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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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

RECEIVED

APR 11 2016

SC Court of Appeals

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

.....

Appellant

v.

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

.....

Respondents.

RECORD ON APPEAL (VOLUME 1)

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

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

Attorneys for Respondents

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

Attorneys for Appellant

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4202404

Lisa Mckaughan William Farr Estate Of
Individually And As
Personal Representative

Upstate Lung And Sun-Yin Wan Md
Critical Care Specialists,
Pc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2132

Judge Code

Date

For Clerk of Court Office Use Only

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

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley

M Hope Blackley - Clerk of Court

Masha Long, DC

Court Reporter

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

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

Plaintiff,

-vs.-

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

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No: 2013-CP-42-_____

2013-CP-42-

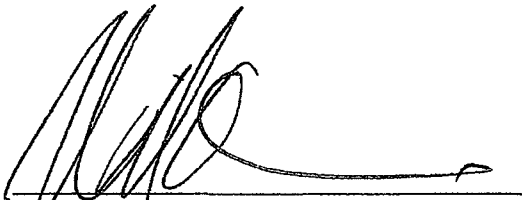
SUMMONS

(Jury Trial Demanded)

02404

TO THE DEFENDANTS IN THE ABOVE NAMED ACTION:

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


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

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

May 31, 2013
Rock Hill, South Carolina

RECEIVED
MAY 31 2013
MCKINNON

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

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

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Civil Action No: 2013-CP-42-_____

2013-CP-42-

02464

Complaint for Damages
Jury Trial Demanded

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

Plaintiff:

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

Defendants:

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

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

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

Jurisdictional Allegations and Venue

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

Factual Allegations Common to All Causes of Action

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

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

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

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

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

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

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

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

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

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

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

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

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

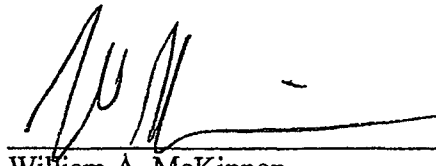
FOR A SECOND CAUSE OF ACTION
(Negligence, Gross Negligence and Recklessness as to all Defendants)
(WRONGFUL DEATH ACTION)

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

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

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

[SIGNATURE PAGE FOLLOWS]



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

Attorney(s) for Plaintiff

May 30, 2013
Rock Hill, South Carolina

FILED
JUL 1 2013
CLERK OF COURT
ROCK HILL, SOUTH CAROLINA

Exhibit A

10/27/2017
10/27/2017
10/27/2017

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

C.A. File No. _____

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

Plaintiff,)

vs.)

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

Defendants.)

2013-CP-42-02404

AFFIDAVIT

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

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

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

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

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

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

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

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

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

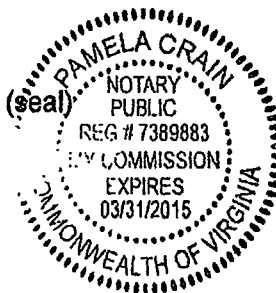
7. The factual basis for my opinion about the breaches of the standard of care by Dr. Wan and John Doe, Radiologist at this time are the medical records of William Farr. The factual basis of my opinions may be supplemented at a later time.

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


ROBERT A. HALVORSEN, M.D.

Sworn to and signed before me
this 17th day of September, 2012

Pamela Crain
Notary Public in and for
City: Richmond
County of Richmond
State of Virginia



Reg # 7389883
Exp March 31, 2015

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

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

Plaintiff,

-vs-

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

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 2012-CP-42-

2013-CP-42-52404

RESPONSES TO STANDARD
INTERROGATORIES

TO: ALL DEFENDANTS:

RESPONSES TO STANDARD INTERROGATORIES

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

RESPONSE:

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

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

Deloris F. Farr

**1506 Gunter Drive
West Columbia, SC 29169**

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

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

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

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

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

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

**Gibbs Surgical Oncology
101 East Wood Street
Spartanburg, SC 29303**

CLERK
JAN 11 2007
JAN 11 2007
JAN 11 2007

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

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

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

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

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

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

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

RESPONSE:

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

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

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

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

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

**Gibbs Surgical Oncology
101 East Wood Street
Spartanburg, SC 29303**

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

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

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

RESPONSE: None Known

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

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

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

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

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

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

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

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

RESPONSE:

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

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

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

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

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

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

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

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

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

Gibbs Surgical Oncology

FILED
CLERK OF COURT
JAN 11 2011
SPARTANBURG, SC

101 East Wood Street
Spartanburg, SC 29303

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

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



William A. McKinnon
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
(803) 328-5656 Facsimile

FILED
CLERK OF COURT
ROCK HILL, SC
JAN 10 2013

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

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

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

v.)

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

ANSWER OF DEFENDANTS

TO: WILLIAM A. MCKINNON, ATTORNEY FOR PLAINTIFF:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

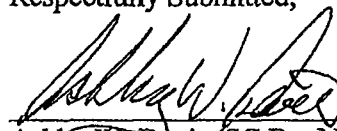
22. These Defendants deny the allegations contained in Paragraph 28 of the Complaint and demand strict proof thereof.

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

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

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

Respectfully Submitted,



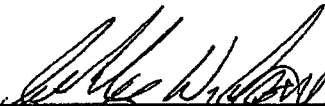
Ashby W. Davis (SC Bar No. 1560)
David L. Williford (SC Bar No. 73129)
DAVIS, SNYDER & WILLIFORD, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
(864) 335-3500

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

Greenville, South Carolina

August 1, 2013

THESE DEFENDANTS RESPECTFULLY
REQUEST TRIAL BY JURY.



Ashby W. Davis, Attorney for Defendants

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS

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

7 PLAINTIFF,)

8 vs.)

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

12 DEFENDANT.)

TRANSCRIPT

OF

RECORD

2013-CP-42-2404

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

15 B E F O R E:

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

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

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

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

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

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2		<u>Joint Exhibits</u>		
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4	J-1	Medical Records		
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P R O C E E D I N G S

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

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

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

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

MR. MCKINNON: I apologize, Your Honor.

THE COURT: That's all right.

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

(Pause.)

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

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

(Pause.)

1 MR. DAVIS: Sorry, Judge.

2 (Pause.)

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

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

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

17 THE COURT: Okay.

18 THE CLERK: It's finished.

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

20 Okay. Wonderful.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

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

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

4 MR. WILLIFORD: Yes, Your Honor.

5 May it please the Court.

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

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

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

25 The -- a couple months later the pathology specimens

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Those are the four factors the Court must consider.

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

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

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

10 MR. MCKINNON: Thank you, Your Honor.

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

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

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

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

10 (The Court nods affirmatively.)

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

13 THE COURT: Okay.

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

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

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

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

11 MR. MCKINNON: Thank you, Your Honor.

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

16 MR. MCKINNON: Thank you, Your Honor.

17 MR. WILLIFORD: Thank you, Your Honor.

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

19 Anything on the status of them?

20 THE CLERK: No, Your Honor.

21 THE COURT: Okay.

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

23 MR. WILLIFORD: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. WILLIFORD: Our second motion in limine is

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

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

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

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

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

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

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

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

13 MR. WILLIFORD: Thank you, Your Honor.

14 THE COURT: You want to do number three?

15 MR. WILLIFORD: Yes, Your Honor.

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

17 (The Court nods affirmatively.)

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

21 THE COURT: Okay.

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

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

4 MR. MCKINNON: No objection, Your Honor.

5 THE COURT: All right.

6 MR. WILLIFORD: Thank you, Your Honor.

7 THE COURT: And number four?

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

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

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

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

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

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

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

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

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

15 MR. WILLIFORD: Well---

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

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

3 THE COURT: All right.

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

5 THE COURT: Okay.

6 MR. WILLIFORD: Okay.

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

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

11 THE COURT: We do?

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

13 THE COURT: Okay.

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

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

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

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

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

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

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

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

1 details of Doctor Feldman's income.

2 MR. MCKINNON: Your Honor, very briefly.

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

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

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

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

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

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

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

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

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

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

11 THE COURT: All right.

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

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

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

24 MR. DAVIS: Thank you, Your Honor.

25 MR. MCKINNON: Thank you, Your Honor.

1 THE COURT: Be right back.

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

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

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

9 (Parties comply.)

10 THE COURT: Yeah.

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

15 THE BAILIFF: Yes, sir.

16 THE COURT: All right.

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

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

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

24 MR. CALLOWAY: 118 and 167.

25 MR. WILLIFORD: I believe 119 and 167.

1 MR. CALLOWAY: That's right.

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

3 THE COURT: 118 and one---

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

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

6 THE COURT: 119?

7 MR. WILLIFORD: 118 was---

8 MR. MCKINNON: Yes, sir, that's right. You are
9 correct. 119 and 167, Your Honor.

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

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

14 THE COURT: Certainly.

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

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

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

22 THE COURT: Good morning, ladies and gentlemen.

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

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

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

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

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

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

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

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

25 (Jurors comply.)

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

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

16 (Plaintiff complies.)

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

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

25 (No response.)

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

3 (Plaintiff complies.)

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

7 Doctor, if you will, please stand.

8 (Defendant complies.)

9 THE COURT: This is Doctor Wan.

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

15 (No response.)

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

17 (Defendant sits down.)

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

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

25 (Juror responds.)

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

2 THE JUROR: Eleven.

3 THE COURT: Give me just one moment.

4 (Pause.)

5 THE COURT: You're Mr. Boyd?

6 THE JUROR: Yes, sir.

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

11 THE JUROR: Yes, sir.

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

14 (Juror complies.)

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

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

1 Kurt McKaughan.

2 (Witness stands.)

3 THE COURT: Doctor Barry Singer.

4 Doctor William Woodruff.

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

6 Doctor Sarah Vidito.

7 Did I say that correctly?

8 MR. WILLIFORD: Vidito.

9 THE COURT: Vidito.

10 MR. WILLIFORD: Yes, sir.

11 THE COURT: Doctor Christophe Nguyen.

12 Doctor J. Thomas Latham.

13 Doctor Mark O'Rourke.

14 Doctor Greg Feldman.

15 Doctor Rosanna Lapham.

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

21 (Jurors respond.)

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

23 Yes, ma'am, your juror number?

24 THE JUROR: Thirty-eight.

25 THE COURT: You're Ms. Felton?

1 THE JUROR: Yes.

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

6 THE JUROR: No.

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

9 THE JUROR: Twenty-one.

10 THE COURT: You're Mr. Crocker?

11 THE JUROR: That's correct.

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

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

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

19 THE JUROR: Twenty-two.

20 THE COURT: Twenty-two.

21 You're Ms. Crowley?

22 THE JUROR: Yes, sir.

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

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

3 THE JUROR: No, it will not.

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

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

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

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

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

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

18 THE COURT: Thank you, gentlemen.

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

1 (No response.)

2 THE COURT: Thank you.

3 Has any member of this -- excuse me.

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

9 (Jurors respond.)

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

12 Your, your number?

13 THE JUROR: 226.

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

18 THE JUROR: No, it will not.

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

20 Yes, ma'am, your juror number?

21 THE JUROR: 202.

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

1 THE JUROR: No, it would not.

2 THE COURT: Thank you, ma'am.

3 Yes, ma'am, your juror number?

4 THE JUROR: 217.

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

9 THE JUROR: No, it would not.

10 THE COURT: Thank you, ma'am.

11 Yes, ma'am.

12 THE JUROR: 190.

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

16 THE JUROR: No.

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

18 Yes, ma'am, on the end?

19 THE JUROR: 109.

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

24 THE JUROR: No, it will not.

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

1 Yes, ma'am, your juror number?

2 THE JUROR: 230.

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

6 THE JUROR: No, sir.

7 THE COURT: Thank you, ma'am.

8 Yes, sir, your number again?

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

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

13 THE JUROR: No, sir.

14 THE COURT: Thank you, sir.

15 Yes, ma'am, in the blue.

16 THE JUROR: Number 149.

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

20 THE JUROR: No, sir.

21 THE COURT: Thank you, ma'am.

22 Yes, ma'am, in the red.

23 THE JUROR: Number 13.

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

1 Plaintiff and the Defendant a fair and impartial trial?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, ma'am.

4 Yes, ma'am, in the red.

5 THE JUROR: Forty-eight.

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

10 THE JUROR: No, sir.

11 THE COURT: Thank you, ma'am.

12 Yes, ma'am.

13 THE JUROR: 238.

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

17 THE JUROR: No, sir.

18 THE COURT: Thank you, ma'am.

19 Yes, ma'am.

20 THE JUROR: 121.

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

24 THE JUROR: No, sir.

25 THE COURT: Thank you, ma'am.

1 Yes, ma'am, in the stripes.

2 THE JUROR: Seventy-two.

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

7 THE JUROR: No, sir.

8 THE COURT: Thank you, ma'am.

9 Yes, ma'am, your juror number?

10 THE JUROR: 221.

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

15 THE JUROR: No.

16 THE COURT: Thank you, ma'am.

17 Yes, sir, your juror number?

18 THE JUROR: Sixty-four.

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

22 THE JUROR: No, sir.

23 THE COURT: Thank you, sir.

24 Yes, ma'am, your juror number?

25 THE JUROR: Sixty-eight.

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

4 THE JUROR: No, sir.

5 THE COURT: Thank you, ma'am.

6 Yes, ma'am, your juror number?

7 THE JUROR: 227.

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

12 THE JUROR: No, sir.

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

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

18 (No response.)

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

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

1 (Jurors respond.)

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

3 THE JUROR: Fifteen.

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

7 THE JUROR: No, sir.

8 THE COURT: Thank you, ma'am.

9 Yes, sir, your juror number?

10 THE JUROR: Nineteen.

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

16 THE JUROR: No, sir.

17 THE COURT: Thank you, sir.

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

21 (No response.)

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

1 (No response.)

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

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

12 (No response.)

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

17 (No response.)

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

21 (No response.)

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

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

2 (No response.)

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

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

10 (No response.)

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

17 (No response.)

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

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

22 THE COURT: All right.

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

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

1 MR. WILLIFORD: Yes, Your Honor.

2 THE COURT: You want to approach?

3 MR. WILLIFORD: Yes, Your Honor.

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

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

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

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

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

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

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

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

17 Mr. McKinnon.

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

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

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

24 Yes, ma'am.

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

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

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

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

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

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

15 THE COURT: Thank you very much.

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

18 MR. MCKINNON: Nothing, Your Honor.

19 THE COURT: Any from the defense?

20 MR. WILLIFORD: No, Your Honor.

21 THE COURT: Thank you, gentlemen.

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

1 (Pause.)

2 THE COURT: Let me see the lawyers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 But we'll stand at ease.

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

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

4 Yes, sir.

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

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

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

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

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

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

1 case.

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

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

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

25 On the last day that the Defendants could name an

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

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

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

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

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

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

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

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

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

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

6 THE COURT: Yes, sir.

7 MR. WILLIFORD: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 Thank you.

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

12 MR. WILLIFORD: Sure, Your Honor.

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

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

18 MR. MCKINNON: Standard of care expert.

19 THE COURT: -- standard of care expert?

20 What's Doctor Vidito?

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

23 THE COURT: And Nguyen?

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

1 THE COURT: Lapham?

2 MR. WILLIFORD: Treating surgeon.

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

5 THE COURT: O'Rourke?

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

7 THE COURT: Doctor Latham.

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

10 THE COURT: He's an expert?

11 MR. WILLIFORD: Yes, sir.

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

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

17 THE COURT: Thomas is the hired expert?

18 MR. MCKINNON: Yes, sir.

19 THE COURT: Rosanna is the treating?

20 MR. WILLIFORD: Correct.

21 THE COURT: Okay. All right.

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

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

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

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

19 Okay. Any questions?

20 MR. WILLIFORD: No, Your Honor.

21 THE COURT: Okay.

22 MR. CALLOWAY: Thank you, Your Honor.

23 THE COURT: Anything else?

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

1 THE COURT: What about your other issues?

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

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

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

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

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

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

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

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

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

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

6 MR. CALLOWAY: Sure. Sure.

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

9 MR. CALLOWAY: Thank you, Your Honor.

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

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

16 THE COURT: Okay.

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

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

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

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

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

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

3 THE BAILIFF: All right.

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

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

8 THE COURT: Okay.

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

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

14 MR. MCKINNON: Thank you, Your Honor.

15 THE COURT: We'll come right back.

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

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

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

1 two x-rays?

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

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

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

10 MR. MCKINNON: Yes, sir.

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

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

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

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

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

25 THE COURT: That's all right.

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

4 THE COURT: Sure.

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

7 THE COURT: Sure.

8 Do we need to bring down the screen?

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

11 THE COURT: Can you bring down the screen?

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

13 Do y'all?

14 I see how you do that.

15 (Pause.)

16 THE COURT: Okay.

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

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

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

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

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

1 it goes?

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

5 THE COURT: You want to approach?

6 Lawyers want to approach?

7 MR. WILLIFORD: Yes, sir.

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

9 THE COURT: So are you gonna use it?

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

13 THE COURT: Okay.

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

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

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

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

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

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

22 MR. MCKINNON: Yes, sir.

23 THE COURT: Thank you.

24 MR. MCKINNON: Yes, sir.

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

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

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

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

11 THE COURT: Thank you.

12 You may be seated, ladies and gentlemen.

13 (Jurors comply.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 MR. MCKINNON: None, Your Honor.

23 THE COURT: Any from the Defendant?

24 MR. WILLIFORD: No, Your Honor.

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

1 statements.

2 MR. MCKINNON: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 All right. Let me help you.

9 There we go.

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

12 That one's backwards. Flip it around.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 So I want you to think about that.

6 Is he gonna be biased?

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

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

11 I want you to think about that.

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

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

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

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

5 But you know what?

6 Smokers deserve good doctors too.

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

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

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

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

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

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

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

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

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

1 don't. Nobody does because he died.

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

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

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

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

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

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

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

20 Thank you, ladies and gentlemen.

21 Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. WILLIFORD: May it please the Court.

24 (The Court nods affirmatively.)

25 MR. WILLIFORD: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

10 So what is the Plaintiff's theory?

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

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

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

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

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

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

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

17 (Doctor Wan complies.)

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

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

1 internal medicine, pulmonology, and critical care.

2 Thank you, doctor.

3 (The Defendant sits down.)

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

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

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

16 Well, what is that?

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

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

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

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

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

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

1 well, what is occult?

2 Occult means hidden.

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

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

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

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

16 Now, could there be some underlying process?

17 Maybe.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 So what is the law?

22 What, what are you here to decide?

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

1 Judge Hayes.

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

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

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

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

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

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

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

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

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

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

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

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

5 A few more questions to consider throughout the trial.

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

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

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

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

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

25 Doctor Rosanna Lapham, the pathologist who did the

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

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

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

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

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

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

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

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

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

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

18 What is that?

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

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

3 Is it in favor of the Plaintiff?

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

5 Is it in favor of the Defendants?

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

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

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

22 Thank you.

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

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

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

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

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

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

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

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

18 MR. WILLIFORD: I understand.

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

21 THE COURT: Okay.

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

24 THE COURT: (Nods affirmatively.)

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

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

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

10 MR. WILLIFORD: I understand.

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

13 MR. WILLIFORD: Yes, sir.

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

18 MR. WILLIFORD: Yes, sir.

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

21 MR. WILLIFORD: Yes, sir.

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

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

1 THE COURT: All right.

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

4 MR. MCKINNON: Beg your pardon?

5 THE COURT: All the technical stuff is working?

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

8 THE COURT: Thank you.

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

11 MR. DAVIS: Yeah, I know.

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

14 MR. CALLOWAY: No.

15 MR. WILLIFORD: Okay.

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

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

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

21 MR. DAVIS: Absolutely.

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

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

Lisa McKaughan - Direct examination
by Mr. Calloway

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

3 MR. DAVIS: No, sir.

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

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

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

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

11 MR. DAVIS: Okay.

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

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

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

17 MR. CALLOWAY: We are, Your Honor.

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

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

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

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

Lisa McKaughan - Direct examination
by Mr. Calloway

1 there.

