less than 90%, while

under conscious sedation, is a significant problem that must be watched for and if it occurs, must be fixed immediately.

15. At around 7:45, Mrs. Davis's vital signs were again measured, and this revealed that Mrs. Davis had a normal oxygen level, but high blood pressure. Significantly, Mrs. Davis was noted to have no pain or anxiety due to the procedure.

16. At 8:06 am, Mrs. Davis is given 1 mg of versed and 50 mcg of Fentanyl. Neither before, and certainly not after these powerful drugs were given, did Mrs. Davis have any pain or anxiety.

17. At 8:55, Mrs. Davis was again given 1 mg of Versed and 50 mcg of Fentanyl. Again, Mrs. Davis had no reports of pain or anxiety. At 9:06, Dr. Patel started the pacemaker procedure by making a pocket for the device in Mrs. Davis's skin.

18. At 9:13, Dr. Patel ordered and the nurses administered another 50 mcg of Fentanyl. At 9:16 her oxygen level was 100% (very good) but she did continue to have markedly high blood pressure, 164/127. At 9:16 Mrs. Davis received another 1mg of Versed.

19. At 9:21, there was clear evidence of a significant change in Mrs. Davis's condition. At 9:21, her oxygen level dropped to 87% and her blood pressure dropped to 120/90.

20. No medical person in attendance responded to this obvious change. In fact, Dr. Patel continued with the procedure unabated.

21. The next readings at 9:26 were ever worse. Mrs. Davis had an oxygen level now down to 80% and her blood pressure dropped further to 108/94. The medical

team did nothing to respond to this for another 4 minutes when they finally started to bag her in an effort to increase her oxygen status.

22. The medical team called a code shortly thereafter, and gave a number of drugs that were designed to counteract the Fentanyl and Versed already given.

23. Over the next number of minutes, the medical team along with anesthesia, ran a code on Mrs. Davis but it was all for naught. Mrs. Davis passed that day.

24. As a direct and proximate result of the acts and/or omissions of Defendants, Mrs. Davis did not receive proper treatment for her illness in a timely fashion. Mrs. Davis's condition was completely treatable and with proper, standard of care medicine, Mrs. Davis would have not have died when she did and would have had a near normal life expectancy. Further, with proper care, Mrs. Davis would not have suffered and died the way she did.

25. The injuries to and death of Mrs. Davis were the direct and proximate result of and was caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and hospital staff under similar circumstances and thereby rendered inappropriate medical care to Mrs. Davis by deviating from and falling below the prevailing and acceptable standards of care in one or more of the following particulars, as follows:

AS TO DEFENDANT AMISUB:

- a. In failing to properly institute the conscious sedation protocol;

- b. In giving too much medication, and without proper documentation;
- c. In failing to properly respond to the obvious signs of distress;
- d. In failing to question the actions of Dr. Patel when he was ignoring the obvious signs of distress in Mrs. Davis;
- e. In failing to call a code sooner, despite what Dr. Patel was doing; and
- f. In such other ways as may be shown at trial

AS TO DEFENDANTS Carolina Cardiology and Vasant Patel, MD

- g. In failing to properly institute the conscious sedation protocol;
- h. In giving too much medication, and without proper documentation;
- i. In failing to properly respond to the obvious signs of distress;
- j. In failing to call a code sooner; and
- k. In such other ways as may be shown at trial.

FOR A FIRST CAUSE OF ACTION

(SURVIVAL ACTION)

- 26. Plaintiff reiterates paragraphs 1-25 above as if set forth verbatim herein.
- 27. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Davis suffered from severe debilitating injuries which resulted in her permanent injury and disability, and conscious pain and suffering, as a result of which Mrs. Davis is entitled to recover a sum to compensate her estate for her 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 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.

FOR A SECOND CAUSE OF ACTION

(Wrongful Death)

28. Plaintiff reiterates paragraphs 1-27 as if set forth verbatim herein.

29. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Mrs. Davis 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 her 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.

FOR A THIRD CAUSE OF ACTION

(Loss of Consortium)

29. Plaintiff reiterates paragraphs 1-28 as if set forth verbatim herein.

30. Plaintiff Andrew Strong, as the husband of Mrs. Davis, has suffered a loss of consortium as a result of the actions and inactions of defendants. He is therefore

entitled to an award of damages to compensate her for her loss of the society, comfort, companionship, support, and good offices of his wife. Further, the Defendants' actions in this case have been reckless and/or grossly negligent and thus Plaintiff Andrew Strong is additionally entitled to an award of punitive damages to punish and deter these defendants and others like them.

WHEREFORE, Plaintiffs respectfully pray for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law.


Chad A. McGowan
McGowan, Hood, & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29730
(803) 327-7800
(803) 328-5656 Facsimile
cmcgowan@mcgowanhood.com

Rock Hill, South Carolina

September 13, 2010

PLAINTIFF DEMANDS A JURY TRIAL

**For Defendants' Exhibit 26,
see Record p. 751
(Duplicate of Plaintiff's Exhibit 22)**

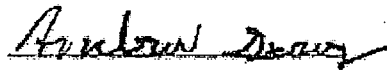
**For Defendants' Exhibit 27,
see Record p. 752
(Duplicate of Plaintiff's Exhibit 23)**

Acknowledgment and Agreement

I have elected to get a cash advance against the possible proceeds of the Emma Davis case. I have been specifically advised that:

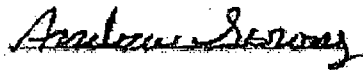
- 1) The cost of these funds is very high. I am getting an advance of \$10,000, but will have to pay back \$20,000—double the amount. The money will have to be paid back at the time any funds in this case are disbursed. The amount of pay back will be the same whether the case settled in 10 days, 100 days, or 1000 days. The quicker the advance is paid back the higher will be the cost of funds.
- 2) My attorney thinks this is a bad idea because the cost of funds is so expensive.
- 3) While my attorney has helped to arrange this advance, through his father-in-law Mike Meloney, neither my attorney nor his firm will receive any benefit of any kind from this advance.
- 4) I can if I want get another attorney's advice on borrowing money under these terms. I also know that any other attorney will probably agree that this is a bad idea because the cost of funds is so expensive.
- 5) If for some reason I do not recover in the case, I will not have to pay any funds back.

Even knowing how expensive the funds are, I still want to go through with it.



Andrew Strong

I irrevocably direct my attorney to pay any amounts owed under this advance directly from trust at the time of disbursement.



Andrew Strong

September 12, 2012

Rock Hill, SC



589302

MCGOWAN005095

**For Defendants' Exhibit 29,
see Record p. 655
(Duplicate of Plaintiff's Exhibit 11)**

State of South Carolina	)	
	)	
County of York	)	
	)	
Tanisha Gilmore, as	)	10-CP-46-3899
Personal Representative of	)	
the Estate of Emma Davis,	)	
and Andrew Strong,	)	
	)	
Plaintiffs,	)	Deposition
	)	
vs.	)	of
	)	
	)	Tanisha Gilmore
Amisub of South Carolina,	)	
Inc., d/b/a Piedmont	)	
Medical Center; Carolina	)	
Cardiology, Vasant Patel,	)	
MD, Ellenora Issac, RN,	)	
Gary Miller, RN, Debra	)	
Swartzman, RN, Robert	)	
Baker, MD, and Anesthesia	)	
Associates of Rock Hill,	)	
PA,	)	
	)	
Defendants.	)	

Deposition of Tanisha Gilmore, taken before Angela M. Barrett, a notary public in and for the State of South Carolina, commencing at the hour of 10:39 a.m., Monday, August 29, 2011, at the office of McGowan, Hood & Felder, L.L.C., 1539 Health Care Drive, Rock Hill, South Carolina.



Reported by
Angela M. Barrett

APPEARANCES

For the Plaintiffs:

Chad A. McGowan, Esq.
McGowan, Hood & Felder, L.L.C.
1539 Health Care Drive
Rock Hill, South Carolina 29732

For the Defendants Amisub of South
Carolina, Inc., d/b/a Piedmont
Medical Center, Ellenora Issac,
RN, Gary Miller, RN and
Debra Swartzman, RN:

William U. Gunn, Esq.
Holcombe Bomar, P.A.
Post Office Drawer 1897
(100 Dunbar Street, Suite 200)
Spartanburg, South Carolina 29304

For the Defendants Carolina
Cardiology and Vasant
Patel, MD:

George C. Beighley, Esq.
Richardson Plowden & Robinson, P.A.
Post Office Drawer 7788
(1900 Barnwell Street)
Columbia, South Carolina 29202

For the Defendants Robert
Baker, MD and Anesthesia
Associates of Rock Hill, PA:

James E. Bradley, Esq.
Moore, Taylor & Thomas, P.A.
Post Office Box 5709
(1700 Sunset Boulevard)
West Columbia, South Carolina 29171

Also Present:

Tanisha Gilmore

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Reexamination by Mr. Beighley:	52

EXHIBITS

No exhibits were marked during this deposition.

1

STIPULATIONS

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11

12

Whereupon,

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EXAMINATION

18

BY MR. GUNN:

19

Q Ms. Gilmore, you heard me say my name is Billy Gunn

20

and I'm a -- a lawyer from over in Spartanburg.

21

And I'm the lawyer for Piedmont Medical Center.

22

A Uh-huh.

23

Q You heard my speech to Mr. Strong --

24

A Yes, sir.

25

Q -- about -- about clarification. If I ask you a

1 question that doesn't -- doesn't make sense or
2 needs clarification, be sure and tell me that you
3 need me to straighten the question out and I'll be
4 glad to try to do so.

5 A Okay.

6 Q If you need to take a break, you holler and we'll
7 do that ---

8 A Yes, sir.

9 Q -- okay?

10 You've -- have you ever had anybody take a
11 deposition like this before?

12 A No, sir.

13 Q Okay. Another thing that's helpful is to -- to
14 verbalize your answers.

15 A Uh-huh.

16 Q Give us good verbal answers. It's okay to shake
17 your head and nod, but try to accompany that with
18 -- with verbal answers because it makes it much
19 easier for the court reporter --

20 A Yes, sir.

21 Q -- okay?

22 Your name is Tanisha Gilmore?

23 A Yes, sir.

24 Q And what is your date of birth?

25 A 6/11/84.

1 Q So you are 27.

2 A Yes, sir.

3 Q Okay. Where do you live, Ms. Gilmore?

4 A I live in Chester --

5 Q And --

6 A -- on --

7 Q -- tell me your street address.

8 A [REDACTED]

9 Q [REDACTED]?

10 A Yes, sir.

11 Q [REDACTED]?

12 A Yes, sir.

13 Q Okay. Who are -- who are your parents?

14 A My mother is Linda Gilmore.

15 Q Okay.

16 A And Harvey Wilson.

17 Q And what -- what was your relationship to Ms. Davis.

18 -- Emma Davis?