2 THE WITNESS: This one?

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

7 THE WITNESS: All right.

8 DIRECT EXAMINATION

9 BY MR. CALLOWAY:

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

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

13 A I'm Lisa Farr McKaughan.

14 Q And where do you live, Lisa?

15 A West Columbia, South Carolina.

16 Q How long have you lived there?

17 A Been there about 13 years.

18 Q And who do you live with there?

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

21 Q And how old is your daughter?

22 A My daughter?

23 Q Yes, ma'am.

24 A Five.

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

Lisa McKaughan - Direct examination
by Mr. Calloway

- 1 A She's been with us since my dad's death.
- 2 Q We're here today about a man, a man named William Farr.
- 3 Do you recognize that name?
- 4 A I'm sorry?
- 5 Q We're here today about a Mr. William Farr.
- 6 Do you recognize that name?
- 7 A That's my dad.
- 8 Q That's your dad.
- 9 Okay. I want to ask you just a few questions about
- 10 your father just to learn a little bit more about him.
- 11 Could you tell us, was he married?
- 12 A Yes, to my mom, 51 years.
- 13 Q Okay. And her name is?
- 14 A I'm sorry?
- 15 Q And her name is?
- 16 A Delores.
- 17 Q Okay. Let me ask this.
- 18 Where did they live together?
- 19 A Union, South Carolina.
- 20 Q How long they lived there?
- 21 A Forty-five years in the home that he passed away in,
- 22 forty-five years.
- 23 Q Was that your childhood home?
- 24 A But they lived their all their lives, yes, sir.
- 25 Q That was your childhood home?

Lisa McKaughan - Direct examination
by Mr. Calloway

1 A Yes.

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

4 Mr. Farr---

5 A I have a brother, Brian.

6 Q Okay. And where does he live?

7 A He lives in Boiling Springs, South Carolina.

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

10 What did he do for a living?

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

13 Q L&B for Lisa and Brian?

14 A (Witness nods affirmatively.)

15 Q Okay. And where was this store located?

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

18 Q How long did he have that store?

19 A How long did he have the store?

20 Q Yes, ma'am.

21 A He -- we built that in 1997.

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

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

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

Lisa McKaughan - Direct examination
by Mr. Calloway

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

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

3 A He worked for Conso in Union.

4 Q what did he do for them?

5 A Before that?

6 Q No.

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

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

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

14 A It is, but it was sold --

15 Q Okay.

16 A -- not long after his death.

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

19 what did he like to do?

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

Lisa McKaughan - Direct examination
by Mr. Calloway

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

3 A What did they do together?

4 Q Yes, ma'am.

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

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

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

22 Q Did your father attend church anywhere?

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

Lisa McKaughan - Direct examination
by Mr. Calloway

1 because I taught Sunday School there for many years.

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

3 A Yes.

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

6 A I'm, I'm sorry?

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

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

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

18 A What he had planned for for retirement?

19 Q Yes.

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

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by Mr. Calloway

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

4 A And my daughter?

5 Q Yes.

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

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

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

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

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

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by Mr. Calloway

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

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

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

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

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

13 Q Okay. Was he treated for that?

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

15 Q Okay. Did he recover from that?

16 A Oh yes.

17 Q Okay.

18 A Very well.

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

21 Any, any difficulties?

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

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

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

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by Mr. Calloway

1 difficulty breathing?

2 A When he started having difficulties?

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

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

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

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

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

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

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

25 Q So you were pregnant at the time?

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by Mr. Calloway

1 A Yes.

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

3 A I had, I had her just like about three, three weeks or
4 so after that, after that appointment.

5 Q Okay. What did you observe or what did you learn about
6 what had happened at that appointment and we're talking
7 about the appointment with Doctor Wan?

8 A Well, I just know, when I come home, I remember, you
9 know, sitting at the desk and calling him because, you know,
10 anytime I had spare time or on my break if I was working or
11 whatever I always called and he just proceeded to say that,
12 you know, of course, he went to the appointment and there
13 was an x-ray and that it was COPD.

14 Q And, after that appointment, did you notice or did you
15 observe anything about your father or any, any continuing
16 symptoms he may of had?

17 A Well, the, the breathing never did, you know, get any
18 better, but they had put him on a different kind of these
19 things that you could breathe, you know, you could squirt
20 like, like -- say like Symbicort or just different. I'm
21 just trying to think of the names of all the breathing
22 things that he had and different machines and then that was
23 when, you know, the next appointment, appointment when we
24 went to the, you know, oncologist.

25 Q Okay. And so now we're in -- after January 2010 and

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by Mr. Calloway

1 so -- for the next few months, what were your observations
2 of your father's health and -- at that time?

3 A Well, it just seemed like to me that, you know, the --
4 I just didn't really think the breathing was, was getting
5 any better, but I'm not a doctor. You just have to, you
6 know, pray and trust that, that, you know, they're giving
7 you the right information and that, you know, they say you
8 have COPD and use these inhalers and, and breathing and what
9 else can you do.

10 Q So that takes us into sort of the summer months at that
11 time. So let's, let's get to that point.

12 Are you -- what are you observing in your father as far
13 as his symptoms go at that point?

14 A Well, just shortness, more shortness of breath. You
15 know, just shortness of breath. I mean, you know, it was
16 just --.

17 Q Personally, were you concerned for his health at that
18 time?

19 A Yes, I most definitely was. I, I did everything known
20 to man. That was why, you know, we went on, you know, to
21 Doctor Vidito because she was the oncologist, but I wanted
22 him to take x-rays, you know, that day after that, and they
23 just said it wasn't one needed, you know. She just pretty
24 much said like the COPD and that was when it just kept
25 worsening and worsening and I just finally told daddy, I

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1 said, daddy, I know, you know, you get tired of going to all
2 these appointments, but you just gonna have to go to Doctor
3 Littlefield. I trust him. I had, you know, been around him
4 many years. I knew his reputation and --.

5 Q Let's talk for a second about the time -- what you
6 remember about his appointment or his visits to Doctor
7 Littlefield.

8 Tell us what you remember about that.

9 A Well, when he went to Doctor Littlefield when Doctor
10 Littlefield looked at him he automatically---

11 MR. DAVIS: Objection, Your Honor, as hearsay, what
12 Doctor Littlefield may say. He's not listed as a witness.
13 He's not gonna be testifying. It's hearsay.

14 THE COURT: Well, I, I mean if -- she can't testify as
15 to hearsay, but she has not said what he was gonna say yet.

16 You want to rephrase the question?

17 MR. CALLOWAY: Yes, Your Honor.

18 Tell us what you remember and what you observed about
19 your father's treatment with Doctor Littlefield during 2010
20 at that point in time.

21 A Well, all that, you know, I think all that, you know,
22 his health pretty much, you know, with Doctor Littlefield
23 was fine. But the breathing, you know, he, he did
24 automatically -- he made x, x -- you know, for x-ray.

25 Q Okay. And, and what were you observing in your father

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1 at that time?

2 still struggling or was he having symptoms?

3 A Yes, it was even, you know, it was even worsening, you
4 know, even more.

5 Q Okay. How so?

6 A Enough to where I was starting to panic --

7 Q Okay.

8 A -- you know. I just was, you know, I was running
9 around, you know. I had to get to him -- to some doctor
10 that was, you know, gonna tell us what was going on.

11 Q All right. Okay. So that takes us sort of towards
12 the, towards the Fall of 2010, and, at that point in time,
13 who was he going to see or what was, what was going on to
14 continue to treat his condition?

15 A In October?

16 Q Yes, ma'am.

17 A When October -- after -- when we saw Doctor
18 Littlefield, he had him to go do the x-ray, and then like
19 a -- it was like a day or two, it was just a short while
20 after that, we got a call to come back up there and I knew
21 cause I even called Doctor Littlefield myself and I was, you
22 know, saying please just help me. You know, I just didn't
23 even want to wait. You know, I was just -- I -- you know,
24 you, you just know.

25 Q You were present at the -- were you present at that

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1 appointment?

2 A (Witness nods affirmatively.)

3 Q Could you describe for the jury what that appointment
4 was like with you and your father there?

5 A Well, when we went that day and they said that---

6 MR. DAVIS: Objection, Your Honor. They said, that's
7 hearsay.

8 THE COURT: I would sustain the objection.

9 MR. DAVIS: Thank you, Your Honor.

10 Q Just, Lisa, if you would, just tell us what you
11 remember about the appointment while you were there.

12 Not telling us specifically what someone said, but your
13 observations of your father and the treatment he was
14 receiving at that appointment.

15 A Well, his breathing was still worsening and we had to,
16 from that, go to a lung specialist because what was on the
17 x-ray was big.

18 Q And did -- were -- did he receive a diagnosis at that
19 point?

20 A When we went to the lung doctor, yes.

21 Q What was the diagnosis?

22 A That it, it was, it was lung cancer and it was a
23 9-centimeter.

24 Q Okay. Tell us if, from what you observed, how that
25 news affected your father.

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by Mr. Calloway

1 A I just remember him, you know, just sitting there, you
2 know, listening. I had asked for a comparison from January
3 till then, but there, there wasn't one to compare it to.

4 Q Now let's explain -- let's talk about that for a first
5 second.

6 When you say you asked for a comparison, what do you
7 mean?

8 A That's correct, and I -- and we knew that, but they
9 said there was nothing to compare it to.

10 Q Are you talking about the x-rays?

11 A (Witness nods affirmatively.)

12 Q So you asked for what exactly?

13 A I wanted to compare the one that Doctor Wan did in
14 January to the one in October.

15 Q Okay.

16 A But we were told there was nothing to compare---

17 MR. DAVIS: Objection, Your Honor.

18 A ---it to.

19 THE COURT: Sustain---

20 MR. DAVIS: Hearsay. I---

21 THE COURT: Sustain the objection.

22 MR. DAVIS: Thank you, Your Honor.

23 Q Were they able to compare the January 2010 x-ray to the
24 x-ray taken later in the year?

25 A You can't compare something if you don't have it there

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1 to compare it with.

2 Q Okay. Lisa, did you ever have an opportunity to, to go
3 to Upstate Lung, the place where Doctor Wan works?

4 A After my dad passed away.

5 Q Okay. For what purpose?

6 A Because after, you know, I, I knew that something
7 wasn't right and I went there. I was the executor and I
8 went there for the x-ray and they said there wasn't one
9 there.

10 Q Okay. You went to find it and they told you there was
11 no x-ray?

12 MR. DAVIS: Objection.

13 A They said there wasn't one.

14 MR. DAVIS: Now he's eliciting hearsay.

15 THE COURT: All right. I, I will allow that one cause
16 that's a party.

17 MR. DAVIS: All right. Thank you, Your Honor.

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

19 Q Going back to, to 2010 after his diagnosis -- well, let
20 me just ask you this.

21 How does the diagnosis affect you when you heard that
22 he'd been diagnosed with cancer?

23 A How did it affect me after the nine---

24 Q Yes, just to, just to hear the news.

25 A Well, you just start grasping for any straw that you

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1 can. You know, just, just, you know, you just want to hear
2 anything positive. You just, you just grasping and you just
3 researching and you just calling. You just, you just doing
4 everything you can. It was -- you know, I -- thank God for
5 Victoria and for Kurt. It was all I had for many years.
6 That's your mama and your daddy. You just get one.

7 Q And then you -- do you remember a surgery that he had
8 in December of 2010?

9 A (Witness nods affirmatively.)

10 Q What do you remember about his demeanor and his
11 experience through that surgical procedure and his recovery?

12 A Well, I, you know, I had met with, you know, Doctor
13 Nguyen personally. With them -- without my dad. And I
14 just, you know, just wanted just to -- I guess I just wanted
15 him to say everything was gonna be all right, you know, and
16 we'll have the surgery and your life will go back to normal.
17 But no lung cancer in a 9-centimeter is good. I don't care
18 who you are.

19 Q Did your father receive any care after the surgery for
20 the cancer in his right lung?

21 A He did. We went through, you know, the chemotherapy
22 and radiation. I took him down to Charleston. You know,
23 again, like I said, I was just, I was just grabbing at any,
24 you know, anything I could do, and, you know, he, he went
25 through the chemotherapy. But the radiation, I even called

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1 the radiation place myself and like if, if a day I couldn't
2 go, if he had somebody to drive him, because I was coming
3 back and forth to Columbia and I was up here all the time.
4 Don't, don't get me wrong, it was, it was everyday. But it
5 just burnt him up so bad it went all the way through him and
6 all the way through his back, out his back just like he was
7 shot.

8 Q Do you -- did you have an opportunity to observe your
9 father on those chemotherapy days when he was going through
10 the treatments?

11 A Yeah, I went with the -- I went to all the
12 chemotherapy, sit right with him. Sit right with him the
13 whole time.

14 Q And what did you, what did you observe when you saw him
15 going through those therapy---

16 A Well, I mean, you know, it's a sad situation. You have
17 other people there and, you know, that you can sort of, you
18 know, talk to and sympathize with. But, you know, what it
19 is is what it is.

20 Q Going forward from December 2010, did he continue to
21 have or did he have any additional issues with his lungs
22 after that?

23 A Did I have any history --?

24 Q Did he have any additional issues with his lungs after
25 that surgery in December 2010?

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by Mr. Calloway

1 A I mean, after the surgery, my, my dad never -- I mean
2 he just -- he, he was just not the same person. He just
3 never -- I mean, you know, it just, it just went downhill
4 and it just went downhill fast.

5 Q How so?

6 what was different about him?

7 A Well, I mean, you know, you just weak and I'm -- you
8 know, you just -- you know his breathing, he'd have to, you
9 know, sit up in a recliner. You know, he would have such
10 bad -- they'd call them labor pains so bad, you know, we
11 would just have to call, you know, nine -- 9-1-1 for the
12 ambulance to come, you know, to take him, you know, to the
13 hospital. You know, it just, it just, it just -- it's a,
14 it's a sad terrible, terrible death. There's no two ways
15 about it. It's, it's awful.

16 Q And in those last or after the December 2010 surgery
17 and up till the time of his death, was he still able to do
18 the things that he was able to do before, before the surgery
19 and like we talked earlier like the, the fishing and those
20 hobbies that he use to do?

21 A No, because see he had -- you know, we was having an
22 oxygen tank. So he was on oxygen and no, he couldn't, you
23 know, drive anymore and, you know, he was -- like I said, he
24 was use to going to his garden. I mean he, he just -- he
25 didn't have, he didn't have the energy to. He just didn't.

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by Mr. Calloway

1 Q Was he still able to do the work at the store and the
2 things like that?

3 A No, sir.

4 Q Why not?

5 A Well, I mean he wasn't able. He was just, he was just
6 real, real, you know, just limp. Just -- I mean he didn't
7 have any weight on him. I remember, you know, just sitting
8 there watching him trying to peel like a little, you know, a
9 little tangelo or clementine. I remember we would come back
10 on Sundays and, you know, my mother would cook a Sunday
11 dinner, and I'm -- you know, him trying to still fix people
12 dinner around our home that didn't have before he ate
13 hisself. He wasn't able to do it.

14 Q Did it affect -- his illness, did it affect his
15 relationship with your mother?

16 A I'm sorry?

17 Q Did his illness affect his relationship with your
18 mother at that time?

19 A Well, yes, because she was disabled and, you know, I
20 mean I went to all the appointments. She really couldn't,
21 you know, go. I had to go. But I mean he -- my mother was
22 dependent on him. But now that he's gone, I told him not to
23 worry. Not that I was expecting him to go anywhere, you
24 know, cause you don't want to talk like that. But I told
25 him not to worry about mama, that she would go with us and

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by Mr. Calloway

1 she's been with us ever since.

2 Q Now, Lisa, was there a time that came where he began to
3 have problems with his left lung?

4 A The cancer was always there. They done biopsies. I
5 remember talking to the lung doctor and, you know, was just
6 trying to understand what in the world, you know, was going
7 on. I'm gonna be honest with you. I fussed at my dad for
8 smoking, but they got onto me for getting onto him because
9 they said it was the way that you cope in his, in his stage.
10 It was just a way to cope with it. It didn't -- it wasn't
11 gonna matter if he stopped then or not.

12 I, I was doing everything known to man. But then they
13 started getting onto me at the hospital. So --.

14 Q And this may be difficult, but I want to talk about, if
15 we can for just a moment, sort of the last few months of his
16 life.

17 Can you tell me what his general health or what his
18 experiences were during that period of time?

19 A At the last couple months?

20 Q Yes, ma'am.

21 A Jesus. I mean it was, it was just sad. It was
22 pitiful. It was -- I mean it was, it was tragic because,
23 you know, him, you know, him just grasping, you know, for,
24 you know, for the breath and it just, you know, it just --
25 it -- just the spells that he would have cause it's -- you

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1 know, you just think if you're holding your breath or
2 whatever and you're fighting, you know, you're just fighting
3 for your breath, and I just remember, you know, going
4 outside on the driveway just wanting to crawl up somewhere.
5 You just want to go hide, you know, cause there's nothing
6 you can do.

7 That's one time there's no policeman, you know, no, no
8 politician. There's nobody, nobody, not even your best
9 friend, and people that was good to him that I could even go
10 on and say help us now. I mean there was nothing you could
11 do and he wound up, you know, at the last, they had took him
12 so many times that they, you know, finally put him in
13 Hospice.

14 Q From your observations, did he appear to be in pain?

15 A Was he in pain?

16 Q Yes, ma'am.

17 A Yes, sir, he was. He was fighting for his life, but,
18 you know, that's why, when, when you go, they, they give
19 you -- and you go to Hospice, they give you the Morphine
20 because the -- they're suppose to, you know, help you, I
21 guess, tell your brain that, you know, you can breathe.
22 They suppose to put you at ease a little bit just like I
23 guess if you break a bone or whatever and it tells you, you
24 know, if you take pain medicine and that your bone's not
25 broke. But --.

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by Mr. Calloway

1 Has your family sustained any, any losses, any monetary
2 losses as a result of your father's death?

3 A I think the medical bills after the surgery was about
4 583,000 of the total of them. There---

5 Q Well, we'll get into those and specifically in just a
6 second.

7 What about his funeral?

8 Was there a funeral for your father?

9 A Oh, my God. It was, you know, about -- I guess just
10 for the funeral home alone, about 10,000, and then, you
11 know, you have another like four or so in the marker and --.

12 Q And we'll get to the medical bills in just a second.
13 But let me ask you about just from this prospective.

14 What has been the effect of your father's death on you?

15 A What has it affected me?

16 Q Yes, ma'am.

17 A Well, your life is never the same. If you, if you, if
18 you've lost a mama or dad, you know. If, if you hadn't,
19 just enjoy them while you can cause, you know, none of us
20 ever -- when we born, we, we get to -- we know everyday
21 we're born to die. That's one thing that's gonna happen to
22 all of us.

23 But, you know, I just, you know, married later in life,
24 and I was always right there with them, you know, taking him
25 to his appointments, doing whatever, and then, when I moved,

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by Mr. Calloway

1 I met Kurt and I had Victoria and I thought well, gosh, we
2 really gonna start living now. You know, I'll start seeing
3 what all my, you know, my friends had and, and, you know,
4 have Christmases and, and all of that happened.

5 But, you know, when the Lord takes something from you
6 he'll give you something back and I do have Victoria and I
7 have Kurt. I have a lot to be thankful for. I don't want
8 y'all to, you know, just think I'm here wanting to -- you to
9 feel sorry for me. It's not that. It's just right is right
10 and wrong is wrong. That's why I'm here.

11 Q You mentioned your daughter.

12 Does, does your daughter remember her grandfather?

13 A I'm sorry?

14 Q Does your daughter remember her grandfather?

15 A She says she does. I had, you know, some principals
16 that I'm close to said now, if you keep, you know, showing
17 her pictures and talking about him she'll remember him and I
18 have, you know, some pictures of them together in, in her
19 room at home and, of course, you know, we're staying in our
20 hometown, you know, this week in my home and I'll try to
21 tell her things you know. I got pictures out last night,
22 you know, of her first and second Christmas and just
23 reminiscing and --.

24 Q Let's both ask or talk for just a moment about the, the
25 medical bills.

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by Mr. Calloway

1 Are you claiming that there are medical bills that are
2 damages that you're claiming in this lawsuit against the
3 defendant?

4 A Yes, sir, I think it's like 583 or something, something
5 like that.

6 MR. CALLOWAY: And, Your Honor, the, the -- if I could,
7 we've got the documents which have been premarked.

8 I'm looking -- and I'll show -- excuse me for a second.
9 (Pause.)

10 Q This is what's been marked as Plaintiff's Exhibit 1,
11 and, Lisa, I'm gonna hand you this document and ask you if
12 you recognize that document.

13 A Yes, sir.

14 Q What is that document?

15 A It says Upstate Lung and Critical Care medical bills.

16 Q I'm gonna hand you another document. This is what's
17 been marked as Plaintiff's Exhibit 4. Take that if you
18 don't mind. I'll take what you've got in your hand.

19 A Oh, yeah, take that one.

20 Q Yes, ma'am. Thank you.

21 Do you recognize those documents, ma'am?

22 A Yes, sir, all these are his I mean.

23 Q What are those just in general?

24 A They're just, you know, bills through, through the lung
25 cancer.

Lisa McKaughan - Direct examination
by Mr. Calloway

1 Q Are those medical bills for the treatment your father
2 received for his lung cancer?

3 A Uh-huh. (Affirmative).

4 Q Okay.

5 A Yes, sir.

6 Q Okay. If you'd look at the last tab there, Tab 6 of
7 Document 4, the last tab in the document you have, the
8 largest group of documents.

9 Do you see that?

10 A Uh-huh. (Affirmative).

11 Q Okay. Are those the medical bills for your father from
12 Spartanburg Regional Medical Center?

13 A That's Upstate Lung.

14 Q Last tab. Right here, that big long document.

15 Are those documents from Spartanburg Regional Medical
16 Center?

17 A Oh, yeah, cause it says Doctor Nguyen, yes, sir.

18 Q Okay. And we've done the calculations.

19 Have you had an opportunity before to review those
20 documents?

21 A Uh-huh. (Affirmative).

22 Q Okay. And we've done the calculations and would you
23 agree that it appears the total calculations of the, the
24 medical bills from Spartanburg Regional Medical Center for
25 after the first surgery till the time of your father's death

Lisa McKaughan - Direct examination
by Mr. Calloway

1 totaled five thousand -- \$553,882.93?

2 A Yes, sir.

3 Q Okay. If you would go to the tab immediately preceding
4 that, Doctor Littlefield's bills. It will be marked with
5 Littlefield in the bottom right-hand corner, but it's the
6 tab immediately preceding the Spartanburg Regional tab.

7 Do you see those?

8 A I see. There's so many here.

9 what tab did you say?

10 Q It's the one immediately preceding the---

11 A Cause it's---

12 Q ---Spartanburg Regional.

13 A Doctor Mehta after.

14 Q Okay. Immediately preceding. Before that. Before all
15 the Spartanburg ones.

16 A My goodness. There's so many.

17 Q Do you see those documents?

18 A Yes, sir.

19 Q Do those appear to be your father's medical bills from
20 his treatment with Doctor Littlefield?

21 A Yes, sir.

22 Q And, again, for the sake of the math, would you agree
23 that the amount of the bills for Doctor Littlefield's
24 treatment for, for your father, after this first surgery, is
25 \$8,400?

Lisa McKaughan - Direct examination
by Mr. Calloway

1 would you agree with that?

2 A Uh-huh. (Affirmative).

3 Q Okay. If you would look at the tab before that?

4 A (Witness complies.)

5 Q Okay. Do those appear to be the, the records from
6 Palmetto, Palmetto Hematoma, excuse me, Hematology and
7 Oncology?

8 Do you see those documents?

9 A Yes.

10 Q And, again, for the math sake, would you agree that the
11 amount of those medical bills for your father's treatment is
12 \$10,417.37?

13 A Yes, sir.

14 Q Okay. And one final one in a previous tab there. It's
15 the bill for Carolina Medical Affiliates.

16 Do you see that document?

17 A Yes, sir.

18 Q Okay. Would you agree, for math's sake, that the
19 amount of the bills for your father's treatment from
20 Carolina Medical Affiliates is \$10,846?

21 A Yes, sir.

22 Q Okay. And, again, for the total for those four bills
23 would be \$583,546.30?

24 Is that your understanding?

25 A Yes, sir.

Lisa McKaughan - Direct examination
by Mr. Calloway

1 MR. CALLOWAY: Your Honor, if you -- I'd beg the
2 Court's indulgence for just one second.

3 (Pause.)

4 Q One thing I want to clarify at this point is as it
5 relates to -- I think you had mentioned earlier a time when
6 you visited Upstate Lung.

7 Is that correct?

8 A (Witness nods affirmatively.)

9 Q Let me just clarify and make sure I understand.
10 what was your purpose of going to Upstate Lung at that
11 point?

12 A I was going there to get the x-ray.

13 Q why?

14 A Because I just knew in my heart that one had been taken
15 in January.

16 Q Okay. And what you -- once you got there, what were
17 you told by the Defendants?

18 A That they didn't have one.

19 Q Did they look for it?

20 A (Witness nods affirmatively.)

21 They just said there just wasn't one there.

22 Q That one had not been taken?

23 A There was no record whatsoever of any x-ray been taken
24 there.

25 MR. CALLOWAY: Okay. Your Honor, at this time the

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Plaintiff has no further questions.

2 THE COURT: Yes, sir.

3 MR. DAVIS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. DAVIS:

6 Q You have those x-rays today?

7 A I'm sorry?

8 Q You have those x-rays, the original x-rays taken by
9 Doctor Wan on January 11th, 2010?

10 You've got those, don't you?

11 A I do.

12 Q You've had them for sometime, haven't you?

13 A Yes, sir.

14 Q No question they're the original x-rays?

15 A Yes, sir, I went and picked them up myself.

16 Q And these are, these are the ones that Mr. McKinnon
17 showed the jury right here, Exhibit 5?

18 A Right.

19 Q Okay. So you're not suggesting that they, they somehow
20 didn't exist at some time, are you?

21 A Correct. They did say that, yes, sir.

22 Q But they're right there?

23 A But that---

24 Q You have them?

25 A They wasn't from the start.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Q You have them?

2 You got them?

3 A I do now.

4 Q You got them and turned them over to your lawyer?

5 A I do now.

6 Q Right?

7 A Yes, sir, I do now.

8 Q Okay. Okay. What is COPD?

9 A It's something commonary (phonetic) pulmonary. It's --
10 I mean I know what it is. It's like emphysema. It's, you
11 know, with the breathing.

12 Q Constructive -- excuse me.

13 Chronic Obstructive Pulmonary disease.

14 Does that sound right?

15 A Uh-huh. (Affirmative).

16 Q And your father had been diagnosed with COPD for
17 sometime prior to his death?

18 Yes?

19 A I did not hear of him having COPD until he went to
20 Doctor Wan.

21 Q Okay. So Doctor Wan diagnosed your father---

22 A Correct.

23 Q ---as having COPD as far as you knew?

24 A Correct.

25 Q Because you had a conversation with your father

Lisa McKaughan - Cross-examination
by Mr. Davis

1 sometime after his visit to Doctor Wan and, and he told you,
2 your father did, that Doctor Wan took an x-ray and, a chest
3 x-ray, and told me I had COPD?

4 A Correct. Yes.

5 Q Did your father also tell you that Doctor Wan had
6 recommended that he stop smoking?

7 Did, did he tell you that?

8 A He -- I mean it -- he told her -- he knew that -- I
9 mean everybody, you know, wanted him to quit smoking.

10 Q Yes, ma'am.

11 Did your father tell you, when he told you of the visit
12 with Doctor Wan, that Doctor Wan had strongly advised,
13 encouraged your father to stop smoking, that -- the lung
14 doctor that told him?

15 Did he tell you that?

16 A No, he did not. He told me that she did an x-ray and
17 he said it was COPD.

18 Q Did, did your father tell you that Doctor Wan, on
19 January 11th, 2010, first time -- the only time he's --
20 she's ever seen him, did your father, in talking to you
21 about that visit with Doctor Wan, tell you that Doctor Wan
22 had given him a prescription for Chantix to help him, a
23 prescription to help him stop smoking?

24 Did, did your father tell you that?

25 A He did take Chantix. He did.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Q So did your father tell you that Doctor Wan gave him
2 that prescription?

3 A I knew that he had Chantix, but I didn't know if it was
4 from the oncology doctor or if it was from her. I'm sorry.
5 I didn't know which one.

6 Q Okay. Did your father also tell you that Doctor Wan
7 had said I want to see you again in six months?

8 January -- I want to see you in six months?

9 Did he tell you that?

10 A He did, but I made that decision not to go back there.

11 Q I see.

12 You were not present with your father at the visit to
13 Doctor Wan on January 11th?

14 You didn't go to, to---

15 A No, I did not go to that one.

16 Q You didn't go.

17 You, you didn't -- you never met Doctor Wan?

18 A No.

19 Q You didn't go to the visit with your dad on that day?

20 A Did I go visit him?

21 Q No, you didn't go to that office visit.

22 A No, I did not, no, sir.

23 Q Nobody went with your father but your dad alone to
24 Doctor Wan?

25 A Yes, he went to that alone.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Q And he'd been sent to Doctor Wan by Doctor Vidito---

2 A Uh-huh. (Affirmative).

3 Q ---an oncologist who practices with Doctor Bearden who
4 treated your father for the colon cancer?

5 A Correct.

6 Q Is that right?

7 A That's right.

8 Q Okay. Before your father was diagnosed with his right
9 lung cancer in November of 2010 he had another chest x-ray
10 done by some Doctor, Littlefield or somebody.

11 Correct?

12 A Doctor Littlefield sent him to have a x-ray.

13 Q All right. So he had, he had another chest x-ray done?

14 A Correct.

15 Q The next thing he had done was a CT Scan, right?

16 A Right.

17 Q The next thing he had done was a PET Scan, a kind of
18 more sophisticated imaging, right?

19 A Uh-huh. (Affirmative).

20 Q The next thing he had done was a bronchoscopy where
21 they, they stick a lighted scope down into his lungs and
22 look around directly into his lungs?

23 A Uh-huh. (Affirmative).

24 Q He had that too, didn't he?

25 A Correct.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Q And after all those things -- and, and they did some
2 brushings in that bronchoscopy where they took some, I guess
3 a brush or something, and they, they sort of swept up some
4 cells from inside his lung and they put those on a slide and
5 they gave him to a pathologist to read those cells under a
6 microscope?

7 Do you remember that?

8 A I remember looking at the PET Scan at the hospital
9 myself and seeing the light that went off right there at his
10 lung.

11 Q Right.

12 And so that's where they took some cells in the
13 bronchoscopy later?

14 Do you remember that?

15 Do you remember being told about that or hearing about
16 that or anything?

17 A I was right there when they did that biopsy.

18 Q Were you there when the cytologist looked at the cells
19 that they took out from inside your father's right lung?

20 Were you there when the pathologist spread those cells
21 out on a, on a microscope on a slide and looked at them
22 under a microscope?

23 Were you present when that happened?

24 A I sure was and I was there when they said it was a
25 9-centimeter tumor.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Q Right.

2 will you agree with me, ma'am, that, after the chest
3 x-ray, the CT Scan, the PET Scan, the bronchoscopy, and the
4 cytology, he still did not have a diagnosis?

5 A No, sir, I do not agree with you at all---

6 Q All right. Tell me---

7 A ---and I am under oath.

8 Q I know you are.

9 A No, sir, I do not.

10 Q I know.

11 Tell me your best recollection who was it that first
12 told your father you have lung cancer?

13 A Doctor Cruz, the lung specialist.

14 Q And, and when was that if you, if you remember?

15 A It was in the Fall after we had -- because it's, it's
16 steps. It order. It's steps that you have to go through --

17 Q Right?

18 A -- for them to, to say, you know, exactly what it is
19 and what centimeter. But I was with him and it was in the
20 latter part of the Fall of that.

21 Q November?

22 A I mean it was getting cool weather. It was cool
23 weather.

24 Q November?

25 If the medical records show it was sometime in November

Lisa McKaughan - Cross-examination
by Mr. Davis

1 would that be -- sound about right to you?

2 A Well, that -- well, October. Then by the time -- and
3 then November. That's probably true, yes, sir.

4 Q All right. And so you're not telling this jury that,
5 that, that the chest x-rays that was performed in the Fall
6 diagnosed cancer and somebody said oh, you -- your dad's got
7 lung cancer based on that chest x-ray?

8 You're not telling the jury that, are you?

9 A They told me that whatever was there was big. That was
10 their exact words.

11 Q Did anybody diagnose and tell you or your father, that
12 you're aware of, that based on x-ray, chest x-ray done in
13 the Fall of 2010, that your father has lung cancer?

14 A Yes, Doctor Cruz did. He told us plainly. We were
15 called there. He told us there that he had lung cancer.

16 Q Okay. And, and we'll look at his medical records with
17 the jury later.

18 Okay?

19 A Okay.

20 Q And are you telling me that after the CT Scan somebody
21 told you or your father that he has lung cancer?

22 A When we -- after he -- after we went to Doctor
23 Littlefield Doctor Littlefield sent him to the x-ray and
24 they called us in and they said whatever is there is big.

25 Q Right.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 A There's steps that you have to take before you get to
2 that point.

3 Q Right.

4 A That was why they were doing the CT Scan and they were
5 doing the PET Scan. When you take the PET Scan you drink
6 the, the -- like the water with the sugar and that detects
7 if there's cancer. That's what makes the light go off. And
8 then, after that, they do the biopsy and then, after that,
9 that was when we were called into Doctor Cruz and that was
10 when he told us that it was lung cancer and it was a
11 9-centimeter.

12 Q Sometime in November best you recall?

13 A Sir, if -- I mean I know that it was cool weather cause
14 I remember coming.

15 Q Do you remember your father having two bronchoscopies
16 by Doctor Cruz, a pulmonologist, in the Fall of 2010?

17 A He -- they did a couple of -- they called it like going
18 down in there to get a -- trying to get a piece of it to see
19 what it is.

20 Q Yes, ma'am.

21 A And they were very thorough.

22 Q Right.

23 A But we were told plainly by him that it was a
24 9-centimeter, and before that, whatever was on the x-ray,
25 they not just gonna go say what it is, you know, but it was

Lisa McKaughan - Cross-examination
by Mr. Davis

1 big. But it was a 9-centimeter tumor.

2 Q Is it your understanding that Doctor Cruz was the first
3 doctor that informed you and your father that he had lung
4 cancer after his second bronchoscopy by Doctor Cruz?

5 Is that your understanding?

6 A Yes, he told us that it was lung cancer, correct.

7 Q And did you go to your -- with your father to the
8 Medical University of South Carolina in February of 2011
9 after his surgery by Doctor Nguyen on December 2, 2010?

10 Did you go with him down there to Charleston?

11 A After the surgery?

12 Q Yeah.

13 A After Doctor Nguyen's surgery?

14 Q Right.

15 A Did I go where?

16 Q To the Medical University of South Carolina in
17 Charleston.

18 A Oh, yes, we -- I took him. Yes, sir, I was the one
19 that made that appointment, got all the records myself.
20 Doctor George Simon.

21 Q Why did you go to MUSC?

22 A Because I thought I could go down there and get Tarceva
23 and it save his life---

24 Q Excuse me?

25 A ---and that wasn't the case.

Lisa Mckaughan - Cross-examination
by Mr. Davis

1 Q I'm sorry. I apologize.

2 To get what?

3 I didn't catch that.

4 A I wanted to go down there and just get Tarceva. Like I
5 was telling the jury, you're just running and grasping at
6 every straw that you can, and, for some reason, I had put in
7 my head that Tarceva was this, you know, magic, you know,
8 drug that you could take, and, you know, I was just hoping
9 that he could be like a candidate or something for that.
10 But, you know, he wasn't and they just said that the, the
11 treatments that they were doing, you know, you know, were
12 fine treatments and then we went back and proceeded to
13 chemotherapy and the radiation.

14 Q Where did you learn about Tarceva?

15 Am I pronouncing that correctly, Tarceva, whatever that
16 is?

17 I don't know.

18 A Tarceva. Tarceva.

19 Q Is that what it is?

20 I'm sorry.

21 A Uh-huh. (Affirmative).

22 Q Where did you, where did you learn about that?

23 A It's a very expensive cancer drug and it's just
24 basically, you know, it's just according on, you know, who
25 was a good candidate or, or who, or who's not or, you know,

Lisa McKaughan - Cross-examination
by Mr. Davis

1 if they're doing these studies, you know, or, or if they,
2 you know, feel that you're a good, good candidate and I
3 just -- that was just, you know, what I had in my head.

4 And, like I said, I had, you know, asked different
5 doctors what makes one university better than the other,
6 what makes one doctor better than the other, what makes one
7 better than the other or, in my case, what makes one
8 esthetician better than the other.

9 Q What, what -- what's an, what's an---

10 A And---

11 Q What's an esthetician?

12 I'm sorry.

13 A I'm sorry?

14 Q What's an esthetician?

15 A A skin care specialist.

16 Q Is that, is that what you do?

17 A Uh-huh. (Affirmative).

18 Q Okay. All right. I'm sorry.

19 A And I just had, you know, read about that myself and I
20 wanted to go for a, you know, a second opinion, and there
21 were other doctors that I respected too to the utmost to
22 this day that, you know, talked with me about taking him,
23 you know, down there and what it was is what it was.

24 You know, again, when you've got lung cancer, it's not
25 good, especially a 9-centimeter. That is one time -- cancer

Lisa McKaughan - Cross-examination
by Mr. Davis

1 don't discriminate. It doesn't and it's, it's not good.
2 But, again, you just still grasping at any straw you can
3 get.

4 Q So you, you -- you're the one that got your father
5 lined up for a second opinion at the Medical University of
6 South Carolina in Charleston?

7 A I did the research myself and did that. I did.

8 Q All right. And as a part of that second opinion and
9 the whoever doctors that spoke to you or your father when
10 you went down there, do, do you understand that, that MUSC
11 had requested that the original pathology slides from your
12 father's surgery by Doctor Nguyen when he took out the right
13 lung cancer that they -- the pathologist from MUSC said we
14 want to, we want to send us those original slides under --
15 so we can look at them?

16 You know -- you understand that that's what's happened?

17 A Well, we -- they wanted more than that. I mean---

18 Q Right.

19 A ---I had to get all of his---

20 Q Right.

21 A ---records sent.

22 Q Including those original slides. I think it was Doctor
23 David Wren here in Spartanburg looked at it under the
24 microscope following your father's right lung cancer surgery
25 by Doctor Nguyen that he did in December, December 2, 2010.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Is that right?

2 A Uh-huh. (Affirmative).

3 Q And are you aware of the report of the two pathologists
4 at MUSC where they said they agreed basically with whatever
5 Doctor Wren found, they found the same things on those
6 slides?

7 You aware of that?

8 A I was there, sir---

9 Q That they didn't have a difference of opinion?

10 A ---and I, you know, they looked at the, the tests and I
11 was there to see if there was a different type of treatment
12 for my dad. That's what I was there for and there was
13 really nothing any -- when you go and you get chemotherapy
14 and you go and get radiation, a lot of people want to go to
15 Texas to MD Anderson. But the protocol is really the same
16 here as it is in Texas or Charleston or anywhere else.

17 But when you've got a loved one that is that critical,
18 again, you're just grasping for anything. But what they
19 were doing was the same if they did that in Charleston, in
20 Spartanburg. But I mean as far as the surgery or them --
21 nothing was really even talked about the surgery that day.