19 A Ms. Davis was my aunt biologically. But she raised

20 my mother in her home, so Ms. Davis was the only

21 one we known as our grandmother.

22 Q Oh, okay.

23 A So we called her our grandmother.

24 Q Okay. Your -- your mother, Linda -- Linda -- is it

25 Linda Ann?

1 A Linda. She goes by Linda.

2 Q Okay. But it's the same person?

3 A Yes, sir.

4 Q We're talking about the same person?

5 A Yes, sir.

6 Q Okay. She -- she was, then, actually the niece of

7 Emma Davis, but -- but -- but Ms. Davis raised her

8 as a daughter?

9 A Yes, sir.

10 Q Okay. How -- how old a lady is your mother, Linda?

11 A Forty-eight.

12 Q Okay. Do you know -- do you know how old your

13 mother was when she began to be raised by Emma?

14 A She was two years old.

15 Q Okay. So she raised her from two -- age two --

16 A Yes, sir.

17 Q -- until the time she left the home?

18 A Yes, sir.

19 Q And -- and do you know what age your mother was

20 when she left the home?

21 A No, sir. Not actually.

22 Q Okay. What did -- what did Linda -- what did she

23 call Ms. Davis?

24 A She called her "Mom".

25 Q She called her "Mom"?

1 A Uh-huh.

2 Q Okay. And -- and what -- what did -- when Ms.

3 Davis was alive, what did you refer to her as?

4 A My grandmother.

5 Q Okay. Did you -- did you have a name for her? Did

6 you call her Granny or something like -- what did

7 you call her?

8 A No. We went-- we called her "Ma." We considered

9 her our mom, also.

10 Q Okay.

11 A We just called her "Ma," too, so

12 Q All right. So we -- we know that she raised your

13 mother --

14 A Uh-huh.

15 Q -- yeah. Your mother.

16 A Yes, sir.

17 Q And we know that she raised Willie Bell. Was there

18 -- were there any other people that she raised like

19 that?

20 A No, sir.

21 Q Okay. Now, do you have any family here in York

22 County?

23 A No, sir.

24 Q All right. Do you work?

25 A Yes, sir.

1 Q Where do you work?

2 A HealthSouth.

3 Q HealthSouth?

4 A Yes, sir.

5 Q And what do you do at HealthSouth?

6 A I'm a nursing assistant.

7 Q And how long have you worked as a nurse -- nursing

8 assistant?

9 A Since 2004.

10 Q Since 2004?

11 A Yes, sir.

12 Q Have you been at HealthSouth the whole time?

13 A No, sir.

14 Q Where else have you worked?

15 A Chester Regional Medical Center.

16 Q And what did you do there? Were you a CNA or --

17 A Yes, sir.

18 Q Okay. And how long were you at Chester Regional?

19 A About three years.

20 Q All right. Can you tell me the approximate years

21 that you worked there?

22 A It was from about 2004 to 2007.

23 Q All right. Let's -- let's go at it this way: When

24 -- how far did you go in school?

25 A College graduate.

1 Q Okay. Where did you go to college?

2 A York Tech.

3 Q All right. You -- tell me about your -- your

4 schooling before that. Did you go to Chester High

5 School?

6 A Yes, sir.

7 Q And when did you finish Chester High School?

8 A 2002.

9 Q All right. Did you go directly to York Tech then?

10 A Yes, sir.

11 Q And -- and was that in -- in nursing?

12 A Yes, sir.

13 Q And was that an associate's degree?

14 A I have a diploma in surgical technology. And I'm a

15 full-time student now --

16 Q Okay.

17 A -- in --

18 Q And what are you taking now?

19 A Nursing.

20 Q Is it -- is it your intention to try to become an

21 RN?

22 A Yes, sir.

23 Q Okay. Are you still working full-time at -- at --

24 at HealthSouth?

25 A I work PRN at HealthSouth.

1 Q Okay. All right. Let -- let's go back and -- when
2 did you complete your diploma at York Tech?
3 A August 9th of this year. I just finished surgical
4 technology.
5 Q Okay.
6 A And I started nursing August 25th.
7 Q Okay. Well, I want to go back and -- and talk to
8 you about your time in the workforce. It --
9 A Uh-huh.
10 Q It sounds like you went to work at Chester Regional
11 at -- in 2004.
12 A Uh-huh.
13 Q Did you work in -- in a medical field before that?
14 A No, sir.
15 Q That was your first venture into the medical --
16 A Yes, sir.
17 Q -- profession.
18 A Uh-huh.
19 Q Okay. So you worked -- worked at Chester Regional
20 as a CNA until nine -- until 2007.
21 A Uh-huh.
22 Q What did you do then professionally?
23 A Well, I have several jobs. I work for Pizza Hut as
24 a server.
25 Q Okay.

1 A I've been there since I was 16. And I still work
2 there part-time or as needed.

3 Q PRN.

4 A Yes, sir. And I also work for this company called
5 "Owens Corning." I started there in 2007. I -- I
6 was working at the Pizza Hut, Owens Corning, and at
7 Chester Regional all at the same time --

8 Q Wow.

9 A -- and going to school. So that's my work history.

10 Q Okay. At -- at Owens Corning -- you're talking
11 about the -- the -- was it down there on Highway
12 97, I think?

13 A It's Highway 9.

14 Q Okay.

15 A Off of Highway 9.

16 Q Okay. It's a -- a facility -- if you leave Chester
17 it's on the left down there?

18 A It depends on the way you're coming.

19 Q Or -- or is it on the bypass?

20 A It's off of the bypass and --

21 Q Okay.

22 A -- down. Yes, sir.

23 Q All right. So -- so the two jobs you've had in the
24 medical field have been at Chester Regional and
25 HealthSouth.

1 A Yes, sir.

2 Q Okay. And you're working for HealthSouth now and

3 you're working PRN at Pizza Hut, too.

4 A Yes, sir.

5 Q And you're going to school.

6 A Yes, sir.

7 Q Okay. Did you -- did you ever live in the home

8 full-time with -- with your grandmother, Ms. Davis?

9 A Could you be more pacific [sic] --

10 Q Well --

11 A -- as far --

12 Q -- did you ever -- was there ever a period of time

13 where you went to stay with her for more than, say,

14 a week at a time?

15 A Yes, sir.

16 Q Okay. When was that?

17 A I couldn't actually give you a date but --

18 Q Just approximate it for me.

19 A I would say in 2000.

20 Q All right. And -- and how long were you there with

21 her?

22 A About three weeks.

23 Q Okay. And what was the reason for that?

24 A I helped care for Ms. Davis, and whenever she was

25 ill, I would go there with her.

1 Q Okay. All right. But my question -- and I should
2 have asked it a better way, I guess. My -- I think
3 my question was sort of geared toward were there
4 any times that you -- that you lived with her
5 because of your needs that -- that you couldn't --
6 whoever you were living with as a child couldn't
7 take care of you or --

8 A No, sir.

9 Q Okay. All right. And you went and stayed with her
10 for about three weeks in --

11 A Yes, sir.

12 Q -- about 2000 to take care of her.

13 A Yes, sir.

14 Q And what was the matter with her at that time?

15 A Well, not take her as being ill. Like to be with
16 her at night.

17 Q Okay. Just sort of backup.

18 A Yes, sir.

19 Q Okay. Tell me -- tell me what you know about the
20 state of her health at the time she went to have
21 this pacemaker installed in February of 2010.

22 A Could you be pacific [sic] --

23 Q Yeah.

24 A -- about the state --

25 A Yeah.

1 A -- of her --

2 Q I --

3 A -- health?

4 Q -- can. We -- we -- it's developed that she had

5 some cardiac --

6 A Yes --

7 Q -- problems.

8 A -- sir.

9 Q Can you -- can you tell me what you knew about her

10 cardiac problems?

11 A I was told that Ms. Davis -- she had some issues --

12 heart issues and her heart wasn't, well, beating

13 fast as -- as it should've been. And that's why

14 she was getting the pacemaker, to help the rhythm

15 of the heart.

16 Q Okay. Did you ever go to any of her medical

17 appointments with her?

18 A Yes, sir.

19 Q Which ones did you go to?

20 A Dr. Patel was a new doctor that took over Ms.

21 Davis' case. She was seeing Dr. Epps. And Dr.

22 Epps left for whatever reason, and then Dr. Patel

23 came in. I used to go with her to see Dr. Epps. I

24 never met Dr. Patel --

25 Q Okay.

1 A -- until February 11th.

2 Q Okay. You -- you never met him until the day the

3 -- of the pacemaker installation?

4 A Yes, sir.

5 Q Okay. How about Dr. Stone, did you ever go with

6 her to see Dr. Stone?

7 A Yes, sir.

8 Q And did you sometimes provide her transportation

9 for her?

10 A Yes, sir.

11 Q Okay. You've driven regularly, I guess, since you

12 were a teenager?

13 A Yes, sir.

14 Q And -- and you drive now to get to all these jobs

15 you've got?

16 A Oh, yes, sir.

17 Q Okay. So you took her to Dr. Stone sometimes. You

18 took her to Dr. Epps --

19 A Yes, sir.

20 Q -- the prior cardiologist.

21 A Uh-huh.

22 Q Do you know the name of the chest doctor or

23 pulmonologist that saw her?

24 A No, sir.

25 Q Okay. Do you know -- we know that at the time of

1 her death she was under the care of Dr. Sam
2 Stone --
3 A Uh-huh.
4 Q --her -- her primary care doctor. She was under
5 the care of Dr. Patel.
6 A Yes, sir.
7 Q Do you know any other doctors that she was under
8 the regular care of at the time of her death?
9 A No, sir. Not that I know of.
10 Q Okay. We know about the -- were you -- were --
11 were you familiar at all with the pulmonology or
12 breathing problems she had?
13 A Yes, sir. I --
14 Q All right. Tell --
15 A -- knew she --
16 Q Tell me what you know about that.
17 A I knew she used a CPAP at night. That's -- and she
18 had -- she had been treated for bronchitis before.
19 But that's the breathing issues that she had.
20 Q All right. Let me ask her -- ask you about her
21 hospitalizations before her death.
22 A Uh-huh.
23 Q Mr. Strong said something about being hospitalized
24 in Columbia.
25 A Uh-huh.

1 Q He thinks at Richland Memorial.

2 A Uh-huh.

3 Q Do you remember anything about that?

4 A Yes, sir.

5 Q What -- what do you remember about that?

6 A I couldn't tell you what she -- I don't remember

7 what she was there for. But I knew -- I went to

8 visit her there every day, but I -- I've forgotten

9 what she was there for.

10 Q Okay. Can you tell me about when that was?

11 A I couldn't tell you.

12 Q Okay. His -- his estimate -- I -- I think what he

13 said was about five years or -- or thereabouts

14 before her death.