22 Q Did your father receive any treatment at MUSC as a
23 result of that second opinion?

24 A No, he did not have treatment there at all. We just
25 went that day and that was it.

Lisa Mckaughan - Cross-examination
by Mr. Davis

1 Q Okay. And then did you and your father come back and,
2 and were -- was he treated by a cancer doctor here in
3 Spartanburg?

4 A Yes, that was Doctor Mehta.

5 Q Mehta?

6 A Yes.

7 Q All right. And is he with Bearden's group and Doctor
8 Vidito?

9 Is he in that same group or is he in a different
10 oncology?

11 A Doctor Bearden was my dad's cancer doctor through the
12 colon. But Doctor Bearden actually went to the Josey
13 Bearden and he built that.

14 Q Okay.

15 A And he had more of, more of the breast, you know,
16 patients than he did, and that was when my dad was assigned
17 to Doctor Vidito.

18 Q Okay.

19 A But Doctor Bearden did follow along with me through
20 this. He gave me his personal cell phone and he followed
21 this because I had a lot of questions and I needed answers
22 and I needed it -- them fast.

23 Q Doctor Mehta, am I pronouncing that right?

24 A Mehta.

25 Q Mehta?

Lisa McKaughan - Cross-examination
by Mr. Davis

1 A Mehta, yes.

2 Q Is Doctor Mehta in the same group as Doctor Vidito?

3 A Yes.

4 Q Okay. But you wanted a -- you wanted to change your
5 father's care from Doctor Vidito to, to somebody else or to
6 Doctor Mehta?

7 Isn't that right?

8 A Well, the reason why I did that was because when we
9 went back in July I was wanting her to take a x-ray and she
10 did not.

11 Q Her is Doctor Vidito?

12 A Doctor Vidito.

13 Q Vidito?

14 A Exactly.

15 Q Okay.

16 A And she did not do that. She was saying well, there's
17 no reason to take one where there was, and I -- when you're
18 use to having good doctors like Doctor Bearden, and you're
19 use to the care that they, they give their patients, I knew
20 that what they were doing wasn't right. I knew the care
21 that -- what they do and that's why I was hollering out like
22 I was doing because I mean he wasn't getting the care at the
23 time.

24 Q I mean that was back in the summer, months before his
25 diagnosis of lung cancer was made, is that right, that you,

Lisa Mckaughan - Cross-examination
by Mr. Davis

1 you wanted him switched from Doctor Vidito to Doctor Mehta?

2 A Doctor Mehta was, I think, after he even -- he done
3 been diagnosed and had his surgery.

4 Q Okay. Well, I'm sorry.

5 When -- in the Summer of 2010 you've told us just now
6 that you didn't like the way Doctor Vidito wouldn't do a
7 chest x-ray.

8 A He wasn't saying anything.

9 Q Let me finish my question.

10 A That was me.

11 Q Let me finish my question.

12 All right. You told me just a moment ago that, in the
13 Summer of 2010, you, you didn't like the fact that Doctor
14 Vidito was, was not taking a chest x-ray or something like
15 that if I understood you correctly, and you requested or got
16 your dad changed from Doctor Vidito to another doctor in her
17 group.

18 Is that right?

19 Did I---

20 A Doctor Vidito said the reason why she wasn't going to
21 do a---

22 Q Well, well, can you just answer my question cause is,
23 is that correct what we're talking about?

24 A I switched, I switched him from Doctor Vidito to Doctor
25 Mehta---

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Q Okay.

2 A ---because I did that personally. I wanted to do that.

3 Q Okay. And that was the Summer of 2010, is that right,
4 sometime in the Summer or you tell me when it was?

5 A Well, no, if the surgery was December of 2010, it would
6 have to be over in '11, wouldn't it?

7 I mean---

8 Q I don't know, ma'am. I'm just asking.

9 A I mean it would have to be.

10 Q I mean---

11 A The surgery was at the end of '10. There's just so
12 many days in December.

13 Q Well okay. I, I apologize if I'm confused. I probably
14 am.

15 So you're telling me now that you wanted to switch from
16 Doctor Vidito to Doctor Mehta after the December 2010
17 surgery by Doctor Nguyen.

18 Is that, is that right?

19 A That's correct.

20 Q Okay. All right. Doctor Nguyen, he did your dad's
21 cancer -- colon cancer surgery?

22 A Doctor Orr did.

23 Q I'm sorry.

24 A Rick Orr.

25 Q Who?

Lisa Mckaughan - Cross-examination
by Mr. Davis

1 A Rick Orr.

2 Q Okay. I apologize. I may of misread that in the
3 records.

4 You met Doctor Nguyen at what time?

5 About what timeframe did you meet Doctor Nguyen?

6 A I guess -- I mean it was -- it had to be between, you
7 know, Doctor Littlefield doing the x-ray and us going to the
8 lung because I had asked for Doctor Orr, but Doctor Orr said
9 Lisa, he said I've got somebody that's better than me and I
10 said well, who, who could that be cause I like Doctor Orr a
11 lot and that was when he introduced me to Doctor Nguyen.

12 Q Okay. And you were introduced to Doctor Nguyen after
13 his cancer, after, excuse me, after his right lung cancer
14 diagnosis?

15 A Uh-huh. (Affirmative).

16 Q And I think it was Doctor Cruz that recommended or
17 Doctor Orr or whoever it was that got you to Doctor Nguyen?

18 A Well---

19 Q Correct?

20 A ---I liked that group.

21 Q Okay. And, and Doctor Orr said here's a guy that's
22 better than me?

23 A Uh-huh. (Affirmative).

24 Q Is that right?

25 A Well, he just did more of the, the lung---

Lisa McKaughan - Cross-examination
by Mr. Davis

1 Q Okay.

2 A ---you know, for that---

3 Q Doctor Nguyen did?

4 A Uh-huh. (Affirmative).

5 For that.

6 Q Okay. And so you met Doctor Nguyen and he met with you
7 and your father and explained this is what I recommend, this
8 is the kind of surgery I think we probably need to do, this
9 is what I -- whatever and he'll testify and he'll tell us
10 what he did.

11 But that's when you first met him, right?

12 A We -- I've had several, you know, times I've, you know,
13 we've met with him.

14 Q Sure.

15 A I mean---

16 Q Sure you have.

17 And, and so Doctor Nguyen explained the surgery that he
18 proposed---

19 A Uh-huh. (Affirmative).

20 Q ---for the right lung cancer, correct?

21 A Yes, they did some tests. They have to go in there to
22 see if -- because it was so big, because Doctor Cruz really
23 did not think that my dad could even survive, you know,
24 after surgery because your, your right lung has three lobes
25 where the left has two, and then taking out most of your,

Lisa McKaughan - Cross-examination
by Mr. Davis

1 you know, your right lung they had to -- they didn't think
2 he was gonna really be able to have the surgery. But with
3 that, you know, being my dad, I wanted them to, you know,
4 try everything that they could and they had to go in there
5 and, you know, see, with all of that blocked off, that taken
6 out, how much breathing, you know, he would have --

7 Q Okay. And they---

8 A -- before they did the surgery.

9 Q We're talking about the right lung?

10 A Yes.

11 Q Okay. So Doctor Nguyen did the surgery on December 2,
12 2010, on your father's right lung cancer in his right lung
13 --

14 A Uh-huh. (Affirmative).

15 Q -- correct?

16 And do you understand that he found the cancer
17 in-between the upper lobe and the middle lobe?

18 A He said he was removing the whole---

19 Q Well, you keep pointing to your left. I'm, I'm---

20 A ---middle portion.

21 Q It was on his right side, wasn't it?

22 A Yes.

23 Q Right side.

24 A Cause it's three, three lobes to the right and two to
25 the left.

Lisa McKaughan - Cross-examination
by Mr. Davis

- 1 Q Okay. The cancer was found on the right side?
- 2 A Correct.
- 3 Q All right. And that's where Doctor Nguyen operated?
- 4 Yes?
- 5 A Right. Correct.
- 6 Q And did Doctor Nguyen tell you that, based on his
- 7 surgery and based on the pathology part of the tissue
- 8 specimens he removed during the surgery, that they got all
- 9 his right lung cancer?
- 10 Did he tell you that?
- 11 A No, he did not.
- 12 Q He never told you that?
- 13 A No, sir, he did not.
- 14 Q All right. Doctor Nguyen, to use your word, is a
- 15 fabulous doctor.
- 16 You said that in your deposition---
- 17 A I'll---
- 18 Q ---he's fabulous?
- 19 A I'll agree with you.
- 20 Q well, that's---
- 21 A One hundred percent.
- 22 Q well, that was your word, right?
- 23 A I think he's a fabulous doctor, but he -- I mean he's
- 24 not God and he did the best he could do.
- 25 Q I'm sure he did.

Lisa McKaughan - Cross-examination
by Mr. Davis

1 And Doctor Nguyen did the biopsy a couple years later
2 on the left lung in 2012, didn't he, the Spring of 2012?

3 A They did---

4 Q He did that?

5 A After my dad's surgery they did several biopsies.

6 Q Okay. And eventually he did what's called a wedge
7 resection and took a little piece of the left lung out
8 during a biopsy and gave it to a pathologist to look at the
9 slides under a microscope.

10 You remember that in the Spring of -- April of 2012?

11 A Yes, that was the -- one of the last biopsies.

12 Q And did Doctor Nguyen let you know what the results of
13 the pathologist looking -- Doctor Lapham?

14 Doctor Lapham looked at the tissue slides, the slides
15 of the tissue from the left lung in April of 2012, and she
16 looked at those under a microscope and gave a report in
17 writing and had a conversation with Doctor Nguyen?

18 Were you aware of that, about what she found, the
19 pathologist, this is what this shows?

20 Are you aware of that?

21 A Sir---

22 Q Well, just, just---

23 A ---after my dad had the cancer---

24 Q Just -- excuse me. Excuse me.

25 A No, I'm not gonna sit there and say that I knew that---

Lisa McKaughan - Cross-examination
by Mr. Davis

1 MR. DAVIS: Your Honor?

2 A ---because I would be telling a story and I'm under
3 oath.

4 Q Right.

5 A But I do know that they did numerous of surgeries
6 because they knew, without a doubt, that cancer was there
7 and they claimed that it was sort of hanging in midair and
8 that's -- we couldn't figure out why they wasn't getting
9 something or, or what was, you know, what was going on. Why
10 was my dad sitting here getting feeble, you know, dying and,
11 you know, and me fighting trying to figure out what was
12 going on. They were doing the best they could.

13 I talked to Doctor Cruz I don't know how many times.
14 That was the lung doctor. They were doing everything that
15 they could known to man, but just because they go in there
16 and do a biopsy doesn't mean every single time they gonna
17 get exactly what they want. That's why they have to keep
18 doing that to, to they come up with, you know, with what's
19 going on or, or whatever. But the cancer was already there.
20 I know you want me to tell you something different, but I'm,
21 I'm not. I can't.

22 Q All right. All I want you to do is just---

23 A Is tell the truth and that's what I'm doing and that's
24 what y'all need to do.

25 Q If you could just listen. I'll listen to you. I won't

Lisa Mckaughan - Cross-examination
by Mr. Davis

1 interrupt you. If you could please listen to my question.

2 If you don't understand---

3 A This was a sad thing that my family went through.

4 Q Yes, ma'am.

5 A Very sad thing.

6 Q I'm sure it was tragic. I don't -- nobody's
7 questioning that here.

8 Ma'am, did Doctor Nguyen, after he did the biopsy of
9 your father's left lung and sent those lung -- left lung
10 tissues, in April of 2012, to a pathologist, did Doctor
11 Nguyen tell you, at that time, based on what's found on the
12 pathology slides, your father has a new primary left lung
13 cancer?

14 Did he tell you that?

15 A No, they said it metastasized, metastasized. Doctor
16 Mehta, metastasized. They said metastasize. It spread,
17 it's spread, it's spread. That's what they keeping saying
18 over and over and over that it -- I mean it spread. The,
19 the, the death certificate says metastasized.

20 MR. DAVIS: Nothing further, Your Honor.

21 THE COURT: Any redirect limited to what he went into?

22 MR. CALLOWAY: Your Honor, nothing.

23 THE COURT: Thank you, ma'am. You may step down.

24 Lawyers approach a moment.

25 (WHEREUPON, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: All right. Ladies and gentlemen, after
3 conferencing with the lawyers, I think this is probably a
4 logical time for us to break for the day.

5 I need to remind you of my instructions to you
6 previously about you can't have any discussions among
7 yourselves or with anyone else about anything involving the
8 case. Well, the -- those instructions get more important as
9 this case goes along.

10 So, again, just very politely tell your family and your
11 friends, when they ask well, what kind of case is it, who
12 does it involve, you tell them that the judge has instructed
13 me that I can not talk to you about anything involving the
14 case.

15 You've also heard some testimony now. You've probably
16 heard some words that maybe you don't understand. You know,
17 again, I want to remind you, don't go pull out a dictionary
18 and try to look up definitions for words. Allow the lawyers
19 to educate you on, on the different aspects of the case
20 because I would hate for you to actually pull out a
21 dictionary, look up a word, and it not be the correct
22 meaning and then we have no way of knowing that when you
23 come back in here.

24 So, again, thank you for your time and your patience
25 today while we went through this process of jury selection

1 as well as starting with the trial of the case. I'm gonna
2 ask, if you would, to please be back in the jury
3 deliberation room by 9:30 in the morning and we will resume
4 with the taking of the testimony in the case.

5 But, again, thank you very much. Go with the bailiff.

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

8 THE COURT: Anything I need to address before we step
9 down?

10 MR. MCKINNON: Not from the Plaintiff, Your Honor.

11 MR. DAVIS: No, sir.

12 THE COURT: All right. We'll step down. Thank you
13 very much. We'll be at ease.

14

15 (WHEREUPON, Court was in recess for the evening.)

16

17

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25

1 Tuesday, July 28th, 2011

2

3 THE COURT: Do -- say, say that y'all needed to put
4 something on the record about the Joint Exhibits or
5 something?

6

MR. MCKINNON: Yes, sir, Your Honor.

7

8 Yesterday we marked one Joint Exhibit, which is a set
9 of medical records, and some Plaintiff's Exhibits were
10 entered without objection, Your Honor. We just wanted to
11 make sure those were on the record. I think it's Joint
Exhibit 1 and Plaintiff's Nos. 1 through what?

12

THE COURT REPORTER: Five.

13

MR. MCKINNON: One through five?

14

THE COURT REPORTER: Yes, sir.

15

MR. WILLIFORD: No objection, Your Honor. We concur.

16

17 THE COURT: All right. So those are like labeled with
Joint Exhibits?

18

THE COURT REPORTER: One of them and the ones are---

19

20 MR. MCKINNON: We apologize, Your Honor. We spoke with
the court reporter yesterday and just forgot to mention it
21 to Your Honor.

22

23 (WHEREUPON, Joint Exhibit No. 1 and Plaintiff's Exhibit
Nos. 1 through 5 were received into evidence at this time.)

24

25 THE COURT: Okay. All right. Is the Plaintiff ready
to call their next witness?

1 MR. MCKINNON: We are ready to proceed, Your Honor.

2 THE COURT: I believe the jury is here.

3 Will you have them bring the jury in?

4 THE BAILIFF: Yes, sir.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: Is the Plaintiff ready to call your next
8 witness?

9 MR. CALLOWAY: We are, Your Honor.

10 Your Honor, at this time the Plaintiffs call Doctor
11 Barry Singer.

12 THE COURT: Sir, just come right up here and let the
13 Clerk of Court swear you in.

14 DOCTOR BARRY SINGER, being first
15 duly sworn, testified as follows:

16 THE COURT: Thank you, sir. Just have a seat in the
17 red chair and pull the red chair up to the microphone.

18 (Witness complies.)

19 DIRECT EXAMINATION

20 BY MR. CALLOWAY:

21 Q Good morning, Doctor Singer.

22 A Good morning.

23 Q Would you please state your full name for the Court?

24 A Barry L. Singer, M.D.

25 Q What do you do for a living, Doctor Singer?

Barry Singer - Direct examination
by Mr. Calloway

1 A I'm a physician.

2 Q Okay. Do you have a specialty?

3 A Medical oncology and, and hematology.

4 Q And how long have you been working as an oncologist?

5 A Over 40 years.

6 Q Okay. I want to ask you a little bit about your
7 educational background.

8 If you would, sort of starting with, with college, tell
9 us a little bit about your education.

10 A I attended Harvard College. I graduated with honors,
11 1963. I attended John Hopkins Medical School. I graduated
12 with an M.D. Degree in 1967, completed an internship in
13 medicine at Bellevue Hospital, New York City, and then a
14 residency in internal medicine at the Graduate Hospital,
15 University of Pennsylvania in Philadelphia. I completed a
16 fellowship in the same institution in hematology and medical
17 oncology. I spent two years in the U.S. Army Medical Corp
18 at Valley Forge Army Hospital and Walter Reed Army Hospital
19 as a hematologist/oncologist. I went into private practice
20 in 1973 and I've been since.

21 Q Okay. And do you currently treat cancer patients?

22 A Yes, sir.

23 Q And what type of cancers do you currently treat?

24 A I treat all types of cancers. The main three I see in
25 most are lung, breast, and colon, but I treat all cancers.

Barry Singer - Direct examination
by Mr. Calloway

1 Q Are you -- do you have any board certifications?

2 A Yes, I'm board certified in internal medicine,
3 hematology, and medical oncology.

4 Q And just for our understanding, tell us just basically
5 what it means to be board certified.

6 A It means that one is completed training in that area
7 and passed an examination in that area to be board qualified
8 and then board certified.

9 MR. CALLOWAY: Your Honor, at this time the Plaintiffs
10 would move to have Doctor Singer qualified as an expert in
11 medical oncology.

12 MR. WILLIFORD: No objections, Your Honor.

13 THE COURT: Medical oncology?

14 MR. CALLOWAY: Yes, sir.

15 THE COURT: All right. Ladies and gentlemen, normally
16 a person can not give opinion testimony. Normally, when a
17 person testifies, they must testify as to what they either
18 saw, heard, or sensed by smell or something of that nature.
19 However, there is an exception when someone is qualified
20 because of education or experience. They are permitted to
21 give their opinion in certain areas if the Court qualifies
22 them that way.

23 This witness will be qualified in the area of medical
24 oncology to give opinion testimony in that area. That does
25 not mean that you must accept the opinion, but it is

Barry Singer - Direct examination
by Mr. Calloway

1 evidence for you to use in anyway that you see fit.

2 Yes, sir.

3 MR. CALLOWAY: Thank you, Your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. CALLOWAY:

6 Q Doctor Singer, could you tell us basically what an
7 oncologist is, what his job is?

8 A An oncologist basically oversees the treatment of
9 cancer patients. He or she often is the one to administer
10 or order chemotherapy for them, but, in addition, generally
11 they're sort of like the primary cancer care doctor. They
12 may refer the patient for other treatments such as radiation
13 therapy or further surgery and they generally follow them
14 medically because most are trained as internists.

15 Q Doctor Singer, have you had an opportunity to review
16 the medical records for Mr. William Farr?

17 A Yes, sir.

18 Q Have you reviewed anything else regarding, regarding
19 his case other than just the medical records?

20 A Depositions of various doctors who cared for him as
21 well as some experts.

22 Q All right. Doctor Singer, what we want to do first
23 here is take a look at some of the medical records. I'm
24 gonna just put the Joint Exhibit No. 1 -- I'll make
25 reference to the Bates cites numbers for ease of reference.

Barry Singer - Direct examination
by Mr. Calloway

1 First, Doctor Singer, I'm gonna show you what is
2 labeled as Bates Number LCMA0040 and 0041.

3 Doctor Singer, do you recognize this document?

4 A Yes, sir, this is Doctor Cruz's evaluation of the
5 patient.

6 Q I'm gonna turn to Page LCMA0041 and ask you to direct
7 your attention to the number one there at the top, and, if
8 you would just -- well, I'll read it to you. It says lung
9 cancer, radiologic T3NOMO2B bronchoalveolar type, and, and
10 if you could, if you could just explain to us and we'll
11 start with that first part.

12 What are those numbers and letters mean?

13 What does T3NOMO refer to?

14 A TNM is the way we classify or stage cancer. All
15 cancers are staged that way using those three letters. T
16 stands for the size of the primary tumor, N whether they're
17 nodal met -- metastases or the nodes are involved, and M
18 whether they're a distant metastasis meaning away from the
19 cancer. In this case, T3 stands for the size of the tumor.
20 It's a larger tumor. It's greater than 7-centimeters.

21 Q Okay. Okay. And the, the next thing there is 2B.

22 What does that refer to?

23 A Oh, the staging is 2B. That's because of the size of
24 the tumor.

25 Q Okay. And tell us---

Barry Singer - Direct examination
by Mr. Calloway

1 A T2---

2 Q I'm sorry.

3 A T3N0M0 is a Stage 2B lung cancer.

4 Q Tell us, if you could, and explain to the jury what
5 cancer staging is.

6 A Yes.

7 Q What does that mean?

8 A We use it to describe the extent of the cancer because,
9 by staging, we describe the size of the primary, whether --
10 with a T. N, as I said earlier, whether they're nodes
11 involved, and M, whether there's distant metastasis so any
12 other doctor who sees the patient knows exactly how large
13 and how extensive the cancer was, and, from the stage, we
14 can decide on treatment, which is very important because
15 lung cancer, unless you remove the cancer surgically,
16 generally the patient does not do well, and with the T3N0M0,
17 you hope that you're removing the entire tumor because there
18 are no nodes or distant metastases at least seen at that
19 time.

20 Q All right. And this is referenced to the -- to Mr.
21 Farr's tumor at what point in time?

22 A This is the right lung tumor that was treated in 2010.

23 Q And the last thing on this, Doctor Singer, that next
24 word there after the 2B, what is that word and what does it
25 refer to?

Barry Singer - Direct examination
by Mr. Calloway

1 A Oh, bronchoalveolar type is a type of adenocarcinoma.

2 Q All right.

3 A We don't use it now. It was an -- it's an older
4 expression for adenocarcinoma.

5 Q And you use the term adenocarcinoma.

6 What does that refer to?

7 A Adenocarcinoma means a tumor that develops in the
8 glands. Tumor can develop in various areas of tissues in
9 the body. If it develops in the skin or epidermis it's
10 called epidermoid. If it develops in glandular structure
11 it's called adenocarcinoma. If it's -- develops from
12 connective tissue, a sarcoma. So, I mean it depends where
13 the tumor develops.

14 Q And as an oncologist, based on that description, what
15 does that tell you about this tumor?

16 A This tumor was a certain size. It was greater than
17 7-centimeters. But it clinically or pathologically did not
18 have evidence of spread of the cancer to the nodes or
19 distally.

20 Q Next, doctor, I want to show you, Doctor Singer, is a
21 pathology report that says SRHS0056.

22 Just for our understanding, and I'll zoom in on this,
23 what, what is, in general, what's a pathology report or a
24 surgical pathology report?

25 A Well, when tissue is removed from the body it's

Barry Singer - Direct examination
by Mr. Calloway

1 examined under the microscope after appropriate fixing and
2 staining and the pathologist is the specialist who does
3 that.

4 Q And I want you to look sort of towards the middle of
5 this first paragraph and I will mark or point to it here
6 where it's got this listing of a -- of size and centimeters.
7 It looks like it says 9-centimeters by eight and a half by
8 five.

9 Is that what you see there?

10 A Yes, that's the size of the tumor. Nine by 8.5 by
11 5-centimeters.

12 Q In your experience and training as an oncologist, how
13 would you describe that tumor -- a tumor of that size?

14 A It's very large. I mean, lung cancer, is anything over
15 three or four centimeters is quite large. This was
16 9-centimeters.

17 Q Now, you may be aware that it's Plaintiff's allegation
18 in this case that Mr. Farr had a much smaller cancer back in
19 January of 2010.

20 Do you have an opinion on that?

21 A Yes, sir.

22 Q What is your opinion on that?

23 A My opinion, from review of the records and various
24 depositions, that there was a mass there back in January or
25 February of 2010, but it was much smaller. I would expect

Barry Singer - Direct examination
by Mr. Calloway

1 that because you wouldn't expect a 9-centimeter tumor to
2 just appear overnight. It had to be present for at least a
3 few years, but growing. So -- especially adeno --
4 adenocarcinomas.

5 So I would suspect that it was present, but description
6 of being two to three centimeters in size makes sense
7 clinically.

8 Q Okay. And, in your practice as an oncologist, do you
9 often or would or do you consider reliable what a
10 radiologist, a radiologist says about the size of the tumor?

11 A Yes, sir.

12 Q Okay. And so what do you base your opinion today in
13 saying that you believe the opinion -- the tumor was two and
14 a half centimeters in January of 2010?

15 A From review of the records and radiologic description
16 of the size.

17 Q Okay. I want to ask you a little bit about the
18 difference between tumors based on their size. In general,
19 let me ask it this way.

20 Is a bigger tumor more serious than a smaller tumor?

21 A Generally the larger the tumor the more likely it's
22 have to spread. I mean it's not a hundred percent because
23 the surface area -- if you think of a tumor as a sphere, and
24 obviously no tumor is a perfect sphere, but if you imagine
25 it's a sphere, a three and -- a 3-centimeter sphere will be

Barry Singer - Direct examination
by Mr. Calloway

1 just a little over an inch. 2.54 centimeters is an a inch.

2 You have a sphere that's just a little over an inch in
3 size. Then you have a 9-centimeter mass, which is probably
4 over four inches. You have a much greater surface area and
5 a much greater volume. So the likelihood of cells to escape
6 is much greater. So by just -- by the nature of the size of
7 the tumor, you would be more likely to have spread of it.

8 Q Okay. And could you explain a little of the mechanism
9 of that?

10 why is it that a larger tumor is more likely to spread
11 than a smaller one?

12 A Because, as cancers grows, cells break off all the
13 time. The body's immune system is able to generally prevent
14 them taking hold and growing as when we call metastasis, but
15 the more surface area, the more area cells to break off. It
16 just makes common sense that you have a larger area that's
17 maybe 20 or 30 times as large that more cells are gonna
18 break off, and, therefore, there's a greater risk of
19 developing metastasis.

20 Q Again, along the same line, the difference between a
21 big tumor and a small tumor, is there a difference in
22 treatment options for a smaller tumor relative to a big
23 tumor?

24 A Well, certainly you have to take out more lung volume
25 when you take out a bigger tumor obviously. But you usually

Barry Singer - Direct examination
by Mr. Calloway

1 take out a lobe that the tumor is in. That's generally
2 accepted surgery for a lung cancer and the likelihood that
3 you would take out less lung volume with a smaller tumor
4 than a larger tumor.

5 Q All right. What about in terms of patient prognosis.

6 Is there a difference in patient prognosis based on a
7 small tumor versus a large tumor?

8 A Not definitely prognosis because unless you have the
9 metastases, the patient is greater risk for the metastases
10 if the metastasis is more likely to develop. But if the
11 stage is still the same, the prognosis doesn't change until
12 the actual metastasis occurred. When a recurrence occurs,
13 then the patient, in lung cancer, generally is going to die,
14 succumb to it.

15 Q Okay. And we've already used this term a lot, but just
16 to explain to us, what is a metastasis just in general?

17 A Metastasis is spread of the primary tumor to another
18 site and growing in that area. I mean you have cells that
19 break off all the time from cancers and fortunately our
20 body's can -- immune system can destroy it, but if enough
21 cells break off, some do take hold and grow in a different
22 area, a different organ. In this case, in my opinion, it
23 was left lung. But it could go to any organ, brain, lung,
24 liver. Those are common sites for lung cancer to spread in
25 adrenal gland.

Barry Singer - Direct examination
by Mr. Calloway

1 Q So let's talk more in the specifics about Mr. Farr's
2 cancer.

3 It was told, as if you told us, that your opinion that
4 he had a two and a half centimeter tumor in January of 2010.

5 Is that correct?

6 A Correct.

7 Q And, in December or November/December, it was a
8 9-centimeter tumor.

9 A Yes.

10 Q Is that right?

11 A Yes, sir.

12 Q Okay. Do you have an opinion as to what, what the
13 recommended course of treatment would of been for Mr. Farr
14 had his cancer been diagnosed in January of 2011?

15 A Yes.

16 Q '10. Excuse me.

17 A Yes, the -- my opinion would be that he would have
18 surgery cause that's the treatment of choice for lung cancer
19 is to resect the, the lobe that the cancer is in, and
20 generally, for a Stage 1 or Stage 2 lung cancer, that's all
21 that's recommended, adjutant therapy. What we mean by
22 adjutant therapy is that we give further treatment just in
23 case there's cancer cells that are still present. Adjutant
24 therapy would not be recommended. So he would not get
25 radiation or chemotherapy like he did in -- later.

Barry Singer - Direct examination
by Mr. Calloway

1 Q So is your, is your opinion more likely than not that,
2 had this cancer been diagnosed in January of 2010, chemo and
3 radiation therapy would not have been necessary?

4 A That's correct.

5 Q Okay. Doctor Singer, in Mr. Farr's case, do you have
6 an opinion as to, if the cancer had been diagnosed in
7 January of 2010, do you have an opinion as to whether Mr.
8 Farr would have survived the cancer?

9 A I -- yes, I do have an opinion.

10 Q What is your opinion on that?

11 A My opinion is that the small -- a tumor that's
12 completely resected, the probability of cure is very high.
13 It's in the range of 70, 75 percent. There's still some who
14 succumb to it, but, by far, the majority are cured.

15 Q Okay. And so it is your opinion, more likely than not,
16 that, had this cancer been diagnosed in January of 2010,
17 that Mr. Farr would have survived the cancer?

18 A Yes, sir, it's my opinion that he would.

19 Q Was Mr. Farr's prognosis different because the lung
20 cancer was discovered in October or November as opposed to
21 January?

22 A Yes, because his -- he was at greater risk for
23 metastasis for the reasons I said previously, and I believe
24 that was one of the reasons why he got postoperative
25 radiation and chemotherapy because of two reasons.

Barry Singer - Direct examination
by Mr. Calloway

1 One, because of the size of the cancer. The
2 9-centimeter tumor, as I said, is a very large tumor and
3 also because one of the margins they felt that was very
4 close, and when you have close margins, meaning that the
5 tumor cells are within one millimeter of the resection,
6 there's a great risk that cells may have been left after the
7 surgery. And if cells were left, eventually they'll grow
8 back in most cases. And because of that, he received
9 radiation therapy and I believe they gave him chemotherapy
10 because of the large size of the tumor.

11 Q Okay. And just let me make sure and clarify that.

12 You talked about adjuvant therapy, the chemo and the
13 radiation.

14 Even after---

15 A Yes, sir.

16 Q ---a cancer tumor has been removed, additional therapy
17 may be necessary?

18 A Absolutely. Especially if the tumor is very large and
19 particularly if there is close margins.

20 Q All right. Doctor Singer, based on your review of the
21 records and what you've learned about this case, is it your
22 understanding that Mr. Farr, at some point, in addition to
23 his, his right lung cancer, developed cancer on his left
24 side?

25 A Yes, sir.

Barry Singer - Direct examination
by Mr. Calloway

1 Q Okay. Let's take a look at a couple additional
2 documents there.

3 Doctor Singer, this is SR50058. It's another portion
4 of that path report from December of 2010 that we discussed
5 a moment ago or a few minutes ago, and I want to point to a
6 portion of it here. That line that starts with the word
7 adenocarcinoma.

8 If you wouldn't mind reading that for us.

9 A Sure. Adenocarcinoma with papillary features.

10 Q Okay. And what is that basically -- just, in general,
11 what does that describe?

12 A Papillares are little expressions that grow out of the
13 cancer like little -- if you're looking at a field, you see
14 a little tree pop up, that would be like a papillary. I
15 mean coming up out of the glandular tissue.

16 Q Okay. And this was telling us -- the adenocarcinoma
17 tells us what?

18 A That's gland. It's a gland derivation. In other
19 words, it develops from the bronchial glands.

20 Q Okay. Doctor Singer, I'll show you an additional
21 document. This is GS000214. This is an additional path
22 report. Let me see if I can find the date for you.

23 The date reported, do you see the date reported there?

24 A Yes, sir, April 7th, 20 -- April 17th, 2012.

25 Q Okay. So is this the right tumor or the left---

Barry Singer - Direct examination
by Mr. Calloway

1 A This---

2 Q ---the left---

3 A This will be the left---

4 Q Okay.

5 A ---the left cancer which was found.

6 Q Okay. And, again, sort of the similar thing of the
7 two, what -- excuse me.

8 The similar designation that's there for the, the type
9 of cancer we have here, would you read sort of that line?

10 A Again, it's an adenocarcinoma, but now -- now with
11 lepidic and acinar pattern. That's a predominate pattern
12 because it's a glandular tumor again.

13 Q And so, from these path reports, do we see that the
14 first tumor was an adenocarcinoma and the second tumor was
15 an adenocarcinoma?

16 A Yes, sir.

17 Q What does that tell you, if anything, as an oncologist,
18 about the nature of those two tumors?

19 A Well, just as an adenocarcinoma, knowing they can have
20 a multitude of variance in terms of appearance, that it's,
21 to me, it would, 95 percent of the time, be the same cancer.

22 Q Okay. Is -- okay. So does this tell you anything
23 about whether one cancer came from the other?

24 A No, it doesn't. It just says -- to me, it indicates,
25 since the right one was found before the left, that the

Barry Singer - Direct examination
by Mr. Calloway

1 right one came first and the left one, and since there were
2 several x-rays done, PET Scans in-between that show nothing
3 in the left lung, this timing, about a year and a half, two
4 years after is when you expect to see metastasis for a
5 primary lung cancer. Usually you see them within one to two
6 years. The fact that it's in the left lung less than two
7 years later would strongly indicate, to me, it's the same
8 cancer.

9 Q Do you hold that opinion to a reasonable degree of
10 medical certainty more likely than not?

11 A Yes, sir.

12 Q Doctor Singer, if you recall the two documents we've
13 just examined, does the fact that one of these path reports
14 refers to lepidic patterns and the other refers to a
15 papillary patterns, does that influence your opinion that
16 one -- the previous opinion just stated?

17 A No, we see this in colon, breast cancer where they're
18 both glandular patterns where the cell that actually
19 metastasizes, the more aggressive cell, generally cancers
20 are not uniform. If they're made of well differentiated,
21 poorly differentiated, moderately differentiates, it's
22 always the poorly differentiates that spreads. So it's a
23 more aggressive form of the cancer or it's logically that
24 that spreads.

25 So metastases in primaries don't often have the exact

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1 same histology. They may be predominance of one type and
2 then metastasis because that's the most aggressive form of
3 the tumor versus the primary. So we know that occurs and
4 we -- it's a, it's a regular finding.

5 Q Okay. And just to -- let's talk about that, again,
6 this sort of more generally, in your experience in treating
7 lung cancer, what is the general effect on the patient?

8 What are the symptoms?

9 What is going to be how they feel and how they
10 experience that disease?

11 A Well, in early stages, they're asymptomatic generally.
12 Stage 1 and 2, they, they don't have any symptoms, and they
13 may not even have symptoms into Stage 3. Generally, by
14 Stage 4, they have symptoms.

15 The most significant symptom in advanced lung cancer is
16 weakness and anorexia, not eating, and weight loss. The
17 cancer just eats, eats away at them and that's usually by
18 Stage 4. But early stage lung cancer, the patient may be
19 entirely asymptomatic.

20 Q Based on your review of the records and your
21 understanding of, of Mr. Farr's situation, in sort of the
22 last couple months of his life, April, May, June of 2012,
23 what was the experience and what was his condition at that
24 point?

25 A He was going downhill very rapidly, which is typical of

Barry Singer - Direct examination
by Mr. Calloway

1 someone with Stage 4 lung cancer.

2 Q Doctor Singer, do you have an opinion as to the cause
3 of Mr. Farr's death?

4 A Yes, sir.

5 Q What is your opinion?

6 A Metastatic lung cancer.

7 Q And why did you or what led you to that conclusion?

8 A The fact that he developed the metastasis in the left
9 lung in my opinion. The fact that the doctors who treated
10 him treated him for metastatic lung cancer and the fact that
11 the death certificate is signed as metastatic lung cancer.
12 I believe everything is correct.

13 Q During the same time period that I'm talking about in
14 April to June of 2012, in addition to the symptoms you
15 described, if there's some indications of pneumonia he may
16 have suffered during that time, would that be an unusual
17 finding versus---

18 A No.

19 Q ---in this situation?

20 A Someone with terminal disease, often pneumonia or
21 sepsis, is, is common cause of the final.

22 Q What about for that same time period, April to June of
23 2012, would it be unusual for a person in Mr. Farr's
24 condition to be suffering from respiratory distress?

25 A No. Well, again, certainly had underlying COPD and

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1 that would certainly be the weakest area of his body. So
2 for his to have respiratory distress would not be unusual.

3 Q Does the suggestion that Mr. Farr had those conditions
4 affect your opinion that he died as a result of metastatic
5 lung cancer?

6 A No, not at all. There, there are co-contributory
7 obviously to his weakness, but the lung cancer, in my
8 opinion, was the direct cause of his demise.

9 Q We've already heard some discussion in this trial about
10 the fact that Mr. Farr was a smoker.

11 What is your -- do you have an opinion as to the effect
12 of his smoking on his ultimate demise?

13 A Well, I, I suspect the smoking was the cause of his
14 lung cancer initially in the right lung. He was a 50 pack
15 year smoker. Anyone over 20 pack years certainly has an
16 increased risk. The fact that his cancer progressed and
17 became Stage 4, I mean that's enough cause for him to
18 succumb to it.

19 Q Doctor Singer, do you have an opinion as to whether the
20 medical expenses that are already in evidence here were
21 causally related to a delay in diagnosis of his cancer in
22 January of 2010?

23 A Yes, I do believe that a lot of the medical expenses
24 would not have been incurred if he had been diagnosed
25 earlier. As I said earlier, I do not believe that he would

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1 of required radiation and chemotherapy with earlier surgery,
2 and the subsequent chemotherapy and the surgery on the left
3 lung, in my opinion, would of been significantly risk or
4 significantly reduced by earlier diagnosis.

5 Q Okay. So the, the surgery were -- are you saying that
6 the December 2010 surgery that he had, he still would of had
7 to have surgery if it had been diagnosed in January of 2010?

8 A Correct. He would of had definitive surgery, removal
9 of the upper lobe or both lobes, if necessary. I, I suspect
10 strongly he would of still had one lobe removed. But even
11 if he had two, that would of been it, and he would not have
12 required anymore treatment, and, as I said earlier, the
13 likelihood of metastasis, in my opinion, would of
14 significantly reduced.

15 Q Can you say more likely than not that the cancer would
16 not have or that, that would of been all the therapy or all
17 the treatment he would of needed had it been diagnosed in
18 January of 2010?

19 A Yes, as I said earlier, Stage 1 or 2 would have about a
20 70, 75 percent likelihood reduced.

21 Q You talked a little bit about earlier about the fact
22 that after the, the first cancer that Mr. Farr underwent
23 chemo and radiation therapy. I know we sort of heard that
24 term before.

25 could you basically explain sort of what chemo is for,

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1 how it works, and how it was used in Mr. Farr's case?

2 A Okay. Chemotherapy is the use of certain drugs or
3 chemicals. They're essentially poisons in the sense that
4 they, they will cause toxicity to normal tissue. We try to
5 use enough of them so that we destroy the more rapidly
6 proliferated cancer cells versus the normal cells, which
7 don't turn over as quickly, and we employ certain drugs that
8 are used. They all have side affects. They all cause
9 severe debility in the patient to some degree. Various
10 toxicities through the gastrointestinal tract, bone marrow,
11 and neuropathies as Mr. Farr developed and the platinum
12 drugs.