15 A It was before then. It -- it had -- it wasn't five

16 years. It was --

17 Q Were you driving a car?

18 A No. I didn't take her there. I think she --

19 Q But, I mean, was it a period of time that you were

20 a -- a --

21 A Yes. I was --

22 Q -- licensed --

23 A -- driving. It was -- I'm saying it was more --

24 less than five years. I would say more than --

25 estimate? A -- a year. About a year.

1 Q Before her death?

2 A Yes, sir. A year --

3 Q Okay.

4 A -- or six months.

5 Q All right. What other hospitalizations were you

6 aware of that Ms. Davis had?

7 A She had been hospitalized in Chester.

8 Q And what was that for?

9 A Pneumonia. Pneumonia.

10 Q Pneumonia?

11 A Yes, sir.

12 Q Can you tell me about when that was?

13 A I couldn't give you a pacific [sic] date.

14 Q Okay. Was it during the period of time that you

15 worked there?

16 A Was I working?

17 Q '04 to --

18 A Yes, sir.

19 Q -- '07?

20 A Yes, sir.

21 Q Okay. Sometime during that time period.

22 A Yes, sir.

23 Q All right. All right. You told me, I think -- I

24 -- I may have asked you this. You -- you told me

25 you don't have any kin people in York County.

1 A No, sir.

2 Q Okay. Tell me about what happened on the day of --

3 and I'll be more specific --

4 A Uh-huh.

5 Q -- the -- the day of Ms. Davis' death, which is

6 February the 11th. I've been saying February 10th,

7 but I think --

8 A Uh-huh.

9 Q -- it's February 11th --

10 A It's February 11th.

11 Q -- of -- of 2010. Just tell me when -- did -- did

12 you go with them that morning, or when did you get

13 to the hospital?

14 A Okay. I'm -- they arrived there -- it was like

15 5:30 or so. It was -- you need to know who was

16 with them when they arrived or --

17 Q Well, yeah. Who -- who -- it sounds like -- was it

18 -- was it your mother and --

19 A When --

20 Q -- Atlean Jordan?

21 A When they arrived at 5:30 it was Emma Davis, Andrew

22 Strong, Ganette Strong, and -- it's Atlean Jordan.

23 Q Right.

24 A And following, at 6:30 it was myself, Linda

25 Gilmore, and Rosa Hall. We was --

1 Q Okay.

2 A -- all there before she went back.

3 Q Okay. Okay.

4 A And --

5 Q Just -- just pick up at the point that you got
6 there about 6:30 a.m. and tell me what you remember
7 happening.

8 We got there about 6:30. The procedure was
9 scheduled for 45 minutes, so we was waiting. And I
10 know it take a while to get back and get prepped
11 and everything, so time was passing. I got kind of
12 worried because they said 45 minutes was the
13 longest for the procedure. It was around nine at
14 the time, and I was kind of nervous about what was
15 going on. So finally, a lady came out and she told
16 us that -- it was myself, Linda Gilmore, and Rosa
17 Hall, we was all sitting and they asked for the
18 Davis' family. Because Andrew and his sister was
19 sitting on the other side --

20 Q Andrew and --

21 A His sister --

22 Q Uh-huh.

23 A -- was sitting on the other side of the waiting
24 room, so I said, "This is the Davis family." And
25 she told us that we were -- they were having some

1 issues with Ms. Davis and that --

2 -- and I was like, "What kind of issues?"

3 And she said, "Ms. Davis has stopped
4 breathing."

5 And I was like, "What -- what are you talking
6 about?"

7 And she was like, "Well, Ms. Davis stopped
8 breathing on her own." And she said, "That we're
9 working with her and doing CPR on her at the
10 moment." And she was like, "But the thing is they
11 want to go ahead and continue to insert the
12 pacemaker." And she said, "Because by inserting
13 the pacemaker can sometimes jump start the heart."
14 And I was like -- and she was like, "That would be
15 the best thing to do at the time."

16 So I said, "Okay." And she -- the lady left.

17 And she came back I would say about ten
18 minutes, and she called the family, "Come to the
19 back."

20 And at the time -- well, before the lady left
21 and I told her it was okay about the pacemaker, I
22 asked her, "Why did Ms. Davis stop breathing? Was
23 there any medication or what happened?"

24 And she was like, "If Ms. Davis was at home,
25 this would have happened at home anyway with her

1 breathing issue." So after the ten minutes,
2 though, she called the family to the back. And it
3 was her and Dr. Patel himself. And he was telling
4 us that Ms. Davis has passed.

5 And I asked him again -- I -- I asked him,
6 "What happened?" and what was going on?

7 And he was like, "Well, Ms. Davis had some
8 breathing issues." And he predict that, if she was
9 home, this would've happened at home anyway with
10 her stopped breathing.

11 Q Okay. Now, let -- let me make sure I understand.
12 Well, first of all, the -- the -- the -- the female
13 that came out to speak with y'all --

14 A Uh-huh.

15 Q -- do you -- did you see a nametag or any way you
16 can identify who that was for me?

17 A I just remember her with a purple lead apron.

18 Q A what?

19 A She had her lead apron on when she came out.

20 Q And it --

21 A And --

22 Q -- was purple?

23 A Yes, sir.

24 Q Okay. All right. Well, that -- that's helpful.

25 What -- can you -- can you describe what she

1 looked like?

2 A I just remember her being tall and the apron just

3 stood out.

4 Q Okay.

5 MR. MCGOWAN: (To the deponent) Was she

6 African-American? white? Asian?

7 A She was Caucasian.

8 Q Okay. She was a Caucasian lady?

9 A Yes, sir.

10 Q A tall Caucasian --

11 A Yes, sir.

12 Q -- lady wearing a -- a -- a lead apron --

13 A Yes, sir.

14 Q -- purple in color.

15 A Uh-huh.

16 Q Okay. And -- and -- and if I'm hearing you

17 correctly, she was the first person who came out

18 that alerted y'all that there might be something

19 going on --

20 A Yes, sir.

21 Q -- unexpected.

22 A Yes, sir.

23 Q All right. And -- and she said that it was

24 breathing difficulty?

25 A Uh-huh.

1 Q And that she had stopped breathing on her own.

2 A Yes, sir.

3 Q And that the -- the procedure was going to continue
4 on and they thought the best thing to do was to try
5 to get her -- get the pacemaker installed and that
6 would be of some help to her.

7 A Yes, sir.

8 Q Okay. All right. Now, when -- when the lady in --
9 this woman in the purple lead apron came out on
10 this first occasion --

11 A Uh-huh.

12 Q -- the people that were there were you -- who --
13 who else was within earshot of this lady? Who else
14 was talking to her?

15 A One on one it was myself, Linda Gilmore, and Rosa
16 Hall at that time.

17 Q Okay.

18 A And once she left, that's when the other family
19 rushed over and asked what was -- questioning.

20 Q Okay. And you relayed the information to them?

21 A Yes, sir.

22 Q Okay. All right. The -- this first encounter with
23 -- with this woman, was it just a couple of
24 minutes?

25 A Could you be pacific [sic]?

1 Q Well, I'm just --
2 A Meaning a couple --
3 Q -- trying to figure out --
4 A -- minutes --
5 Q -- how long this encounter with this lady took.
6 A Yeah. She --
7 Q Was it --
8 A -- just gave that information, and she -- she went
9 to the back.
10 Q Okay. All right. Now, how long passed
11 approximately between that and the second
12 conversation with her?
13 A I would say ten minutes or so.
14 Q Okay. All right. And -- and was it the same woman
15 who came back out?
16 A Yes. And she -- she called for the family. And
17 when we went to the back it was Dr. Patel standing
18 right there, so it was her and Dr. Patel at the
19 time when everyone got to the back.
20 Q Okay. Now, would -- when -- when the woman came
21 out -- the female came out the second time she
22 asked for the family. Did she -- did she engage in
23 any more discussion with y'all other than asking
24 for the family outside the presence of Dr. Patel?
25 A No, sir.

1 Q Okay. What I'm trying to find out is did it -- did
2 it -- did it appear to you that her mission -- what
3 she was trying to do at that time was get y'all
4 back in there -- the family back in to talk to Dr.
5 Patel?

6 A Yes, sir.

7 Q Okay. She -- she wasn't relaying any medical facts
8 or any report on Ms. Davis?

9 A No, sir. Dr. Patel was talking at that time.

10 Q Okay. Now, when you went back in to see Dr. Patel,
11 did -- did -- had she passed at that time?

12 A Yes, sir.

13 Q Ms. Davis had -- had passed.

14 A Yes, sir.

15 Q Okay. And -- and -- and before y'all got to -- to
16 pay your respects to her --

17 A Uh-huh.

18 Q -- did you talk to Dr. Patel?

19 A Yes, sir.

20 Q Okay. I -- I'm going -- I'm going to let Mr.
21 Beighley, who is Dr. Patel's lawyer, ask you about
22 that.

23 A Okay.

24 Q Did you have any more conversations that day with
25 anybody that you believe to be a hospital employee

1 other than this tall Caucasian lady who was wearing
2 the -- the lead apron?

3 A No, sir.

4 Q Okay. She's the only person that y'all dealt with
5 on any material information about Ms. Davis'
6 condition?

7 A Yes, sir.

8 Q All right. Did you ever at any time after -- after
9 that day on any later days deal with anybody at the
10 hospital about what had happened to Ms. Davis?

11 A No, sir.

12 Q Okay. And I'm not suggesting that you should have.
13 But if you had --

14 A Oh.

15 Q -- you know, if you had called the hospital or --

16 A No, sir.

17 Q -- if you went back and talked to any -- any person
18 at the hospital. But I'm hearing you say that
19 never happened.

20 A No, sir.

21 Q Okay. Have you -- have you done any -- have you
22 reviewed the medical records at all on Ms. Davis?

23 A Yes, sir.

24 Q Okay. All right. You -- you don't intend to offer
25 any testimony as an expert witness, do you?

1 A No, sir.

2 Q All right. I -- I didn't think that was the case
3 because you weren't identified. And we're pretty
4 straightforward with each other about that. I just
5 want to make sure.

6 A Okay.

7 Q You've -- you've just reviewed them for your own --

8 A Yes, sir.

9 Q -- personal knowledge.

10 A Yes, sir.

11 Q Okay.

12 MR. GUNN: Okay. Thank you, ma'am. That's
13 all I have. I think Mr. Beighley and Mr.
14 Bradley probably have some questions --

15 THE DEPONENT: Okay.

16 MR. GUNN: -- for you.

17 THE DEPONENT: Thank you.

18 EXAMINATION

19 BY MR. BEIGHLEY:

20 Q Ms. Gilmore, I'm George Beighley. I represent Dr.
21 Patel. I have a -- a few questions for you.

22 Were you appointed by the probate court as the
23 personal representative of Ms. Davis's estate?

24 A Yes, sir.

25 Q And was that proceeding carried out, and was there

1 a determination made as to Andrew Strong's
2 relationship with Ms. Davis?