13 They do benefit the patients in the sense that they do
14 increase survival in many cases. We have certainly shown
15 that in breast cancer and we use it in, in certain cases
16 like here in this lung cancer to increase the likelihood
17 that any cells that were present after surgery would be
18 destroyed, but it's not a hundred percent effective.

19 Q And what about radiation therapy?

20 A Radiation therapy is a more direct treatment to an area
21 in the body where radiation is used to destroy cells and
22 prevent them from dividing. And if you prevent cells from
23 dividing, they can't multiply and that's the effect against
24 cancer cells. So we use that as a local treatment.

25 Q And so, Doctor Singer, in your opinion, does the

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by Mr. Calloway

1 failure to diagnose the cancer in January of 2010, was that
2 a causal factor in Mr. Farr's death?

3 A Yes, sir.

4 Q Do you hold that opinion to a reasonable degree of
5 medical certainty more likely than not?

6 A Yes, I do.

7 Q If Mr. Farr had been diagnosed in January of 2010,
8 would he have needed radiation and chemotherapy?

9 A As I said earlier, no.

10 Q Doctor Singer, as an oncologist and based on what you
11 reviewed in this case, do you believe that doctor, excuse
12 me, Mr. Farr's cancer spread from his right lung to his left
13 lung?

14 A Yes, sir, as I said earlier, I believe they were both
15 adenocarcinomas with a different predominance of histology
16 in one compared to the other. But I believe they're the
17 same cancer.

18 Q Let me just ask.

19 Are you being paid today for your testimony?

20 A Yes, I am.

21 Q Okay. Who are you being paid by?

22 A Your firm.

23 Q Okay.

24 A The Plaintiffs.

25 Q Okay. Have you testified in a medical malpractice case

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1 ever before?

2 A Many times. I've been in Court probably over 300
3 times.

4 Q Does that affect your ability to offer truthful
5 opinions on -- based on your review of the matters in this
6 case?

7 A I don't believe it does, no, sir.

8 Q And, lastly, Doctor Singer, has everything that you
9 have opined on today, all of your opinions, has all of them
10 been given to a reasonable degree of medical certainty more
11 likely than not?

12 A Yes, sir.

13 MR. CALLOWAY: Your Honor, at this time we have no
14 further questions.

15 THE COURT: Yes, sir.

16 MR. WILLIFORD: May it please the Court?

17 THE COURT: Are you gonna use the ELMO?

18 MR. WILLIFORD: I will, yes, sir.

19 THE COURT: Okay.

20 MR. WILLIFORD: At some point.

21 CROSS-EXAMINATION

22 BY MR. WILLIFORD:

23 Q Doctor Singer, you would agree that hindsight is not an
24 appropriate way to make a determination about a standard of
25 care as it applies to a physician?

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by Mr. Williford

1 Correct?

2 A We always have to use hindsight in reviewing records.
3 But we'd like to be able to be there when the physician is
4 doing what he's doing obviously. Sure.

5 Q But it's not a way to, to base an opinion on the
6 standard of care strictly by hindsight.

7 True?

8 A Well, I don't see how else you could do it. Whenever
9 you review someone's performance, you're always doing it in
10 hindsight.

11 Q Doctor, I want to hand you your deposition.

12 Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 Q Your original deposition.

15 And, Your Honor, may I ask for your instruction on what
16 a deposition is to the jury?

17 THE COURT: All right.

18 MR. WILLIFORD: Yes, sir.

19 THE COURT: All right. Ladies and gentlemen, testimony
20 is now going to be presented to you by a deposition. A
21 deposition is a document containing sworn testimony given by
22 a witness outside of Court in the presence of lawyers for
23 each party who may ask questions of the witness.

24 This is testimony -- this testimony is entitled to the
25 same consideration and to be judged as to credibility and

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1 weighed by you in the same way as if the witness were
2 present and gave the testimony about to be read to you from
3 the witness stand. It is then for you, the jury, to
4 determine the effect, value, weight, and truth of the
5 testimony given in the deposition.

6 MR. WILLIFORD: Thank you, Your Honor.

7 Doctor, if you would turn to Page 21 of your deposition
8 and let me know when you get there.

9 A Sure.

10 I'm there, sir.

11 Q 21, Lines 2 through -- no, sorry. Lines 21 through 25.
12 Question -- and this is the, this is the -- these are
13 questions I asked you in Philadelphia when we took your
14 deposition.

15 Do you recall that?

16 A Yes, sir.

17 Q Q. Would you agree that hindsight is not an
18 appropriate way to make a determination about the standard
19 of care as it applies to a physician such as Doctor Wan in
20 this case?

21 Your answer sure, I would agree with that.

22 A I did say that, yes, sir.

23 Q Okay. Thank you.

24 Outcomes are frequently not predictable in medicine.
25 True?

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by Mr. Williford

1 A I'll agree.

2 Q A bad result or a bad outcome for a patient can still
3 occur even when a physician provides reasonable care.

4 True?

5 A I would agree with that too.

6 Q A physician can not ensure a good outcome for their
7 patient.

8 A I would agree with that.

9 Q You would agree that a physician can not guarantee a
10 beneficial result as a consequence of his or her care?

11 A I would agree with that too.

12 Q You would agree, sir, that lung cancer can be missed on
13 a chest x-ray without the physician committing malpractice?

14 A I would agree.

15 Q Doctor, you have not authored any literature or
16 published any literature on the specific topics related to
17 this case?

18 A No, I have not.

19 Q Okay. You have not made any presentations, in all of
20 your years of practice, specifically about the, the subject
21 matter in this case?

22 A I made presentations I believe at tumor conference.
23 But not to a large, you know, to a large group of
24 physicians, no.

25 Q Okay. You're not a surgeon, correct?

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1 A No, I'm not.

2 Q You would defer to a surgeon, such as Doctor Nguyen in
3 this case, in terms of what he did surgically and what he
4 removed in terms of Mr. Farr's lung cancer?

5 A I would, yes, sir.

6 Q You would also defer to a surgeon in terms of what they
7 found intra-operatively in the surgery?

8 A Sure.

9 Q And you're not a pathologist---

10 A No, I'm not.

11 Q ---are you?

12 You would defer to a pathologist in terms of what they
13 see under the microscope with the cells?

14 A I would agree.

15 Q Okay.

16 A Yes, sir.

17 Q And you would defer to them in terms of what they find
18 pathologically?

19 A Yes, sir.

20 Q You would agree that, in terms of pathology, the
21 surgical specimen, the area that is removed by a surgeon
22 during surgery and is sent off to pathology where a
23 pathologist looks under the microscope, looks at the cells,
24 looks at the tissues, you would agree that the -- those
25 surgical specimens, in terms of the pathology of it, is the

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by Mr. Williford

1 ultimate determination of what kind of lung cancer someone
2 has?

3 A Yes, sir.

4 Q True?

5 Would it be fair to say that you are not qualified to
6 offer pathology, pathology opinions or pathology
7 determinations in this case?

8 A Correct. I'm not.

9 Q You would agree that you are not qualified to offer
10 standard of care opinions as it relates to pulmonologists
11 such as Doctor Wan in this case?

12 A I'm not a pulmonologist. So I would not offer standard
13 of care. I would agree.

14 Q And you're not giving standard of care opinions against
15 Doctor Wan in this case?

16 A No, I'm not, sir.

17 Q You're not offering an opinion that Mr. Wan acted with
18 a conscious disregard for Mr. Farr, are you?

19 A No, sir.

20 Q And you're not offering an opinion that she was
21 reckless or grossly negligent or intentional in a negative
22 way towards Mr. Farr?

23 A No, I've made no comments regarding Doctor Wan at all.

24 Q Now, on direct examination you talked about the, the
25 size of the tumor as alleged in January on an x-ray---

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by Mr. Williford

1 A Yes, sir.

2 Q ---as being roughly two or three centimeters in your
3 opinion, and then, in December, we have surge, surgery that
4 occurs and it's a 9-centimeter tumor?

5 A Correct.

6 Q And that's determined pathologically and we even looked
7 at the pathology report.

8 Correct?

9 A Correct.

10 Q Okay. You would agree that it's certainly not ideal
11 and not the way it's done in medicine to compare an x-ray
12 suspicion with a surgical specimen at pathology in terms of
13 size?

14 A Well, we care -- compare what we have available. In
15 this case we only have an x-ray because surgery wasn't done.
16 But I agree. Ideally you would want to compare two surgical
17 specimens, but rarely do you get that opportunity.

18 Q Okay. You would agree that getting diagnosed with lung
19 cancer generally has a poor prognosis compared to other
20 types of cancer?

21 A Yes, sir, cause 75 percent of lung cancers are
22 diagnosed at Stage 3 or 4. I would agree.

23 Q Okay. And you would agree that the IASLC, the
24 International Association for the Study of Lung Cancer, back
25 in 2010 and 2011, they made new classifications and

Barry Singer - Cross-examination
by Mr. Williford

1 sub-types for lung cancer including adenocarcinoma?

2 A Yes, sir.

3 Q Okay. And, at that point, they sub-typed
4 adenocarcinomas and now you have different sub-types in, in
5 terms of papillary adenocarcinoma predominate and you have
6 lepidic predominate and they're different sub-types?

7 A Yes, sir.

8 Q Is that right?

9 A They're different appearances under a microscope. I
10 would agree.

11 Q And, as an oncologist, that's certainly important.

12 As new classifications and sub-types of cancer come
13 out, there are different treatment options for different
14 kinds of cancer?

15 A Correct.

16 Q Wouldn't that be fair?

17 A All adenocarcinomas are treated the same way.

18 Q There are different modalities, would you agree, in
19 treating the different sub-types of cancers because they
20 behave differently?

21 A From epidermoid to glandular are adenocarcinoma, but
22 not within adenocarcinoma. All adenocarcinomas, as I said,
23 are treated the same way.

24 Q All right. You can not say and you do not know what
25 the rate is at which Mr. Farr's cancer may have grown?

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by Mr. Williford

1 A No, I don't think anyone can cause you have to have
2 exact measurements at least at two sites, preferably three
3 sites, to get rate of growth.

4 Q And no one can tell you?

5 A No.

6 Q No way can say the rate of growth?

7 A No.

8 Q True?

9 A I agree.

10 Q After Mr. Farr's original right lung surgery, after
11 that was performed by Doctor Nguyen in December of 2010, he
12 started doing better, correct?

13 A Yes, sir.

14 Q In fact, I want to go through some of his medical
15 notes. You were shown some medical records and I want to go
16 through some of that.

17 Now, these, these are medical records that you reviewed
18 in the case.

19 Correct?

20 A Yes, sir.

21 Q Okay. Right here, this is the surgery.

22 Now, this is after he was diagnosed with cancer and the
23 procedure date is December 2nd, 2010, and postoperative
24 diagnosis was preop diagnosis and a postop diagnosis.

25 what, what do these mean?

Barry Singer - Cross-examination
by Mr. Williford

1 A Well, before they do the surgery they feel he has
2 cancer, and then, afterwards, they still felt he had cancer
3 cause they removed it.

4 Q Sure.

5 And here we have Doctor Nguyen, Doctor Christophe
6 Nguyen?

7 A Yes, sir.

8 Q Okay. Right here, the first line of his surgical
9 findings, it says no evidence of metastatic disease.

10 Do you see that?

11 A Yes, sir.

12 Q Okay. Second page of his report.

13 There was no evidence of any endobronchial tumor.

14 Do you see that?

15 A Yes, sir.

16 Q Okay. And he goes into some description and we will
17 have Doctor Nguyen come and testify as to what he did
18 throughout this description and then there was a frozen
19 section returned negative for tumor.

20 What's a frozen section?

21 A Well, they, they cut tissue out and they get a quick
22 reading when they freeze it rather than going through the
23 long, longer process of staying -- of affixing it and
24 staining it. So they get an immediate result.

25 Q An immediate read from a pathologist while they're in

Barry Singer - Cross-examination
by Mr. Williford

1 surgery. They take down the tissues to the pathology
2 department. They have a pathologist look at it and give it
3 an immediate read.

4 A Yes, sir.

5 Q Okay. They report back to the surgeon?

6 A Yes, sir.

7 Q Okay. So that's what a frozen section is.

8 It returned negative for tumor --

9 A Yes, sir.

10 Q -- right here?

11 A little bit further down. The lung cavity was
12 surveyed.

13 It means they looked around?

14 True?

15 A Yes, sir.

16 Q There was no evidence of any metastatic disease --

17 A Yes, sir.

18 Q -- correct?

19 And here, because of the extent of the disease, I mean
20 had -- he did have some lung cancer. He elected to proceed
21 with thoracotomy.

22 True?

23 A Yes, sir.

24 Q Okay. And the tumor was bulky.

25 True?

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by Mr. Williford

1 A Large size, yes, sir.

2 Q Okay. Right here -- next we have a few remaining
3 branches of the pulmonary artery towards the posterior
4 segment of the upper lobe as well as the middle lobe.

5 These were divided with the endovascular stapler device
6 as well. The specimen was removed and blocked and frozen
7 section returned. As mentioned above, negative for
8 bronchial margin. Now, I want to unpack that a little bit.

9 Again, we have this frozen section, this immediate read
10 of what the pathology, the cells, the cells and the tissues
11 showed while in the middle of surgery.

12 Correct?

13 A Yes, sir.

14 Q Okay. And the bronchial margin, again, what is the
15 bronchial margin?

16 A Well, where they cut the cancer out there is a margin
17 in the bronchi there and what they do is see if they're
18 cells still in the margin.

19 Q And according to Doctor Nguyen's report and based on
20 the immediate read of the pathologist, this was negative?

21 A Yes, sir.

22 Q And negative means there was no cancer beyond that?

23 A Correct.

24 Q Okay. We talked about lymph nodes sections. We then
25 completed our mediastinum lymph node dissect, dissection by

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by Mr. Williford

1 removing all hilum lymph nodes.

2 what's the hilum region?

3 what is the hilum?

4 A Hilum is the area of the lung where the vessels and the
5 bronchi all go in, into the lung and that's called a hilum.

6 Q Okay. And lymph nodes were taken out. We completed
7 our mediastinal lymph node dissection. Several hilar lymph
8 nodes, Level 10, were removed as well as additional Level 4
9 from the peritracheal mediastinal.

10 Do you see that?

11 A Yes, sir.

12 Q So Doctor Nguyen not only took out the, the lung cancer
13 that was there, but also lymph nodes as well?

14 A Well, he performed what we expected to be done for, you
15 know, complete resection.

16 Q Sure.

17 A Sure.

18 Q And then, a few days later, well, I guess immediately,
19 but we got this report a few days later, this is the report,
20 the surgical pathology report that you saw a little bit on
21 direct examination, but this is what the pathologist does
22 when they -- it's after the surgery is done. They're
23 looking at the tissues. They do a more full report based on
24 what they see from a gross description.

25 what is, what is a -- the gross description?

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by Mr. Williford

1 A What it appears grossly. Not under the microscope.

2 Q Okay. So they're looking at the tissues before they
3 put it under the microscope.

4 Correct?

5 A Yes, sir.

6 Q And then they do a microscopic analysis.

7 So they're looking at cells under the microscope?

8 A Yes, sir.

9 Q Okay. And this is the report after that.

10 Correct?

11 A Yes, sir.

12 Q All right. Here we have right lung, upper and middle
13 lobectomy. The specimen's intact.

14 What does intact mean?

15 A Well, it hadn't broken, broken up. It's a whole piece.

16 Q Got you. They got it all.

17 All right. The tumor site. Primary tumor at junction
18 of right upper and middle and right middle lobe.

19 Do you see that?

20 A Yes, sir.

21 Q Okay. And this was adenocarcinoma with papillary
22 features?

23 A Yes, sir.

24 Q And you would defer to Doctor Wren in terms of what he
25 diagnosed under the microscope in calling this

Barry Singer - Cross-examination
by Mr. Williford

1 adenocarcinoma with papillary features?

2 A I have no question about it, no.

3 Q Okay. And this was a Histologic Grade 2?

4 A Yes, sir.

5 Q All right. The visceral pleura invasion was negative.

6 Correct?

7 A Yes, sir.

8 Q It means it did not spread into the, into that part of
9 the lung?

10 A Right.

11 Q Okay. And the tumor extension, it was confined to the
12 lung.

13 Do you see that?

14 A Yes, sir.

15 Q So it didn't spread out beyond the lung?

16 A (Witness nods affirmatively.)

17 Q All right. The margins, and when we say margins, we
18 mean kind of the line that's drawn that, you know,
19 whatever's cut out, it's kind of the line that's drawn
20 where, where the cancer was beyond other tissue that was not
21 cut.

22 A Correct.

23 Q Correct?

24 Okay. And here we have the margins. They were
25 negative, but within millimeters at the middle lobe

Barry Singer - Cross-examination
by Mr. Williford

1 bronchial margins.

2 So it was close, but it was negative --

3 A Yes, sir.

4 Q -- according to Doctor Wren?

5 A Yes, sir.

6 Q And the vascular margin was negative.

7 And what is the vascular margin?

8 A Well, it's any tumors in the vessels. Vascular
9 involvement, I believe that's what they mean.

10 Q And that, and that -- and there were none.
11 Correct?

12 A Yes, sir.

13 Q And then parenchymal, parenchymal margin.
14 What is that?

15 A Again, that would be the actual tissue itself.

16 Q Okay. So it was negative beyond what they removed?

17 A Yes, sir.

18 Q And then according to Doctor Wren, the lymphovascular
19 invasion, not identified. They didn't see any there.

20 A Correct.

21 Q Correct?

22 A Yes, sir.

23 Q Okay. Right here, the lymph nodes status.
24 What is a lymph node, doctor?

25 A Lymph node are actually a -- structures where lymph

Barry Singer - Cross-examination
by Mr. Williford

1 drains into from the organ. In this case, the hilar nodes
2 or the mediastinum nodes and generally, if tumor cells are
3 present in them, it means that the tumor has escaped beyond
4 the primary.

5 Q And, and, therefore -- and many people understand as
6 if, if cancer spreads to the lymph nodes, then you might
7 have to worry about it spreading?

8 A Correct.

9 Q And here, lymph nodes status, negative zero out of
10 thirteen.

11 That means that, out of 13 they took, took out, they
12 were all negative?

13 A Yes, sir.

14 Q Correct?

15 No cancer in the lymph nodes?

16 A Yes, sir.

17 Q And there was a pathologic stage and this is different
18 than a clinical stage, correct?

19 A Correct.

20 Q You would---

21 A After surgery you restage and that's called the
22 pathologic stage.

23 Q Okay. Now, in your understanding, when they stage a
24 tumor from a pathologic standpoint, it's a primary tumor?

25 A Yeah. Right.

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by Mr. Williford

1 Q All right. So that's primary lung tumor that Doctor
2 Wren determined, correct?

3 A Yes, sir.

4 Q Now, doctor, you talked about chemotherapy and
5 radiation and, and how Mr. Farr did get that and he did---

6 A Yes, sir.

7 Q ---at some point.

8 But initially, in January of 2011, about -- it's about
9 a month and a half after Doctor Nguyen did the surgery on
10 the right side, they had a radiation therapy consult note.

11 Do you see this?

12 A Yes, sir.

13 Q Okay. And the dictating physician is Drew Monitto,
14 Monitto and, and basically the dictating physician's the one
15 who it's his report.

16 A Yes, sir.

17 Q Correct?

18 Okay. And what is a radiation therapy consult note?

19 A Well, you're going to a radiation therapist who's a
20 specialist in administering radiation therapy and getting
21 his or her opinion regarding further treatment.

22 Specifically with radiation therapy.

23 Q And, doctor, are you familiar with Tumor Boards and---

24 A I was Chairman of one for---

25 Q And what, what is a Tumor Board?

Barry Singer - Cross-examination
by Mr. Williford

1 A ---18 years.

2 We determine, on the Board, generally what further
3 treatment the patient needs in terms of the staging of the
4 cancer and whether further -- any further treatment is
5 required.

6 Q So a Tumor Board you have -- often times you'll have a
7 radiation oncologist?

8 A All specialists.

9 Q Oncologists?

10 A Have all the specialities.

11 Q A pathologist.

12 All the different specialties coming together to try to
13 decide, you know, how do we treat this patient?

14 A Yes, sir.

15 Q All right. So let's look at his note a little bit.

16 Okay. Now, Doctor Corso, he's one of the, according to
17 the medical records, he was one of the oncologist working
18 with Mr. Farr.

19 Correct?

20 A Yes, sir.

21 Q Okay. Doctor Corso felt right here that the patient
22 had a Stage 2, T2 versus T3NOMO bronchoalveolar carcinoma of
23 the lung. He felt that the patient was potentially
24 resectable and I refer the patient to Nguyen, a thoracic
25 oncologist, oncologic surgery.

Barry Singer - Cross-examination
by Mr. Williford

1 This is leading up to his surgery with Doctor Nguyen,
2 correct?

3 A Yes, sir.

4 Q Okay. And let me ask you about that.

5 Bronchoalveo, alveo, alveolar carcinoma, they did a
6 biopsy. According to the records, they did a biopsy of
7 that, that and, and what that is or it's really a brushing
8 just of a few cells and they were reactive and they thought
9 it might be bronchoalveolar carcinoma.

10 Correct?

11 A Correct.

12 Q This was in late October of 2010?

13 A Yes, sir.

14 Q Okay. Now, when they actually did surgery, they
15 determined that it was actually an adenocarcinoma papillary
16 predominant type.

17 A Yes, sir.

18 Q Correct?

19 And so the surgical pathology is, is, is the one that
20 you go with in terms of what it is?

21 A Well, you have more tissues. So you're getting a more
22 accurate diagnosis, yes, sir.

23 Q So yes. Okay.

24 All right. So, on December 2nd, the patient
25 underwent a bronchoscopy, mediastinoscopy.

Barry Singer - Cross-examination
by Mr. Williford

1 what's a mediastinoscopy?

2 A It's when they put a scope into the mediastinum, which
3 is the space between the two lungs. There are lymph nodes
4 in that area, and if the lymph nodes are positive, often it
5 indicates a more advanced cancer.

6 Q Okay. And a bronchoscopy is what?

7 A It's when they put a tube into the actual trachea into
8 the bronchi and look into the lungs.

9 Q So, Doctor Nguyen, during surgery, they looked inside
10 the lungs. They looked outside the lungs.

11 Correct?

12 A Yes, sir.

13 Q And they did a right thoracotomy.
14 what's a thoracotomy?

15 A Opening the chest.

16 Q Okay. And they opened the chest.

17 Bilobectomy. They removed the upper lobe and right
18 middle lobe by Doctor Nguyen. He also had a mediastinal
19 lymph node dissection.

20 Is that when they remove the lymph nodes from the --
21 from around the lung area?

22 A Yeah, when they do the mediastinoscopy they'll sample
23 the nodes, but you can also remove the nodes surgically.

24 Q Okay. And, and they were all negative, correct?

25 A Yes, sir.

Barry Singer - Cross-examination
by Mr. Williford

1 Q Okay. And then operative findings were no -- were
2 notable for no evidence of metastatic disease.

3 A Yes, sir.

4 Q Correct?

5 Okay. The pathology from the patient's surgery on
6 December 2nd showed a 9-centimeter adenocarcinoma and we
7 went through that. We just looked at the---

8 A Yes, sir.

9 Q Okay. Margin status notable, was notable for a
10 negative, but close, total of 13 lymph nodes were dissected
11 and were negative, and there was no lymph node vascular
12 invasion. The patient reported feeling well following his
13 surgery.

14 A Yes, sir.

15 Q Correct?

16 Okay. Okay. And Doctor Corso felt that, you know, he
17 might have a relapse from his lung cancer.

18 Do you see that?

19 A Felt he has significant risk and that's why he gave
20 them, he gave him eventual radiation and chemo.

21 Q Well, we'll get to that.

22 And, and certainly it's appropriate, early on, to
23 consider radiation and chemotherapy because you, you could
24 have a recurrence and that's a possibility for sure.

25 A Well, that's, that's true, and if you do have a

Barry Singer - Cross-examination
by Mr. Williford.

1 recurrence, you know the patient is gonna succumb to cancer.

2 Q Okay. Right here, on the questioning, the patient has
3 done quite well after his surgery.

4 Now, now, this is Doctor Monitto describing his
5 interactions with the patient.

6 Correct?

7 A Yes, sir.

8 Q Okay. So he's talking to Mr. Farr and he's getting
9 this information.

10 True?

11 A Yes, sir.

12 Q All right. He denies any pain or fatigue. He states
13 that, overall, his exercise capacity is actually improved
14 since his surgery and he has less dyspnea on exertion.

15 Now, what, what is dyspnea?

16 A Shortness of breath.

17 Q Shortness of breath.

18 So he's getting better doing more exercises and he's
19 got less shortness of breath after his right lung cancer
20 surgery?

21 A Yes, sir.

22 Q He denies any thoracic pain, hemoptysis, history of
23 wheezing.

24 what are those things?

25 A Hemoptysis is coughing up blood. wheezing is wheezing.

Barry Singer - Cross-examination
by Mr. Williford

1 Q Okay. The third page. The assessment, Doctor
2 Monitto's assessment. This is a 68-year old male status
3 post-thoracotomy. The patient has excellent performance
4 status.

5 Do you see that?

6 A Yes, sir.

7 Q Okay. Recommendations. This is what Doctor Monitto is
8 describing as what's recommended at this time. This is
9 January after his right lung surgery.

10 Right?

11 A Yes, sir.

12 Q Okay. If his bronchial margin were positive, I think
13 there's a role for postoperative adjuvant radiotherapy.
14 However, given the pathology report that the margin was
15 negative, although close, I think that radiation --
16 radiotherapy is likely not indicated.

17 Do you see that?

18 A Yes, sir.

19 Q And Doctor Monitto signed that?

20 A Yes, sir.

21 Q Okay. So, at this point, based on the surgery by
22 Doctor Nguyen, based on the pathology determination grossly,
23 you know, looking at the tissues and then under the
24 microscope and then his improvement, Mr. Farr's improvement,
25 they actually recommended no radiotherapy.

Barry Singer - Cross-examination
by Mr. Williford

1 A Initially, yes, sir.

2 Q Okay. Now, did you review the Medical University of
3 South Carolina pathology records?

4 A Yes, sir.

5 Q Okay. And, and we heard this yesterday.

6 Mrs. McKaughan testified that, you know, she wanted to go
7 and, and take her father to the Medical University of South
8 Carolina to get a second opinion.

9 A Yes, sir.

10 Q Do you recall that?

11 Okay.

12 A It's often done.

13 Q And so, when they went to the Medical University of
14 South Carolina in terms of whether or not, you know, they
15 should seek a second opinion for further chemotherapy, one
16 thing they did is they wanted to look at the pathology
17 slides themselves?

18 A Sure.

19 Q Okay. And that's reasonable and appropriate?

20 A Yeah, they always do.

21 Q So here we are. We have the Medical University of
22 South Carolina pathology report, and this is dated -- the
23 date of collected was February 14th, 2011. They received
24 it that same day. Let's look at the diagnosis. Outside
25 slides.

Barry Singer - Cross-examination
by Mr. Williford

1 Now, what does outside slides mean?

2 A It means that the biopsy or the tissue wasn't obtained
3 in the hospital. It came from elsewhere.

4 Q Okay. So these are the ones they got from Spartanburg?

5 A Right.

6 Q Okay. The same ones Doctor Wren looked at?

7 A Yes, sir.

8 Q Okay. We see lymph nodes. No carcinoma identified.

9 Do you see that?

10 A Yes, sir.

11 Q And obviously carcinoma is cancer. So no cancer
12 identified.

13 Other lymph nodes. No carcinoma identified.

14 Correct?

15 A Yes, sir.

16 Q Other lymph nodes, no carcinoma identified.

17 Do you see that?

18 A Correct.

19 Q Okay. Tumor, here's -- now here's the lung. The
20 bilobectomy, sections of the lung. Tumor histologic type.

21 Now, histologic type, that is, that is what, at the
22 cellular level, they're, they're looking at.

23 Correct?

24 A Correct. On---

25 Q Different patterns of cells and also what they look

Barry Singer - Cross-examination
by Mr. Williford

1 like at a very microscopic level, correct?

2 A Yes, sir.

3 Q Okay. And, and tumor histologic type, adenocarcinoma
4 papillary predominate histological sub-type.

5 Correct?

6 A Yes, sir.

7 Q Okay. So these pathologist, and they're two of them we
8 can see at the end of the report, but they looked at the
9 same slides as Doctor Wren in Spartanburg and they came up
10 with the same diagnosis.

11 Correct?

12 A Yes, sir.

13 Q Okay. And here, in terms of well to moderately
14 differentiated, in terms of the grade, that's not poorly
15 differentiated.

16 Correct?

17 A Correct.

18 Q And, on direct examination, you mentioned that poorly
19 differentiated histologic grade cancers, they have more
20 prolific possibility of spreading?

21 A They do.

22 Q Okay. But this was not fully differentiated, was it?

23 A Correct.

24 Q Okay. Tumor extension was complied -- confined to the
25 lung. The margins, we started here, margins are bronchial

Barry Singer - Cross-examination
by Mr. Williford

1 margin, uninvolved. The vascular margin, uninvolved. The
2 parenchymal, parenchymal margin, uninvolved. Basically no
3 cancer's identified.

4 Correct?

5 A Yes, sir.

6 Q And the same thing, lymphovascular invasion not
7 identified.

8 Correct?

9 A Yes, sir.

10 Q And all the lymph nodes, the peribronchial lymph nodes,
11 it's around the bronchus.

12 Correct?

13 A Yes.

14 Q There were eight of them and they were all negative?

15 A Yes, sir.

16 Q And then 13 other lymph nodes, they were all negative?

17 A Yes, sir.

18 Q Zero out of thirteen 13 mean it's negative, correct?

19 A Yes, sir.

20 Q Okay. And then they, they stage the tumor and they,
21 they, you know, again, this is a T for a primary lung tumor.

22 Correct?

23 A Yes, sir.

24 Q Okay. They go down and then they're a few other lymph
25 nodes right here and right here. No carcinoma identified

Barry Singer - Cross-examination
by Mr. Williford

1 and no carcinoma identified.

2 Correct?

3 A Yes, sir.

4 Q And comment, it has this diagnosis essentially
5 correlates with that rendered by the outside pathologist?

6 A Yes, sir.

7 Q And basically what you're saying is we pretty much
8 agree with Doctor Wren in Spartanburg?

9 A Yes, sir.

10 Q Okay. There's a difference in staging, but in terms of
11 what they found --

12 A Yes, sir.

13 Q -- it was the same.

14 Right here, which is signed by two physicians at the
15 Medical University of South Carolina. All microscopic
16 sections with this case were examined and the results of
17 each examination is/are incorporated in the above diagnose.
18 Doctor Eberts, and then looks like Masha Belik, M.D. I
19 certify that I personally conducted a diagnostic evaluation
20 of the above specimens and have rendered the above
21 diagnoses.

22 Correct?

23 A Yes, sir.

24 Q Now, on direct examination you were answering questions
25 about Mr. Farr's prognosis after Doctor Nguyen's surgery.

Barry Singer - Cross-examination
by Mr. Williford

1 Do you recall that?

2 A Yes, sir.

3 Q All right. Let's look at that a little bit. December
4 22nd, 2010.

5 So this is about three weeks after his surgery.

6 correct?

7 A Yes, sir.

8 Q Okay. I just want to go quickly to impression and
9 plan.

10 As above, Stage 2 non-small cell lung cancer with
11 negative margins, negative lymph nodes. Mr. Farr is doing
12 quite well from his surgery and I am pleased that his
13 oxygenation is as good as it is. Certainly he is on track
14 to make a complete recovery and this is signed by Doctor
15 Nguyen.

16 A Yes, sir.

17 Q Correct?

18 Here's Doctor Nguyen again. This is about a month
19 later in January and he goes through the history of cancer
20 and then his interval history. Six weeks now from his
21 operation. He continues to do quite well and is no longer
22 taking any pain medication. He has resumed his normal
23 activities with full function of his right arm and shoulder.
24 He denies any significant shortness of breath.

25 correct?

Barry Singer - Cross-examination
by Mr. Williford

1 A Yes, sir.

2 Q His room air saturations are 96 percent.

3 Correct?

4 A Yes, sir.

5 Q That means he's getting decent oxygen in his, you know,
6 in, in terms of his breathing?

7 A Yes, sir.

8 Q Okay. So his lungs and his cardiovascular system are
9 functioning quite well actually at this point.

10 A At that point, yes, sir.

11 Q Okay. I want to move to another note. This is
12 February 2nd. Again, this is Doctor Nguyen for follow-up.

13 Mr. Farr presents for follow-up with me with his family
14 regarding concerns about adjutant therapy.

15 Adjutant therapy, as you mentioned again, is, again,
16 can, you know, radiation or chemotherapy, those kind of
17 things?

18 A With no evidence of disease at the time, correct.

19 Q Okay. He is now approximately two months out from his
20 operation.

21 A Uh-huh. (Affirmative).

22 Q He has met with Doctor Corso and his case was presented
23 at our multidisciplinary conference.

24 Again, that's kind of like the Tumor Board?

25 A It is.

Barry Singer - Cross-examination
by Mr. Williford

1 Q Okay.

2 A Yes.

3 Q Recommendations were for either observation or for
4 contemporary adjunct therapy. The issue of Tarceva was
5 raised and thought to be best reserved for situations in
6 which the cancer has returned or is metastatic.

7 And really what he's saying there is this isn't really
8 that situation. It's -- it hadn't returned. It's not
9 metastatic. So Tarceva is not really, not really indicated.
10 I mean that's what he's saying.

11 A To some degree, but it's considered.

12 Q Considered, sure, and that would be, that would be
13 appropriate to consider it?

14 A Yes, sir.

15 Q Clinically, he denies any worsening shortness of
16 breath.

17 A Yes, sir.

18 Q And then down under impression and plan, from a
19 clinical surgical prospective, I feel that he is recovering
20 nicely and we'll see him back in a few months, and that's,
21 again, Doctor Nguyen.

22 Correct?

23 A Yes, sir.

24 Q A few months later, Doctor -- Mr. Farr goes to his
25 oncologist and there's -- and is that Palmetto Hematology

Barry Singer - Cross-examination
by Mr. Williford

1 Oncology. So, a few months later, now it's May of 2011.

2 Do you see that?

3 A Yes, sir.

4 Q Okay. Flip to the next one.

5 A (Witness complies.)

6 Q You know, they're, they're doing an exam and no
7 neuropathy, no shortness of breath, and, unfortunately he
8 continues to smoke in spite of recommendations to quit and
9 he, he certainly continued.

10 Didn't he?

11 A Yes, sir.

12 Q And they do a physical exam.

13 So, in the oncology office visit, they're still
14 examining him. They're not just talking to him.

15 Correct?

16 A I would expect them to, yes, sir.

17 Q Sure.

18 And under lymph nodes, no palpable surgical
19 superclavicular axillary or inguinal adenopathy.

20 Do you see that?

21 A Yes, sir.

22 Q So they're, they're no clinical signs, no, no signs of
23 lymph nodes being suspicious from the doctor palpating or
24 touching or feeling around?

25 A That's right.

Barry Singer - Cross-examination
by Mr. Williford

1 Q Correct?

2 Okay. I'll come back to another note in a moment.

3 All right. Okay. Let me, let me do it real quick.

4 Let me, let me pull from the medical record here.

5 (Pause.)

6 Q Okay. This is directly from medical record notebooks
7 in evidence, and, again, this is just a continuation of that
8 note that we just went over. This is Doctor Mehta, the
9 oncologist, you know, again, and this is from, from that May
10 visit.

11 Right here under assessment and plan. It says right
12 here, unfortunately the patient continues to smoke and I
13 have, once again, expressed to him the greatest factor of
14 his cancer coming back is because he continues to smoke on a
15 regular basis. He verbalizes understanding and states that
16 he will continue to try to cut down. He continues to refuse
17 formal smoking cessation.

18 Do you see that?

19 A Yes, sir.

20 Q Okay. And I know smoking can be difficult in terms of
21 stopping.

22 Correct?

23 A Stopping, yes. Nicotine addiction is very difficult.

24 Q But in the face of lung cancer, certainly a good thing
25 to try to do particularly having survived lung cancer?

Barry Singer - Cross-examination
by Mr. Williford

1 A Yes, sir.

2 Q Now, they continue to follow Mr. Farr.

3 A Yes, sir.

4 Q And he would come back for some visits, and, at this
5 point, they decided they were gonna do a bronchoscopy to
6 kind of see what's going on in his lungs. Procedure date is
7 August 22nd, 2011.

8 So this is about three months after that last note --

9 A Yes, sir.

10 Q -- by Doctor Mehta.

11 Now, again, fiberoptic bronchoscopy and this is where
12 they have a lighted scope and they're actually going into
13 the lung and they -- they're looking at the lung to see what
14 they, they can find.

15 Correct?

16 A Yes, sir.

17 Q Okay. Here under procedure and detail it says
18 examination of the left upper and lower lobes appear free of
19 secretions, mass, or bleeding. Examination of the right
20 upper and middle lobe stumps were in tact. There was no
21 bulging. There was no endobronchial mass. There were no
22 mucosal changes. Wayne Needle was done and the area was
23 lavaged and brushed. The right lower lobes were clear and
24 free of secretions, mass, or bleeding, and, under diagnosis,
25 impact of right upper lobe and right middle lobe stump with

Barry Singer - Cross-examination
by Mr. Williford

1 no endobronchial lesion.

2 Do you see that?

3 A Yes, sir.

4 Q Okay. So they're looking at his lung. They're looking
5 at it in his lung. This is about a year after he was
6 diagnosed. Not quite a year after he was diagnosed, and
7 they're, they're following him and they're not seeing
8 anything based on the bronchoscopy.

9 A Well, he did that because he had a positive PET Scan
10 and they were concerned.

11 Q That's right.

12 Then the PET Scan actually decreased on the right?

13 A That's correct.

14 Q So the PET Scan is, is -- and it's fair for the
15 physicians and reasonable certainty to, to follow along and,
16 and look and see, you know, is it coming back?

17 A Correct.

18 Q And there was a positive PET Scan, but it actually
19 decreased later on?

20 A It did.

21 Q On the right.

22 And when they did a bronchoscopy, that was negative?

23 A Yes, sir.

24 Q Okay. I want to move to -- I've only got a few more,
25 doctor.

Barry Singer - Cross-examination
by Mr. Williford

1 Okay. Again, this is Doctor Mehta. He's an
2 oncologist. This is January 16th, 2012.

3 So now we are, we are over two years after Doctor Wan
4 saw Mr. Farr?

5 A Yeah, about two years.

6 Q And you understand Doctor Wan only saw Mr. Farr one
7 time?

8 A Correct.

9 Q Two years out from that, he's getting follow-up care
10 and he had a recent hospitalization for bronchitis.

11 Bronchitis, what is that?

12 A Just inflammation.

13 Q Inflammation in the lung?

14 A Right, the bronchus.

15 Q Not cancer?

16 A Correct.

17 Q Okay. He was hospitalized between these times. He was
18 treated with antibiotics. Chest x-ray during course of
19 admission did not show any evidence of recurrent lung
20 cancer.

21 Do you see that?

22 A Yes, sir.

23 Q Under tobacco, Mr. Farr continues to smoke one-half
24 pack per day. Not interested in any formal smoking
25 cessation program. Counseled at length today.