3 A I was assigned the PN [sic] due to he wanted
4 everything to be in my name. I was the one who
5 helped care for him and Ms. Davis. And so the
6 situation: Ms. Davis didn't leave a will, and he
7 said that he didn't want to be in the same
8 situation. And by me handling the business
9 already, that it would be best for me to take care
10 of everything.

11 Q Did the -- did the probate court make a
12 determination that he was the common-law husband of
13 Ms. Davis?

14 A I can't remember, sir.

15 Q Okay. In -- in your relationship with Ms. Davis
16 and Mr. Strong, what was your observation in terms
17 of how they held themselves out to the public? Did
18 they take a formal position on being common-law
19 husband and wife?

20 A Yes, sir.

21 Q What -- and how did they demonstrate that that you
22 saw or heard?

23 A They lived together for many years. All my life.
24 And they had the relationship if you seen one you
25 seen the other. And they basically did everything

1 together.

2 Q Okay. Did you ever see any paperwork or documents
3 when you went through Ms. Davis's belongings that
4 -- that designated Mr. Strong as her husband?

5 A No, sir.

6 Q Were you ever present when Ms. Davis ever
7 introduced Mr. Strong to anyone as her husband?

8 A Yes, sir.

9 Q Okay. Tell me about that.

10 A You want each occasion or --

11 Q The best you can remember. Just if you remember
12 any specifics.

13 A Nothing that really stands out. But like when we
14 meet family from out of town or -- or if we meet
15 some new people, she will always introduce him as
16 her husband or whatnot.

17 And the reason I'm asking: In looking through
18 medical records going back through the years where
19 it says "husband", she never seemed to put in like
20 "Andrew Strong" or check that block. Were -- were
21 you ever assisting her in filling out any
22 paperwork, for example, where you remember
23 designating Mr. Strong as her husband?

24 A I don't remember, sir.

25 Q And that's all I'm asking. If you remember --

1 A No.

2 Q -- seeing any --

3 A No.

4 Q -- documents or finding anything in writing when
5 you went through her paperwork showing that he was
6 designated as her husband.

7 A Not that I can remember.

8 Q But it was your experience that in your presence
9 they -- they, at least on some occasions you can
10 remember, would introduce themselves or the other
11 person as their spouse; is that--

12 A Yes --

13 Q -- right?

14 A -- sir.

15 A Okay. Now, on the question of hospitalizations,
16 can you remember generally just -- not specific
17 hospitalization, but generally how many times Ms.
18 Davis was in the hospital that you can remember
19 before her final admission?

20 A There have been several occasions when Ms. Davis
21 was admitting into the hospital.

22 Q But you can't put a number on it?

23 A No, sir.

24 Q Okay. And how about emergency room visits, do you
25 have any idea of how many times she was seen and

1 treated in the emergency room?

2 A She had several emergency room visits, also.

3 Q On February 11th, you told me that Ms. Davis,
4 Andrew Strong, and Mr. Strong's sister went to the
5 hospital about 5:30; is that right?

6 A Yes, sir.

7 Q And was -- was it -- what was Mr. -- who was --
8 what was Ms. Jordan's first name?

9 A Atlean.

10 Q And that's A-t-l-e-a-n-e?

11 A A-t-l-e-a-n.

12 Q And that's Mr. Strong's sister.

13 A That's Emma's sister.

14 Q Okay. That's Ms. Davis's --

15 A Uh-huh.

16 Q -- sister.

17 And what was Mr. Strong's sister's name?

18 A Ganette Strong. And it's spelled with a "G".

19 Q So other than those, that --

20 A Yeah.

21 Q -- would've been, then, four people that went at

22 5:30 --

23 A And it was --

24 Q -- including Ms. Davis.

25 A -- Willie Bell. He was with them at 5:30, also.

1 Q Willie Bell was there. So there'd be Ganette

2 Strong, Willie Bell, Atlean Jordan, Andrew Strong,

3 and Ms. Davis.

4 A Yes, sir.

5 Q And then at 8:30 when you went, who was --

6 A Six-thirty.

7 Q Six-thirty?

8 A Yes, sir.

9 Q Who was in your group?

10 A Myself, Linda Gilmore, and Rosa Hall.

11 Q And Linda is your mother?

12 A Yes, sir.

13 Q And is -- who is Rosa Hall?

14 A That's Emma's sister, also.

15 Q The other sister.

16 A Uh-huh.

17 Q Now, before the 11th of February, had you ever met

18 Dr. Patel before?

19 A No, sir.

20 Q Had you ever talked to him on the phone?

21 A No, sir.

22 Q Okay. And about ten minutes after a hospital lady

23 came out and said that Ms. Davis had stopped

24 breathing on her own, she came back out and said

25 the family needed to go back; is that right?

1 A Yes, sir. It was about a estimate of ten minutes.

2 Q Well, it -- that's just an estimate.

3 A Okay.

4 Q I'm not going to hold you to it.

5 A Okay.

6 Q But you -- you didn't have a stopwatch on or

7 something. But it was some -- something -- some

8 period of time passed.

9 A Yes, sir.

10 Q When the -- when the -- the lady from the hospital

11 came out the first time, did I understand you to

12 say that the -- that Mr. Strong and his people were

13 sitting on one side and -- and the Davis contingent

14 was sitting on the other side of the room?

15 A Yeah. It was like -- Mr. Strong himself, his

16 sister, Atlean. And the four that got there at

17 5:30, they was sitting like across on the other

18 side of the waiting room.

19 Q Okay.

20 A And we was sitting on one side, yes, sir.

21 Q And so the lady that came out the -- the first time

22 just talked to the group you were in.

23 A Yes, sir.

24 Q And not the group Mr. Strong was in.

25 A No, sir.

1 Q After she left then the group Mr. Strong was in
2 came over and talked to your group to get the
3 information.

4 A Yes, sir.

5 Q Okay. I wanted to make sure I understood it.

6 Now, when -- when the lady came back out and
7 asked y'all to come to the back --

8 A Uh-huh.

9 Q -- did -- did everybody from both groups --

10 A Yes, sir.

11 Q -- go at that time?

12 A Uh-huh.

13 Q And at that time you spoke with Dr. Patel.

14 A Yes, sir.

15 Q All right. Tell me again what you recall about the
16 conversation with Dr. Patel -- what -- what he
17 said.

18 A Everyone gathered in -- in like -- I guess it's the
19 chapel of the hospital where everyone -- they meet
20 the family at. We was in there, and Dr. Patel said
21 that he had some bad news: that Ms. Davis was no
22 longer with us. And he -- and I asked him, "What
23 -- what happened?"

24 And he was like, "Well, Ms. Davis stopped
25 breathing."

1 And I was like, "Why did she -- what
2 happened? Why did she really stop breathing?"

3 He was like, "Basically, she stopped breathing
4 on her own." And he was like, "Well, if Ms. Davis
5 was at home, this would've taken place at home
6 anyway with her breathing."

7 Q Do you remember anything else that was said?

8 A That's the most that stood out that I could recall.

9 Q That's what -- that's what you remember?

10 A Yes, sir.

11 Q Do you remember him recommending that the family
12 authorize an autopsy to find out specifically what
13 happened to Ms. Davis?

14 A Yes, sir. He -- they asked did the family want a
15 autopsy.

16 Q Right. And what was the discussion about that with
17 the family?

18 A According to the information that we got, we didn't
19 think there was a need for a autopsy because he
20 said that she stopped breathing on her own. And
21 then, him being a medical profession [sic] I took
22 his word. And him being her doctor that -- why
23 argue with it.

24 Q Do you remember him specifically asking you about
25 getting an autopsy -- having a discussion with you?

1 A Yes, sir.

2 Q Okay.

3 A He asked the family.

4 Q And then, after that discussion the family decision

5 was it did not want to do it.

6 A Yes, sir. We thought it wasn't a need.

7 Q Okay. Do you remember any other discussions with

8 Dr. Patel that day?

9 A That was all of the discussion with Dr. Patel.

10 Q Do you remember any discussions with any other

11 hospital personnel that day?

12 A No, sir.

13 Q What about discussions about where y'all wanted the

14 body to go, what funeral home, and that sort of

15 thing. Do you remember any of that?

16 A I didn't talk to them about the funeral home.

17 Q Who -- who handled those kind of arrangements?

18 A Willie Bell.

19 Q Willie Bell?

20 A Yes, sir.

21 Q Okay.

22 A I had stepped outside, yes, sir.

23 Q Were there -- were there -- during this time

24 certainly it was very stressful for everyone. Were

25 there people in and out of the group as

1 conversations were being held?

2 A Yes, sir.

3 Q Okay. You were not directly involved in the
4 conversation about the funeral arrangements or that
5 sort of --

6 A No --

7 Q -- thing.

8 A -- sir.

9 Q And after February 11th, were you involved with any
10 other conversations with anyone from the hospital?

11 A No, sir.

12 Q Or were you involved with any conversations with
13 Dr. Patel?

14 A No, sir.

15 Q Anybody from his office?

16 A No, sir.

17 MR. BEIGHLEY: (To the deponent) I'm going to
18 let Mr. Bradley ask some questions. I may
19 have a few --

20 THE DEPONENT: Okay.

21 MR. BEIGHLEY: -- more in a moment. Thank
22 you.

23 EXAMINATION

24 BY MR. BRADLEY:

25 Q Ms. Gilmore, what's your social security number?

1 A 248-61-5297.

2 Q And do you have a South Carolina driver's license?

3 A Yes, sir.

4 Q What's that number?

5 A I can --

6 Q If you have --

7 A -- get it.

8 Q -- it in your pocket, you can look at it.

9 A Okay.

10 Q It's not a test.

11 A All right. It's 011371070.

12 Q All right. Did -- did you ever meet Dr. Baker?

13 A No, sir.

14 Q If he was -- would you recognize him to see him at

15 all?

16 A No, sir.

17 Q All right. Do you have any thought of what Dr.

18 Baker may have done wrong?

19 A Could you be more pacific [sic] with --

20 Q Sure. Dr. Baker has been sued. And one of the

21 reasons, in the lawsuit, is that he did not --

22 alleged that he did not comply with the standard of

23 care that a doctor should do.

24 A Uh-huh.

25 Q He did something wrong, basically.

1 A Yes, sir.

2 Q So I'm just asking if you know what that wrong
3 thing is.

4 A No, sir.

5 Q Okay. Do you know if anyone in this family or
6 group of people that cared about Ms. Davis ever
7 talked to or saw Dr. Baker?

8 A No, sir.

9 Q Now, does Willie Bell still live in your community?

10 A Yes, sir.

11 Q Okay. Do you know his address?

12 A No, sir.

13 Q All right. Could you find him if you wanted to?

14 A Yes, sir.

15 Q All right. What does he do for a living?

16 A He was working doing distribution.

17 Q Do you know what -- where he worked -- what
18 company?

19 A No, sir. Because he have a change jobs, so, no,
20 sir. I don't know.

21 Q Okay. So is he -- would he be your cousin? Is
22 that -- what would you call Willie Bell?

23 A I consider him as my uncle due --

24 Q Okay.

25 A -- to him and my mom being raised in the same home.

1 Q Okay. All right. I -- the reason I asked about
2 him is he's the one who signed the release for the
3 autopsy. Were you there when he signed that
4 document?

5 A I had stepped outside.

6 Q All right. Do you remember seeing anybody sign any
7 papers or you even sign any papers when you were
8 there at the hospital?

9 A No, sir.

10 Q So you didn't -- as far as you saw, you didn't see
11 anybody sign any papers?

12 A No, sir.

13 Q Have you seen the paper that Willie Bell signed?

14 A Yes, sir.

15 Q All right. Do you have any reason to dispute
16 what's on that paper? Do you disagree with what's
17 on there?

18 A Disagree with what?

19 Q Why don't we show it to you. I think your lawyer's
20 got it there. It's Document 71 on our numbers. As
21 soon as you have a chance to look at it, Ms.
22 Gilmore -- I -- I want you to get a chance to
23 review it before I ask you about it. So just let
24 me know when you're --

25 A Okay.

1 Q -- ready.

2 A Okay. Basically, this was to sign off for the
3 funeral home -- the funeral arrangements.

4 Yes, it is. So -- so you've seen this
5 document, No. 71, before?

6 A Yes, sir.

7 Q Okay.

8 A At the funeral.

9 Q And that's Willie Bell's signature?

10 A Yes, sir.

11 Q And as far as you're concerned, Willie being your
12 uncle --

13 A Uh-huh.

14 Q -- would he be the proper person to ask this
15 question to? Was there somebody else that
16 should've signed it, or was he the right guy to
17 look at this?

18 A Him or my mom.

19 Q Okay. You don't have a problem with Willie Bell
20 being the person that signed this, or do you?

21 A No, sir.

22 Q Okay. And you see where it says that the autopsy
23 was not requested by Willie Bell?

24 A Yes, sir. I see that.

25 Q All right. Did you disagree with that at the time?

1 A At the time, we didn't think it was a need for the
2 autopsy.

3 Q Okay. All right. So you didn't disagree with
4 Willie Bell signing this form that says no autopsy?

5 A No. I don't disagree with it.

6 Q All right. Earlier Mr. Gunn asked you if you had
7 read your -- I guess, your grandma's medical
8 records, and you indicated that you had; is that
9 right?

10 A Yes, sir.

11 Q Is there anything in there that strikes -- strikes
12 you as unusual or improper or anything that
13 concerns you about those records?

14 A Yes, sir.

15 Q What is that?

16 A The -- the changing of vital signs.

17 Q Okay. Can -- can you show me that? Can you tell
18 me what it is that -- that struck you as unusual or
19 improper or brought -- brought your attention to
20 it?

21 A I don't --

22 Q And -- and if it'll help you, I think what you're
23 looking for is --

24 MR. MCGOWAN: (To the deponent) That's the
25 summary --

1 Q -- probably on --

2 MR. MCGOWAN: -- of all the vital signs.

3 Q -- page 29 and page 30. But I don't know. I'm not

4 trying to tell you where to go. You find it and

5 tell me.

6 A Okay.

7 Q And you take your time. But I'm just -- I'm

8 waiting on you, so don't wait on me.

9 A Okay.

10 Q You take as long as you need to, to figure it out.

11 A Is that -- okay. I see where it was listed around

12 9:30 or so: There wasn't anything recorded, and it

13 just had a dramatic change.

14 Q What page are you looking at Ms. Davis -- Ms.

15 Gilmore, so I can follow you? Looking down --

16 MR. MCGOWAN: (To Mr. Bradley) Twenty-three.

17 Q -- there's a number down at the right.

18 MR. MCGOWAN: Twenty-three is the vital

19 sign --

20 MR. BRADLEY: Got it.

21 MR. MCGOWAN: -- matrix.

22 Q Okay. I'm following you. Tell me now.

23 A Okay. Basically starting at 9:26.

24 Q Right.

25 A That one really stood out to me: the change in the

1 vital signs.

2 Q Okay. Just that there's not any there, a couple of
3 observations where the cuff was repositioned, and
4 then that they go down? Is that your -- or they
5 -- the blood pressure is going up? What is it
6 about that that's --

7 A I basically want to know what was going on there at
8 that point, because it's -- nothing was recorded at
9 9:26.

10 Q Right.

11 A Okay. Then there was nothing recorded at 9:34 or
12 9:36. And you come on down to 9:39; it stated
13 there was a strong right femoral pulse, and then,
14 again, nothing was recorded after that.

15 Q Okay. Any -- anything else?

16 A Anything else concerning this chart here or --

17 Q No, ma'am. Just anything that you thought was -- I
18 mean, you said you'd read them, and I'm just
19 curious of what your observations were.

20 I -- I see that you -- at 9:26 you think
21 there's a problem because of the way the vitals go
22 and the fact that the cuff was loose and there
23 wasn't a reading. Is there anything else?

24 A In the -- in her medical history or --

25 Q Well, just in the records at all that you think's

1 unusual, or improper, brought your attention,
2 anything at all that you think is worthy of
3 comment.

4 A Okay. Give me a second here. No, sir. I couldn't
5 find it.

6 MR. MCGOWAN: (To the deponent) Are you
7 looking for something in particular in those
8 records? because I know them pretty well. Or are
9 you just --

10 THE DEPONENT: It was --

11 MR. MCGOWAN: -- kind of paging through them?

12 THE DEPONENT: -- the medication.

13 A I wanted to question the medication that Ms. Davis
14 was given.

15 Q If it'll help you, there's a medication chart there
16 at --

17 MR. MCGOWAN: (To the deponent) This is --

18 Q -- page 21.

19 MR. MCGOWAN: This is Exhibit No. 1. And on
20 page 25 is the event log, which has pretty
21 much everything that occurred. And it has the
22 vital signs and when drugs were given, also.

23 THE DEPONENT: Uh-huh.

24 MR. MCGOWAN: And that goes on pretty much
25 through the end of the case. And then,

1 additionally, there's sort of a summary, for
2 lack of a better term, of the vital signs on
3 page 23. And then all the medicines that were
4 given on page 21 -- the medication events.
5 And then supplement to that is page number 52,
6 which also lists medications that were given.
7 So I think his question was: Was there
8 anything else in the records that caused you
9 some concern.

10 A No, sir.

11 MR. MCGOWAN: Was that the question, Ward?

12 MR. BRADLEY: Yeah.

13 Q You -- you indicated that you'd read the records.
14 I just wanted to know is there anything in there
15 that concerned you or made you think there was a
16 problem?

17 A Basically the medication and the vital signs.

18 Q All right. And you showed me where the vital signs
19 -- where there's a indication that the cuff didn't
20 record it and that they changed at about 9:30.

21 What was it about the medication that you
22 thought was improper or caused you a concern?

23 A The medication it was the -- the dosage. I was --
24 wanted to question that: Was that the proper
25 amount and how many times that it was given. And

1 the change in the vital signs.

2 Q Was there any particular medication that you
3 questioned, or just you'd like an explanation of
4 the medications or --

5 A I just wanted an explanation on the medication.

6 Q So did you look at something and say, Gosh, that's
7 a lot of medicine or that they didn't give them the
8 right kind of medicine or too much medicine or--

9 A No, sir. Just --

10 Q Okay.

11 A -- the medication.

12 Q Okay. Okay. It's my understanding that Ms. Davis
13 was drawing government disability; is that right?

14 A Yes, sir.

15 Q Do you know what her disability was -- why she was
16 disabled -- according to the government?

17 A She was getting disability due to her -- I can't
18 really say the pacific [sic] reason why. I was
19 thinking more in terms of her -- she had -- I know
20 she had a real high blood pressure issue and she
21 had heart issues going on.

22 Q But you don't know what it was --

23 A What pacific [sic] --

24 Q -- about her physically that made her disabled?

25 A No, sir.

1 Q All right. Was she able to do any work at all
2 before she had this surgery that you know of?

3 A What you mean? Before --

4 Q Like the --

5 A -- February 11th or --

6 Q Yes, ma'am. Well, certainly before she deceased.

7 In the time leading up to this surgery, was --
8 was she -- what was she doing?

9 A She wasn't doing any work-work, like working out in
10 the factory or anything. Basically, she took care
11 -- she used to babysit kids or whatever for the
12 family members or get a child off the bus for
13 someone whenever they need it, but no physical-
14 physical work.

15 Q Okay. Do -- do you still see Mr. Strong regularly?

16 A Every day.

17 Q Okay. Do y'all live nearby one another?

18 A Yes, sir.

19 Q And do you go by to check on him? Is that why you
20 see him, or some other reason?

21 A Check on him every --

22 Q Okay.

23 A -- day.

24 Q Okay. And who -- is he able to support himself?

25 Where does the funds come for his support now?

1 A Me.

2 Q Okay. So you're just helping him out?

3 A Yes, sir.

4 Q Because you see him sort of as your dad.

5 A My granddad, yes, sir.

6 Q Okay. Okay. Do -- do you go to church anywhere?

7 A Yes, sir.

8 Q Where -- where do you go to church?

9 A Christian Faith. I attend Christian Faith, but Mt.

10 Zion --

11 Q Is it Christian Faith Mt. Zion --

12 A No.

13 Q -- or is that --

14 A Christian --

15 Q -- two --

16 A -- Faith is the church that I attend regularly.

17 Q Right.

18 A But I have another church. Mt. Zion is the second

19 church I attend.

20 Q All right. Is Christian Faith an independent

21 church?

22 A Yes, sir.

23 Q And where is that located?

24 A In Chester.

25 Q All right. What street is it on? Do you know?

1 A Pinckney Street.

2 Q Did Ms. Davis go to church there?

3 A Yes, sir.

4 Q All right. Where is the Mt. Zion Church?

5 A It's located in Blackstock, South Carolina.

6 Q And is that like a AME Zion Church, or is it

7 independent?

8 A It's a -- it's an independent church, also.

9 Q All right. Did Ms. Davis attend church there as

10 well?

11 A Yes, sir.

12 Q Okay. Y'all just went to two different churches?

13 A Mt. Zion like the family church.

14 Q Right.

15 A And Christian Faith is a church we started

16 attending.

17 Q I see. All right.

18 Were you a member of any groups or clubs at

19 either one of those churches or --

20 A Yes, sir. I'm the secretary of the church.

21 Q And that's Christian Faith?

22 A Yes, sir.

23 Q What about Ms. Davis? Did she do anything in the

24 churches?

25 A She helped in the kitchen at the -- she was over

1 the kitchen at the church.

2 Q At Christian Faith?

3 A Yes, sir.

4 Q Was -- what would that mean, like kitchen
5 supervisor?

6 A Like if there's any events or anything that take
7 place, she was the one who get the menu together
8 and decide who was going to do what or whatever.
9 Basically, kitchen supervisor.

10 Q All right. And the kitchen was just for special
11 events, or did y'all have a normal operating
12 kitchen where you sold food or anything?

13 A No, sir.

14 Q All right.

15 MR. BRADLEY: I don't have any more questions.

16 Thank you.

17 THE DEPONENT: Thank you.

18 REEXAMINATION

19 BY MR. BEIGHLEY:

20 Q Ms. Gilmore, I just have a couple follow-ups.

21 The -- the -- do you remember your pastor or
22 Ms. Davis's pastor being present there at the
23 hospital?

24 A No, sir.

25 Q Do you know who the pastor was at the time that was

1 attending the church or would've been there at the
2 church in February of -- of that year?

3 A Could you be more pacific [sic]? You was asking --

4 Q Right.

5 A -- was that pastor there at the time when this took
6 place or --

7 Q Well, at -- at your church in February of 2010, who
8 -- who was the pastor or pastors that were assigned
9 to that church?

10 A For the funeral ceremony?

11 Q No. Just generally.

12 A Oh, Pastor Noreen Ruff.

13 Q What's that last name?

14 A Ruff, R-u-f-f.

15 Q All right. And do you remember Pastor Ruff being
16 present the day that Ms. Davis passed away?

17 A No, sir. She wasn't.

18 Q Do you remember the chaplain or someone from the
19 pastoral counseling staff of the hospital being
20 there?

21 A No, sir. Not that I can recall.

22 Q You don't recall?

23 A No, sir.

24 Q Is it -- is it fair to say this was a pretty
25 tumultuous time for you and for the family?

1 A Most definitely.

2 Q And you do recall Dr. Patel discussing an autopsy.

3 But is it fair to say, in terms of every word he
4 said, you can't recall everything he said?

5 A I cannot, no, sir.

6 Q Okay. And it was the family's decision at that
7 time, as -- as evidenced by Mr. -- Mr. Bell filling
8 out that form or it's information on the form, that
9 the family did not want an autopsy?

10 A No, sir. The family didn't want an autopsy due to
11 we believed that -- from what we was told, that she
12 didn't need one.

13 Q You say somebody told you she did not need an
14 autopsy?

15 A No, sir. Based on information that we got that Ms.
16 Davis -- this would have happened to her at home
17 with her breathing issue, we didn't think that we
18 needed an autopsy.

19 Q The family didn't think that.

20 A Yes, sir.

21 Q Okay.

22 MR. BEIGHLEY: That's all I have. Thank you.

23 FURTHER DEPONENT SAITH NOT.

24 Signing waived.

25 (Whereupon, there being no further

1. questions, the deposition was
2 concluded at 11:33 a.m.)

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF YORK

TANISHA GILMORE, AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF EMMA DAVIS, AND
ANDREW STRONG,

Plaintiffs,

vs.

CASE NO. 10-CP-46-03899

AMISUB OF SC, INC. d/b/a PIEDMONT MEDICAL
CENTER; CAROLINA CARDIOLOGY; VASANT PATEL, MD;
ELLENORA ISSAC, RN; GARY MILLER, RN; DEBRA
SWARTZMAN, RN; NORINE KUIPER, CVT; ROBERT
BAKER, MD; and ANESTHESIA ASSOCIATES OF
ROCK HILL, PA,

Defendants.

DEPOSITION OF: LINDA GILMORE

DATE: January 9, 2013

TIME: 12:00 p.m.

LOCATION: McGowan, Hood & Felder
1539 Health Care Drive
Rock Hill, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: IVY SCHLICHER



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37 (INDEX AT REAR OF TRANSCRIPT)

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1 my questions. And if you don't, just tell me that
2 and I'll try to restate it. Okay?

3 A. Okay.

4 Q. If you answer it, I'll figure that you
5 understood it. Is that fair?

6 A. That's fair.

7 Q. I don't think we'll be here too long,
8 but if you need to take a break for any reason,
9 just let me know and we'll be happy to let you do
10 that. If you should discuss your testimony during
11 the break, I'd be entitled to ask you about it, but
12 otherwise, you're free to take a break at any time.

13 A. Okay.

14 Q. And when this deposition is over,
15 you'll be entitled to get a copy and read it and
16 make sure it's accurate, note any changes. And
17 we'll confirm with you at the end of the deposition
18 whether you want to do that or not. Okay?

19 A. Okay.

20 Q. I'm also going to ask you some
21 background questions. Those are for purposes of
22 jury selection. And the reason for that is that we
23 wouldn't want to have a family member or a relative
24 or a co-employee on the jury list and not know
25 that, so that's why I'm asking you those questions.

1 Can you tell me where you live, please.

2 A. I live at 205 Jewel Street; Chester,
3 South Carolina 29706.

4 Q. Are you married?

5 A. No, sir.

6 Q. Have you ever been married?

7 A. No, sir.

8 Q. And we know that you have a daughter
9 Tanisha Gilmore --

10 A. Yes, sir.

11 Q. -- who is the personal representative
12 in this estate.

13 Do you have any other children?

14 A. Yeah. I have three more.

15 Q. Can you tell me their names and where
16 they live?

17 A. Vondrika Gilmore, she live on
18 311 Dottie Lane in Chester; Tiana Gilmore, she also
19 live at 311 Dottie Lane in Chester; and
20 Lashinda Gilmore, she stay home with me.

21 Q. Do you have any relatives by blood or
22 marriage that live in York County? That'd be York
23 or Rock Hill or within the boundaries of
24 York County.

25 A. No, sir.

1 Q. Are you currently employed?

2 A. Yes, sir.

3 Q. Where do you work?

4 A. Boral Stones, Chester.

5 Q. And what type of work do you do there?

6 A. I'm a PS-1 coloring specialist.

7 Q. And what does that entail? What kind
8 of duties do you perform?

9 A. It's like we work on an assembly line,
10 and it's like the molds come down the line. We
11 have to put the color in. It's like stone that
12 they put in houses and stuff. That's the type of
13 work I do.

14 Q. Now, to make sure I'm correct, I want
15 to get you to verify that Emma Davis was your aunt;
16 is that right?

17 A. Yeah.

18 Q. Okay. And your mother is --

19 A. Her sister, Dorothy Davis.

20 Q. Dorothy Davis.

21 A. Yeah, but I was raised with Emma.

22 Q. Where is Dorothy Davis?

23 A. Connecticut. Hartford.

24 Q. Okay. And I assume she's been there
25 for a number of years?

1 A. Uh-huh.

2 Q. And you were raised by Ms. Emma Davis?

3 A. Yeah.

4 Q. And was your daughter somehow raised by
5 Emma Davis or --

6 A. My aunt, Emma, she considered as her
7 granddaughter. Like she is like my mother.

8 Q. So Ms. Davis raised you and your
9 daughter?

10 A. Yeah. She stayed in the -- well, all
11 my kids basically.

12 Q. Okay.

13 A. Because she did everything for me and
14 my children.

15 Q. Okay. So she was like a mother and a
16 grandmother?

17 A. Yeah. I consider my kids her
18 grandkids.

19 Q. Now, about how far away did you live at
20 the time from Emma Davis in Chester? How far away
21 were your houses?

22 A. I'm going to say -- might have been
23 like a mile and a half or two.

24 Q. How often in a given week would you
25 visit with her at her house or she'd visit at your

1 house?

2 A. About twice a week, but we talked on
3 the phone every day.

4 Q. Am I correct that Emma Davis did not
5 actually have any biological children herself; is
6 that right?

7 A. No, sir.

8 Q. And at the time of her death, she was
9 living with Andrew Strong?

10 A. Yes, sir.

11 Q. How would you describe their
12 relationship?

13 A. They had a wonderful relationship.

14 Q. They were not married?

15 A. No, sir.

16 Q. What was your knowledge about
17 Emma Davis' health problems in her later years?

18 A. She was having problems with her heart.
19 I do know that.

20 Q. Any other medical problems you were
21 aware of?

22 A. I think she had -- I think she was
23 taking high blood pressure pills also.

24 Q. Did you ever go with her to any doctor
25 visits?

1 A. Yeah.

2 Q. Can you tell me what doctors you
3 visited with her?

4 A. Sam Stone's, and I went to the
5 doctor -- but I can't remember her -- she was --
6 the first doctor there she was going to about her
7 heart and everything, but I can't remember her name
8 because she moved back to Columbia.

9 Q. That was a lady heart doctor?

10 A. Some kind of doctor. She was a doctor,
11 but she had -- before she was going to Sam Stone,
12 she was going to that doctor, and she moved and
13 went back to Columbia.

14 Q. When you would go on any of these
15 visits and Ms. Davis would go back in the exam
16 room, you'd wait out front?

17 A. Yes, sir.

18 Q. And would not routinely discuss her --

19 A. She would tell me what they said when
20 she come --

21 Q. She'd tell you, but you didn't talk to
22 the doctor?

23 A. No, sir.

24 Q. Okay. Now, how did you learn that she
25 was going to be going into the hospital?

1 A. She called me. She called me -- I
2 think it was during January because she was going
3 to have the procedure done in February, so she know
4 I had to go back to work. She told me make sure
5 I'm there with her when she go to the hospital.
6 She wanted me to take that day off from work, me
7 and my daughter, Tanisha. Make sure we were there.

8 Q. And on the day of the procedure, how
9 did you get to the hospital?

10 A. Me and Tanisha and my aunt, Rosa. We
11 rode together.

12 Q. And I understand that Ms. Davis went in
13 another vehicle. Do you recall who rode or
14 actually transported Ms. Davis?

15 A. Jeanette Strong and Andrew. Oh, wait.
16 Atlean. She was there, too.

17 Q. When you got to the hospital, had
18 Ms. Davis already gone back?

19 A. Yes, sir. She was already gone back
20 because she had told me don't come so early. Make
21 sure my kids get off of school. But we just come
22 on up there.

23 Q. So the folks that you described are
24 waiting in the waiting room; is that right?

25 A. Yes, sir.

1 Q. What's the first information or
2 communication that you received about your aunt's
3 condition?

4 A. The nurse -- well, we was sitting there
5 patiently waiting, and she came by and said that
6 something had went wrong.. But I think they said
7 they revived -- they got her back or whatever. And
8 I was so hysterical. I just can't place everything
9 that was said at the time. But I do know that she
10 said they had lost her, something had went wrong,
11 and that they was going to go ahead and do the
12 procedure.

13 Q. So if I'm understanding you correctly,
14 your understanding was the nurse came out,
15 something had gone wrong --

16 A. Yeah.

17 Q. -- but they had gotten her back and
18 they were going to go ahead and do the procedure?

19 A. Yeah.

20 Q. Okay. Do you remember anything else
21 the nurse said at that time?

22 A. And then the nurse, she left and said
23 she'll let us know what was going on. I was so
24 hysterical. I couldn't even think about that.

25 Q. Is it fair to say it was very upsetting

1 to you and --

2 A. Yeah.

3 Q. -- it's difficult to remember all the
4 exact details?

5 A. Yes, sir.

6 Q. Now, did a same or different nurse then
7 come back out a second time?

8 A. The same nurse.

9 Q. Same nurse.

10 About how long between visits did that
11 second nurse, the same nurse, come back a second
12 time?

13 A. I'm going to say about -- it might have
14 been about 15, 20 minutes, something like that.
15 I'm not sure.

16 Q. And what did she say at this time?

17 A. They had lost her.

18 Q. And obviously that was very upsetting
19 to everyone. I understand that.

20 Do you remember anything else, any
21 details? And you may not, and if you don't, that's
22 fine. I just need to know what you remember and
23 what you don't remember.

24 A. Yeah. Okay.

25 Q. They said they'd lost her. Do you

1 remember any other details?

2 A. No, sir.

3 Q. What's the next thing you remember?

4 A. They came -- well, they came and got us
5 and took us to this room.

6 Q. Like a family room?

7 A. Yes, sir.

8 Q. And while you all were in there, who
9 came in there and talked to you?

10 A. The doctor.

11 Q. Right. Do you remember who the doctor
12 was?

13 A. It was doctor -- wasn't it Patel?

14 Q. The doctor that had been her doctor and
15 was doing the procedure, was that your
16 understanding?

17 A. Yes, sir.

18 Q. All right. And were the nurses or a
19 nurse in the room with you? Do you remember?

20 A. I can't remember.

21 Q. And what can you remember, if anything,
22 about conversations with Dr. Patel?

23 A. Well, it was asked what happened, you
24 know, because we never thought nothing like that
25 was going to go wrong that day. So somebody said

1 what happened, and he said that she wasn't -- she
2 probably wasn't going to live to see the week out
3 or something like that. I can't phrase the way he
4 had it or what.

5 Q. You don't recall what he specifically
6 said?

7 A. No, but I know he said something
8 specific about that, that she wasn't going to live
9 to see the week out.

10 Q. But you don't recall the specifics, but
11 the way it translated to you was she wouldn't
12 probably see the week out; is that right?

13 A. Yes, sir.

14 Q. Do you remember anything else that was
15 said either to Dr. Patel or by Dr. Patel in your
16 presence?

17 A. No, sir.

18 Q. Do you remember any discussions that
19 you had with your daughter or with any other family
20 members?

21 A. Concerning what?

22 Q. Anything. While you all were in the
23 family room.

24 A. No. Everybody just upset, crying,
25 whatever.

1 Q. Now, what happened after that? What's
2 the next thing you remember?

3 A. I think -- no. I wasn't in there when
4 he asked about the autopsy. I wasn't in there
5 then.

6 Q. Okay. So when Dr. Patel asked if they
7 wanted an autopsy, you had gone out of the room?

8 A. Yes, sir.

9 Q. Were you involved in any discussion
10 with the family members about whether they wanted
11 one or not?

12 A. No, sir, I wasn't.

13 Q. Where did you go when you left out of
14 the room?

15 A. Outside.

16 Q. Outside the building?

17 A. Yes, sir.

18 Q. Did you come back in the hospital later
19 that day?

20 A. Yeah. I came back in with a friend of
21 mine.

22 Q. About how long were you outside before
23 you came back?

24 A. I'm just saying about 15 minutes, 15 or
25 20 minutes.

1 Q. And who was with you?

2 A. Annette Strong. Her and her son.

3 Q. Annette Strong?

4 A. Yes, sir.

5 Q. Is that any relation to Andrew Strong?

6 A. Yeah. Sister.

7 Q. How was she related to Andrew Strong?

8 A. That's Andrew's sister.

9 Q. Okay. Now, that's not the one that --

10 A. That's Jeanette. They twins.

11 Q. Okay. So the first time she was there

12 was when she came in with you?

13 A. Who? Jeanette?

14 Q. No. Annette.

15 A. Yeah.

16 Q. And what transpired or what happened

17 when you came back in?

18 A. We went back there to see the body.

19 Q. Just went back to view Ms. Davis?

20 A. Yeah.

21 Q. Did you have any further conversations

22 with anybody at that time?

23 A. No.

24 Q. All right. And when you observed the

25 body, what do you remember, if anything, about the

1 appearance of Ms. Davis? What medical equipment
2 might have been in place or how she looked? Do you
3 remember any details?

4 A. I just seen that she was swollen.

5 Q. Okay.

6 A. That's all I can see. She had swelled
7 up.

8 Q. Was she still on the operating room
9 table?

10 A. Yeah. She was back there on some table
11 back there, yeah.

12 Q. Do you remember anything else about any
13 equipment that was in play or place or anything
14 like that?

15 A. I don't think they had her hooked up to
16 anything. I can't really remember, but I don't
17 think so.

18 Q. You're just not 100 percent?

19 A. I'm not 100 percent.

20 Q. Okay. But you know nobody said
21 anything, didn't have any conversations?

22 A. No.

23 Q. All right. Now, after you left the
24 hospital that day, did you ever have any other
25 conversations with anybody from the hospital about

1 what happened?

2 A. No, until we got a call.

3 Q. All right.

4 A. We got a call the day before the
5 funeral saying that we needed to check into her
6 death because they think something had went wrong.
7 I didn't talk to the person.

8 Q. Who took the call?

9 A. My cousin, Brenda Davis. And she
10 didn't understand what they were saying, so she
11 gave the phone to Laverne Hill.

12 Q. So Brenda Davis took the call?

13 A. Yes, sir.

14 Q. And she is the daughter of --

15 A. Rosa Hall.

16 Q. Rosa's daughter?

17 A. Uh-huh.

18 Q. Brenda didn't understand --

19 A. What they was saying. You know what
20 I'm saying? Like you wasn't looking for no call
21 like that, you know, the day before the funeral
22 saying something had happened.

23 Q. So she gave the phone to who?

24 A. Laverne Hill.

25 Q. And tell me --

1 A. I mean Laverne Young. She's married
2 now. Laverne Young.

3 Q. Laverne Young. Okay. And who is
4 Laverne Young?

5 A. That's my -- that was Emma's
6 sister-in-law.

7 Q. Emma's sister-in-law?

8 A. Uh-huh.

9 Q. How would that be?

10 A. It's different, you know, but the guy
11 really is Emma's cousin, but Emma's mother raised
12 him, so they consider each other they brother and
13 sister.

14 Q. Do me a favor. Just tell me who is
15 Laverne Young's mother. What's her name?

16 A. What is her name? Oh, Lord. She
17 passed away.

18 Q. Is Laverne deceased now?

19 A. No.

20 Q. Laverne's still alive?

21 A. Yes, sir.

22 Q. Okay. Who is Laverne's mother?

23 A. I'm trying to -- Maime Hill.

24 Q. Maime Hill?

25 A. Yeah. She deceased.

1 Q. And how was Maime Hill -- you say she
2 wasn't related to Emma Davis but they were raised
3 together?

4 A. Laverne, her husband's raised with
5 Emma. They really cousins.

6 Q. Now, where is Laverne Young now?

7 A. She still -- she stay in Blackstock.

8 Q. I'm sorry?

9 A. She stay in Blackstock.

10 Q. All right. So you were there at Emma's
11 house the day before the funeral?

12 A. Yeah.

13 Q. A phone call came in answered by Rosa's
14 daughter?

15 A. Yeah.

16 Q. Rosa's daughter didn't understand and
17 gave the phone to Laverne Young?

18 A. Yes, sir.

19 Q. Laverne Young had a conversation.

20 A. Yeah.

21 Q. After Laverne Young got off the phone,
22 she shared the conversation?

23 A. Conversation with us.

24 Q. All right. Tell me now in as much
25 detail you can remember what did Laverne Young tell

1 you?

2 A. That someone had called and said that
3 where he needed to check into Emma Davis' death
4 because something happened. Something went wrong.
5 And they gave us a number to call.

6 Q. Anything else you can remember being
7 told?

8 A. No, sir.

9 Q. Did somebody call the number?

10 A. My sister did.

11 Q. And who was that?

12 A. Robin McClurkin.

13 Q. Is that M-c --

14 A. C-l-u-r --

15 Q. M-c-C-l --

16 A. u-r-k-i-n.

17 Q. And where does Robin McClurkin live?

18 A. Chester.

19 Q. And she is your sister?

20 A. Yes, sir.

21 Q. She was another daughter of
22 Dorothy Davis?

23 A. Yes.

24 Q. And do you know when Robin McClurkin
25 placed that call?

1 A. No, sir.

2 Q. Were you present when she did it?

3 A. I wasn't present when she did the call.

4 Q. Did she tell you who it was or what it
5 was about?

6 A. She told me -- she just told me that
7 she had got in contact with a lawyer. That's all
8 she told me.

9 Q. Were you involved in a family
10 discussion about how Tanisha Gilmore would be made
11 the personal representative of Emma Davis' estate?

12 A. I wasn't really present at the time.
13 No, sir.

14 Q. All right.

15 A. But that's what Andrew said Emma was
16 planning on doing.

17 Q. How would you describe the relationship
18 between Andrew and Emma?

19 A. They had a wonderful relationship.

20 Q. Okay. And they had lived together but
21 were not married?

22 A. Yes, sir.

23 MR. BEIGHLEY: Okay. Now, we've got
24 two other lawyers here -- actually three -- who are
25 entitled to ask you questions, and I may have some

1 more, but to speed things up, I'm going to pass it
2 on to them right now.

3 THE WITNESS: Okay.

4 EXAMINATION

5 BY MR. BRADLEY:

6 Q. Ms. Gilmore, my name is John Bradley.
7 I represent Dr. Robert Baker. I have just a few
8 questions for you.

9 Other than Dr. Patel, did you speak to
10 any other doctors on the day of Ms. Davis'
11 procedure?

12 A. I did not.

13 Q. Do you know if any of the other family
14 members spoke to any other doctors that day?

15 A. I do not.

16 Q. Did you have any contact with
17 Dr. Baker?

18 A. No, sir.

19 Q. Do you know what role Dr. Baker played
20 in the care that was given to your sister at
21 Piedmont?

22 A. She wasn't my sister.

23 Q. I'm sorry. Ms. Davis. On the day she
24 was at Piedmont.

25 A. No, sir.

1 Q. So as far as Dr. Baker's concerned, you
2 don't have any knowledge as to what his involvement
3 was in Ms. Davis' care?

4 A. No, sir.

5 Q. When you went back to see Ms. Davis
6 after she passed, how many times did you go back to
7 see her?

8 A. I went only once.

9 Q. Do you remember if she had a tube of
10 any type in her mouth?

11 A. No, sir.

12 MR. BRADLEY: That's all the questions
13 that I have, Ms. Gilmore. Thank you.

14 EXAMINATION

15 BY MR. THOMPSON:

16 Q. Ms. Gilmore, my name is Josh Thompson.
17 I represent Piedmont Medical Center and some of the
18 nurses named. I just have a couple.

19 Now, earlier did you say that Annette
20 arrived with her son?

21 A. That was after the fact.

22 Q. Yes, ma'am. What's her son's name?

23 A. Jahein.

24 Q. Jahein?

25 A. Yeah. I don't know how to spell it.

1 Q. Yes, ma'am. Is he over or under 18?

2 A. He's under 18.

3 Q. Okay. Now, fast-forwarding to the call
4 the day before the funeral. It was the day before
5 the funeral; right?

6 A. Yes, sir.

7 Q. You said that Robin called the number
8 that she was given?

9 A. Yes, sir.

10 Q. And all she said afterwards was that
11 she had contacted a lawyer?

12 A. Yes. She said, you know, by the
13 information she had, you know, the same thing.
14 Somebody had called and said that we need to look
15 into it. Yeah, she called. Somebody -- they gave
16 her a number to call.

17 Q. And that number was the lawyer or she
18 just said she had talked to a lawyer? Did she say
19 who that number reached, in other words?

20 A. No, sir.

21 Q. Okay. And is Robin married?

22 A. Yes, sir.

23 Q. And what is her husband's name?

24 A. Frank McClurkin, Jr.

25 Q. Frank?

1 A. Yeah.

2 MR. THOMPSON: All right. I believe
3 that's all I have.

4 MR. MCGOWAN: Anything else, George?

5 MR. BEIGHLEY: I have nothing further.

6 MR. BRADLEY: Nothing further here.

7 (The witness, after having been advised
8 of her right to read and sign this transcript, does
9 not waive that right.)

10 (The deposition concluded at
11 12:27 p.m.)

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SIGNATURE OF DEPONENT

DEPONENT: LINDA GILMORE
 DEPOSITION DATE: January 9, 2013
 REPORTER: Ivy Schlicher
 CASE CAPTION: T.GILMORE, REPRESENTATIVE OF
 ESTATE OF E.DAVIS, AND A.STRONG, vs. AMISUB
 OF SC, INC. d/b/a PMC; CAROLINA CARDIOLOGY;
 V.PATEL, MD; E.ISSAC, RN; G.MILLER, RN;
 D.SWARTZMAN, RN; N.KUIPER, CVT; R.BAKER, MD;
 and ANESTHESIA ASSOCIATES OF ROCK HILL, PA

(Please return both Signature of Deponent pages.)

I, the undersigned, LINDA GILMORE, do
 hereby certify that I have read the foregoing
 deposition and find it to be a true and accurate
 transcription of my testimony with the following
 corrections, if any:

PAGE	LINE	CHANGE	REASON
14			
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SIGNATURE OF DEPONENT (CONTINUED)

PAGE	LINE	CHANGE	REASON

LINDA GILMORE	Date

I, Ivy Schlicher, notary public for the State of South Carolina, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Ivy Schlicher
Commission expires: 8/22/2022

1 CERTIFICATE OF REPORTER
2

3 I, Ivy Schlicher, notary public for the
4 State of South Carolina, do hereby certify that the
5 foregoing transcript is a true, accurate, and
6 complete record.

7 I further certify that I am neither
8 related to nor am I counsel for any party to the
9 cause pending or interested in the events thereof.

10 This the 16th day of January, 2013.
11
12
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14
15
16
17
18
19

20 Ivy Schlicher
21 Commission expires: 8/22/2022
22
23
24
25

I N D E X

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REQUESTED INFORMATION INDEX

(No information requested)

E X H I B I T S

(No exhibits proffered)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF YORK

TANISHA GILMORE, AS THE PERSONAL REPRESENTATIVE
OF THE ESTATE OF EMMA DAVIS, AND
ANDREW STRONG,

Plaintiffs,

vs.

CASE NO. 10-CP-46-03899

AMISUB OF SC, INC. d/b/a PIEDMONT MEDICAL
CENTER; CAROLINA CARDIOLOGY; VASANT PATEL, MD;
ELLENORA ISSAC, RN; GARY MILLER, RN; DEBRA
SWARTZMAN, RN; NORINE KUIPER, CVT; ROBERT
BAKER, MD; and ANESTHESIA ASSOCIATES OF
ROCK HILL, PA,

Defendants.

DEPOSITION OF: ROSA HALL

DATE: January 9, 2013

TIME: 9:55 a.m.

LOCATION: McGowan, Hood & Felder
1539 Health Care Drive
Rock Hill, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: IVY SCHLICHER

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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37 (INDEX AT REAR OF TRANSCRIPT)

It is stipulated by and among counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

[illegible]

being first duly sworn, testified as follows:

BY MR. BEIGHLEY:

Q. Ms. Hall, good morning. My name's George Beighley. I'm a lawyer in this case. I represent Vasant Patel, and I'm here today to ask you some questions. You've been identified as a witness in a case brought by Ms. Gilmore on behalf of the estate of Emma Davis.

And before we get started, the rules require me to explain the procedure a little bit to you. This proceeding today is known as a deposition, and it is a process of the courts of South Carolina. It has the same weight and

1 solemnity as testimony in court would have since
2 it's under oath. Do you understand that?

3 A. Yes, sir.

4 Q. Have you ever given a deposition
5 before?

6 A. No. Not that I remember, no.

7 Q. Okay. The rules are fairly
8 straightforward. First of all, if you don't
9 understand something I ask you, all you have to do
10 is tell me that, and I will restate the question
11 for you. Okay?

12 A. Okay.

13 Q. If you answer the question, I'll assume
14 that you understood what it was. Is that fair?

15 A. Yeah.

16 Q. I don't think we'll be here too long
17 today, but if you need to take a break at any point
18 in time, all you have to do is tell me that. We'll
19 stop; take a break.

20 While we're in break, you can discuss
21 anything but your testimony. If you discuss your
22 testimony with someone, then I can ask you about
23 those discussions. Okay?

24 When this is over, if you would like to
25 read it, you just let the court reporter know.

1 She'll get you a copy. You can read it, make any
2 corrections, and sign it. Okay?

3 A. Okay.

4 Q. I'll be asking you some background
5 questions that you may, since you haven't been
6 through this process before, wonder why I'm asking
7 you those questions. They have to do with jury
8 selection in terms of relatives, employment, and
9 that sort of thing. So you'll know why those
10 questions are being asked.

11 So let's start out, please, ma'am, and
12 tell me where you live.

13 A. I live in Chester, South Carolina.

14 Q. What is your residential address?

15 A. [REDACTED].

16 Q. Do you have any relatives by blood or
17 marriage that live in York County?

18 A. No. I can't recall any. Oh, I got
19 a -- York, that's including Rock Hill and all that?

20 Q. Yes, ma'am.

21 A. I have a son and a daughter that live
22 here.

23 Q. Okay. What's your son's name?

24 A. Ronald.

25 Q. Ronald Hall?

1 A. No. Davis.

2 Q. Ronald Davis.

3 And a daughter. What's her name?

4 A. Carolyn Hall.

5 Q. And where does Mr. Davis live?

6 A. He live -- I forget the street, but he
7 live in those houses over there behind Lowe's.

8 Q. In Rock Hill?

9 A. Uh-huh.

10 Q. And is Ronald employed?

11 A. Yeah.

12 Q. Where does he work?

13 A. He work for a trucking company. He
14 drives. He work for Frito-Lay.

15 Q. Is Ronald married?

16 A. Yes, sir.

17 Q. What's his wife's name?

18 A. Twanda. T-w-a-n-d-a.

19 Q. And does she work outside the home?

20 A. Yeah. She do health care.

21 Q. Where does she work?

22 A. She do health work, health care work.

23 I don't know what company she work for.

24 Q. Do you know what kind of health care

25 she does?

1 A. She goes in people homes and clean up
2 and, you know, wait on them. They can't help
3 themselves.

4 Q. Now, how about your daughter,
5 Carolyn Hall? Is she married?

6 A. No, she's not married.

7 Q. Is Carolyn Hall employed?

8 A. Yes. She work for Frito-Lay. I'm
9 sorry. Kellogg's.

10 Q. And what does she do for them?

11 A. She's a supervisor.

12 Q. Is that the cereal company?

13 A. Yes, sir.

14 Q. And is she involved in sales or
15 production, or what area does she work for?

16 A. Production.

17 Q. And where does Carolyn Hall live?

18 A. I don't know the street, but she live
19 over there from Taco Bell in the apartments over
20 there off Cherry Road.

21 Q. Do either Ronald or Carolyn have any
22 children over the age of 18?

23 A. Yeah.

24 Q. Can you tell me Ronald's child or
25 children over 18?

1 A. Yeah. Angela Jones.

2 Q. That's Ronald's daughter?

3 MR. THOMPSON: I'm sorry. Did you say
4 Jones?

5 THE WITNESS: Jones.

6 And he got another daughter, Saterika.
7 Saterika Davis.

8 BY MR. BEIGHLEY:

9 Q. Saterika?

10 A. Yeah.

11 Q. Okay. And what's her last name?

12 A. Davis.

13 Q. All right. Ronald have any other
14 children?

15 A. Yeah. He have a little boy.

16 Q. And what's his name?

17 A. Jaron.

18 Q. Jaron?

19 A. Uh-huh.

20 Q. And last name?

21 A. Davis.

22 And Carolyn have -- oh. She have two
23 boys.

24 Q. All right. And what are their names?

25 A. Desmond Worthy.

1 Q. Worthy?

2 A. Uh-huh.

3 Q. Okay. And the other one?

4 A. Daryl.

5 Q. And what's his last name?

6 A. Worthy.

7 Q. Worthy?

8 A. But I also have four kids now. That's
9 only two.

10 Q. Right. What I'm interested in -- what
11 we're talking about now is the people that live in
12 York County, which would be York or Rock Hill or
13 somewhere else in this county. Do you understand
14 that?

15 A. Yes, sir.

16 Q. Okay. Is Angela Jones employed?

17 A. Yeah.

18 Q. Where does she work?

19 A. She work for Wells Fargo.

20 Q. Do you know what she does there?

21 A. I don't know.

22 Q. How about Saterika Davis? Does she
23 work?

24 A. She work but she just got a job. I
25 don't know what company she work for.