Barry Singer - Cross-examination
by Mr. Williford

1 And, and when a physician typically, in your
2 experience, puts at length, you know, what are they trying
3 to communicate?

4 A They're trying to communicate to the patient that it's
5 significant to do what they're asking them to do.

6 Q Sure.

7 And obviously they care about Mr. Farr?

8 A Yes, sir.

9 Q And, and even though smoking's difficult, they want him
10 to stop because look, you're two years, two years out from
11 surviving lung cancer and he, and he's still smoking?

12 A Yes, sir.

13 Q Okay. And, at this point, the plan was -- at this time
14 we will plan on reimaging the patient in approximately three
15 months from his most recent previous scans.

16 So, again, they are -- they're doing what they need to
17 do in, in terms of following up and, and trying to see what
18 his prognosis is?

19 A Yes, sir.

20 Q Okay. Is otherwise doing fairly well.

21 A (Witness nods affirmatively.)

22 Q Again, we have continued to encourage him to quit
23 smoking and we have told him that this is his greatest risk
24 of recurrence in his disease coming back and he understood
25 what they're talking about according to the records.

Barry Singer - Cross-examination
by Mr. Williford

1 True?

2 A Yes, sir.

3 Q Okay. And that's just signed by Doctor Mehta.

4 And then -- so that was two years after Doctor Wan saw
5 the patient. At that point, cancer free, continues to
6 smoke, he's been encouraged not to, and then we find out, in
7 April of 2012 -- and he, and he unfortunately passed away in
8 June of 2012.

9 A Yes, sir.

10 Q So a few months later.

11 But, in April, we find out that, you know, there's
12 something suspicious on the left side.

13 Correct?

14 A Yes, sir.

15 Q Okay. And they did surgery.

16 Correct?

17 A Yes, sir.

18 Q Okay. And Doctor Nguyen, Christophe Nguyen, the one
19 who did the right lung cancer, ending up doing the left lung
20 wedge resection.

21 Correct?

22 A Correct.

23 Q And a resection is where you cut out the tissue.

24 Correct?

25 A Yes, instead of doing a lobectomy they just took out

Barry Singer - Cross-examination
by Mr. Williford

1 the portion of the lung -- of the lobe that had the cancer,
2 yes, sir.

3 Q Sure.

4 And, and here's the surgical pathology report from
5 Doctor Rosanna Lapham, and we will hear from her later this
6 week.

7 Now, again, the surgical pathology report is a
8 microscopic examination of the tissues that were taken out
9 during surgery?

10 A Yes, sir.

11 Q Okay. And the diagnosis is well differentiated
12 adenocarcinoma. Again, not poorly differentiated, but it's
13 well.

14 So it's---

15 A Correct.

16 Q ---better, right?

17 A Yes, sir.

18 Q It says lepidic predominate with an acinar pattern, and
19 there's another portion that was also of the same tissue.

20 Correct?

21 A Yes, sir.

22 Q And the same thing here, well differentiated
23 adenocarcinoma lepidic predominate and with an acinar
24 pattern.

25 Do you see that?

Barry Singer - Cross-examination
by Mr. Williford

1 A Yes, sir.

2 Q Okay. Tumor shows a predominate lepidic pattern with
3 areas of acinar pattern of infiltrations. Within the random
4 sections of the lung parenchymal there are multiple minute
5 foci of lepidic in situ adenocarcinoma.

6 Do you see that?

7 A Yes, sir.

8 Q Okay. Now, in situ typically means that's where the
9 cancer originated?

10 A It means noninvasive. It doesn't necessarily mean it
11 originated there. It just means noninvasive.

12 Q Noninvasive and it hadn't spread?

13 A Correct.

14 Q Based on that?

15 A Correct.

16 Q And lepidic predominate with an acinar pattern is a
17 different sub-type under the new classifications than
18 adenocarcinoma papillary predominate sub-type?

19 A Well, they're different, but they all contain the same
20 things.

21 Q Well---

22 A It contained papillary, lepidic, and acinar, but the
23 acinar and lepidic are predominate. In the papillary,
24 acinar and lepidic are present too, but they're not
25 predominate.

Barry Singer - Cross-examination
by Mr. Williford

1 Q Okay. Well -- right. But in terms of diagnosing the
2 pathology, they are different tumors predominately, correct?

3 A It's a different histology. I believe it's the same
4 cancer that's spread.

5 Q Okay. Now, pathologic stage, P2 -- T2A.

6 Do you see that?

7 A Yes, sir.

8 Q And when a pathologist does that, that's because it's
9 staged -- they stage it primary, do they not?

10 A They can do it that way, yes, sir.

11 Q And that's what she did?

12 A Metastatic, it's, it's---

13 Q Okay.

14 A ---you don't have to stage it.

15 Q But primary is not metastatic.

16 Primary is actually a new one?

17 A Yes, but the pathologist doesn't know that.

18 Q She -- Doctor Lapham doesn't know that?

19 A No, she doesn't know it's primary metastatic.

20 Q Did you read her deposition?

21 A Yes, I did.

22 Q And you, you read where she said this was not
23 metastatic and this was a primary?

24 A She said that, yes, she did.

25 Q Okay.

Barry Singer - Cross-examination
by Mr. Williford

1 A But she doesn't know that just from looking at it.

2 Q You'll -- we will be sure to ask her that.

3 Discharge summary, Doctor Nguyen.

4 A Uh-huh. (Affirmative).

5 Q Now, this is the discharge summary from, from just that
6 wedge resection of the left lung.

7 A Yes, sir.

8 Q Okay. And the pathology report we just looked at
9 correlates with this note.

10 Correct?

11 A Correct.

12 Q And a discharge summary is, is the summary of that
13 patient's hospital visit at that time?

14 A Yes, sir.

15 Q All right. And this is from Doctor Nguyen's surgery as
16 the attending?

17 A Yes, sir.

18 Q And the admitting diagnosis is what?

19 A Primary neoplasm of the lung.

20 Q And that is a different cancer than -- when they say
21 primary, that is not a metastatic cancer?

22 A Correct.

23 Q That's what they mean?

24 A That's what this label meant. It doesn't mean it's
25 that one because he was treating it as a metastatic lesion.

Barry Singer - Cross-examination
by Mr. Williford

1 Q All right. There's a chest x-ray. This is June of
2 2012. He's back in the hospital again, you know, with some
3 issues with his lungs, and they're looking at it. They do
4 an AP Chest.

5 That's an x-ray, correct?

6 A Yes, sir.

7 Q Right here it says parenchymal lung densities are, are
8 noted bilaterally. Most typical of pneumonia.

9 A Yes, sir.

10 Q Pulmonary edema would be a possibility as well.

11 So, at this point, he's developing some pneumonia?

12 A It's a terminal phase of his disease, yes, sir.

13 Q And extensive parenchymal lung densities bilaterally
14 are a little more pronounced than on the previous study.
15 Findings most compatible with pneumonia. Pulmonary edema
16 would be a clinical consideration as well.

17 Do you see that?

18 A Yes, sir.

19 Q And this is the, the pulmonary consultation, a
20 pulmonologist, this is the last note I'm gonna go over at
21 the moment, and the pulmonary consultations is a
22 pulmonologist giving their, you know, assessment of Mr.
23 Farr?

24 A Yes, sir.

25 Q True?

Barry Singer - Cross-examination
by Mr. Williford

1 And this is that same day, June 10th, 2012.

2 okay. The pulmonary consultation, consultation was
3 respiratory failure and the impression.

4 what is impression?

5 A what they feel the diagnosis are.

6 Q The diagnoses. And it was right lower lobe pneumonia
7 is number one. Number two, end stage chronic obstructive
8 disease.

9 A Yes, sir.

10 Q That's COPD?

11 A Yes, sir.

12 Q And acute on-chronic respiratory failure.

13 Correct?

14 A Yes, sir.

15 Q That means he's got a chronic problem, but it's just
16 now worse?

17 A It's acute problem superimposed on the chronic problem.

18 Q Okay. And then they talk about a history of lung
19 cancer. Not saying it's lung cancer now, but they're
20 talking about he's had a history of it.

21 Correct?

22 A Yes, sir.

23 Q Next page in the note, long past history of tobacco
24 use. Apparently continues to smoke, and this is June 10th
25 of 2012.

Barry Singer - Cross-examination
by Mr. Williford

1 Correct?

2 A Yes, sir.

3 Q And unfortunately Mr. Farr died on I think it was June
4 19th. So---

5 A Yes, sir.

6 Q ---a little over a week later.

7 Correct?

8 A Yes, sir.

9 Q All right. Isn't it true, doctor, that you do not know
10 the criteria for determining a multiple primary lung cancer
11 in terms of being synchronous or metachronous?

12 A No, I don't.

13 Q You don't know that criteria?

14 A No.

15 Q You're an oncologist and you don't know that?

16 A Correct.

17 Q And---

18 A As I've never seen synchronous lung cancers in my 42
19 years of practice.

20 Q And there are certain criteria that help diagnose
21 multiple primary lung cancers --

22 A I'm not---

23 Q -- and multiple primary lung cancers are just that.
24 They're different new -- they're different cancers from each
25 other?

Barry Singer - Cross-examination
by Mr. Williford

1 A Yes, sir.

2 Q And there's a certain set of criteria?

3 A Yes, sir.

4 Q And you're offering the opinion that Mr. Farr died from
5 his right lung cancer metastasizing to his left, and yet you
6 don't know the criteria for determining what the multiple
7 primary tumors are?

8 A That's correct.

9 Q In fact, when I took your deposition you were actually
10 never given the pathology report from Doctor Rosanna Lapham
11 to even know what the left cancer was, correct?

12 A I don't recall, but that may be true.

13 Q Okay. So you're giving an opinion in a deposition and
14 you didn't even have all the information if that's true?

15 A If that's true, I don't.

16 Q You would agree that Mr. Farr unfortunately didn't
17 abide by his physicians and, and his recommendations -- the
18 recommendation to stop---

19 A To stop smoking, correct. I agree.

20 Q And I think you mentioned, on direct examination, his
21 smoking most likely caused the lung cancer initially?

22 A I would think so, yes, sir.

23 Q Okay. Certainly his smoking did not help him and
24 probably affected him in a negative way throughout his
25 course as he continued to smoke?

Barry Singer - Cross-examination
by Mr. Williford

1 A Well, I'm sure it contributed to his COPD. Sure.

2 Q Okay. And, and the way that works is, when you have
3 COPD, Chronic Obstructive Pulmonary Disease, it's difficult
4 to breathe?

5 A Correct.

6 Q Okay. And when it becomes difficult to breath, you can
7 have atelectasis?

8 A Yes, sir.

9 Q And atelectasis is a collapse of, of the lungs in a
10 sense where it just makes it difficult to breathe?

11 A Correct.

12 Q And when you have the lungs -- when you have smoking
13 and COPD and atelectasis and you have pneumonia, pneumonia
14 can develop cause you're not passing airway through to, to,
15 to kind of ventilate the lungs?

16 A That is true.

17 Q True.

18 All right. And that is a progression of what occurs
19 with COPD?

20 A Yes, sir.

21 Q Doctor, if Mr. Farr's cancer was successfully removed
22 by Doctor Nguyen in December of 2010, and if he did not die
23 of that right lung cancer, which was alleged to have been
24 missed by Doctor Wan, you would agree that Doctor Wan did
25 not cause the death of Mr. Farr?

Barry Singer - Cross-examination
by Mr. Williford

1 A If that occurred, correct. I would agree.

2 Q I want to briefly go over a few final questions and
3 then I'll be done.

4 Doctor, you started doing expert witness work in the
5 1970's?

6 A Correct.

7 Q And you, you have reviewed well over 1,500 cases?

8 A Yes, sir.

9 Q You have given deposition testimony at least 700 times?

10 A Yes, sir.

11 Q You have testified 1,079 times for the plaintiff and
12 only six times for the defendant in your career?

13 A Most likely, yes, sir.

14 Q Okay. You have testified over 300 times in Court?

15 A Yes, sir.

16 Q About 99 percent of the legal cases you get involved in
17 have been in medical malpractice cases?

18 A Yes, sir.

19 Q By far, almost all of your testimony has been against
20 doctors or healthcare providers?

21 A Yes, sir.

22 Q About 95 percent of your legal work has been against
23 doctors.

24 True?

25 A Yes, sir.

Barry Singer - Cross-examination
by Mr. Williford

1 Q And you have testified for plaintiffs in at least 47 of
2 the 50 United States?

3 A Yes, sir.

4 Q There were years when you would review about 20 legal
5 cases a year?

6 A Yes, sir.

7 Q And you have charged 450 an hour for your time in this
8 case?

9 A In this case.

10 Q How much are you charging for being here at trial?

11 A \$7,500.

12 Q Okay. Is that just for one day?

13 A Two days, sir.

14 Q Two days.

15 A I came yesterday.

16 Q So that's 1,500?

17 A Yes, sir.

18 Q I mean -- I'm sorry. \$15,000?

19 A No, 7,500 for the two days.

20 Q Okay. 75 for the days.

21 How much time do you estimate that you have put into
22 this case?

23 A I'd say---

24 Q Before trial.

25 A Before trial, ten or fifteen hours.

Barry Singer - Cross-examination
by Mr. Williford

- 1 Q Ten or fifteen hours.
- 2 So ten or fifteen hours at 450 an hour?
- 3 A That's what I charge. That includes that.
- 4 Q Okay. It includes that and then---
- 5 A Yes, sir.
- 6 Q ---in addition to that, it's the \$7,500 for being here
- 7 today at trial?
- 8 A Yes, sir.
- 9 Q You have made upwards of 90,000 a year testifying in
- 10 legal cases.
- 11 Correct?
- 12 A Yes, sir.
- 13 Q It would be fair to say that you had -- you have made
- 14 millions of dollars giving expert witness work, doing expert
- 15 witness work primarily for plaintiffs all across the United
- 16 States?
- 17 A Yes, sir.
- 18 Q Essentially all of your millions have been made
- 19 testifying against doctors?
- 20 A Yes, sir.
- 21 Q You have testified against physicians in almost all
- 22 specialties of medicine?
- 23 A well, they've been involved in all specialties of
- 24 medicine. I have not given standard of care.
- 25 Q Okay. Let me go through a few.

Barry Singer - Cross-examination
by Mr. Williford

1 OBGYNs, you've testified against them?

2 A Well, I have given causation issues. Sure.

3 Q Okay. Neurosurgeons?

4 A Yes, sir.

5 Q Psychiatrists?

6 A Probably.

7 Q Rheumatologists?

8 A Yes, sir.

9 Q Vascular surgeons?

10 A Yes, sir.

11 Q Heart surgeons?

12 A Well, any, any physician who has done anything that
13 would involve cancer or hematologic disorder I would have
14 testified. Sure.

15 Q Gastroenterologists?

16 A Yes, sir.

17 Q I'm curious, doctor, what psychiatrist missed cancer?

18 A I don't know unless they gave someone other drugs that
19 caused the hematologic problem and didn't pick -- check up
20 on it.

21 Q And you don't recall?

22 A No.

23 Q I mean there have been so many cases you just don't
24 recall specifics?

25 A I don't recall, no, sir.

Barry Singer - Cross-examination
by Mr. Williford

1 Q All right. You've done so much witness work, expert
2 witness work that I believe a secretary at your office or
3 her daughter created a painting of you with a law diploma.

4 Isn't that true?

5 A Yes, sir.

6 Q Doctor, isn't it true that you failed, you failed your
7 oncology boards when you took them?

8 A The first time, yes, sir.

9 Q Okay.

10 MR. CALLOWAY: Doctor Singer?

11 MR. WILLIFORD: Wait. One last question.

12 MR. CALLOWAY: Oh, I'm sorry.

13 Q Doctor, can a patient die of end stage COPD?

14 A Yes, sir.

15 Q Okay.

16 THE COURT: All right. Ladies and gentlemen, we're
17 gonna take a short recess. I need to remind you not to have
18 any discussions among yourselves about anything involving
19 the case. We'll get you back just shortly.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Doctor, you may step down. I just need to
23 remind you you can't have any -- doctor, I just need to
24 remind you you can't have any discussions with anyone about
25 the substance of your testimony.

Barry Singer - Redirect examination
by Mr. Calloway

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: So you may step down.

3 We're gonna take a short break.

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

5 THE COURT: All right. Anything before we bring the
6 jury back, gentlemen?

7 MR. MCKINNON: Nothing from the Plaintiff, Your Honor.

8 THE COURT: All right. You want to check to see if
9 they're ready?

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Is the Plaintiff ready to redirect limited
13 to what the defense went into?

14 MR. CALLOWAY: We are, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. CALLOWAY:

17 Q Doctor Singer, in your forty plus years, how many
18 patients have you seen for oncology purposes?

19 A Oncology, thousands. Maybe tens of thousands.

20 Q How many patients have you seen as an oncologist for
21 lung cancers?

22 A It's about 30 percent of my practice. Probably
23 several, many, thousands.

24 Q Mr. Williford asked you on cross-examination, you may
25 remember, about some questions maybe about whether this

Barry Singer - Redirect examination
by Mr. Calloway

1 tumor or the left sided tumor may of been a second primary
2 tumor.

3 Do you remember those types of questions?

4 A Yes, sir.

5 Q In your practice or your experience, your experience,
6 I'll get you to take a look at this document and another of
7 his medical records. Look down at the bottom here in number
8 four.

9 When it uses the word recurrent---

10 MR. WILLIFORD: Your Honor, if he may identify it?

11 MR. CALLOWAY: Sure.

12 MR. WILLIFORD: We don't know what it is.

13 THE COURT: If you would, yes, sir.

14 MR. CALLOWAY: Absolutely. I apologize for that.

15 MR. WILLIFORD: Thank you.

16 Q This is a Spartanburg Regional Medical Center document
17 from, let's see, the date on this one is October 18th,
18 2011.

19 Do you see that, Doctor, Doctor Singer?

20 A Yes, sir.

21 Q Okay. And number four in there, when you read the word
22 recurrent, what does that mean to you as an oncologist?

23 A That it's cancer that's recurring. It's not a new
24 cancer.

25 Q Does that indicate to you that it's -- that the tumor

Barry Singer - Redirect examination
by Mr. Calloway

1 that's being described there is not a second primary?

2 A Correct.

3 Q I show you another document here.

4 THE COURT: Do y'all have those Bates stamped there?

5 MR. CALLOWAY: I do, Your Honor. I apologize. That
6 is -- that -- the document that was just shown is PH00010.

7 THE COURT: Thanks.

8 MR. CALLOWAY: Sure.

9 I'll show you another document here, Doctor Singer.

10 This is PH00086. This is a document from Palmetto
11 Hematology and Oncology.

12 Do you see that?

13 A₂ Yes, sir.

14 Q And the date of the visit here is 1/6/2012.

15 Is that right?

16 A Yes, sir.

17 Q Take you to about right here in the document where it
18 says patient status post-concurrent chemotherapy for
19 recurrent not solved -- small cell lung cancer.

20 What does that mean to you as an oncologist?

21 A Again, it's recurrent. It means the same cancer has
22 recurred.

23 Q What does that tell you or what does that mean to you
24 as an oncologist relative to whether it's a primary tumor?

25 A It's not a primary. It's a recurring tumor meaning

Barry Singer - Redirect examination
by Mr. Calloway

1 it's from the -- another tumor that's being previously
2 diagnosed.

3 Q Show you another document here, doctor. This is a
4 Spartanburg Regional document and the Bates stamp is
5 GS000165. The date on this one, doctor, if you see at the
6 beginning at the top, the date of service is 4/24/2012.
7 That would be slightly less than three months before Mr.
8 Farr's death.

9 Is that right?

10 A Yes, sir.

11 Q Okay. And if you look at the history of present
12 illness section there, the first line reads Mr. Farr is a
13 69-year old Caucasian male with a history of recurrent non
14 small cell lung cancer.

15 what does that tell you when it says recurrent?

16 what does that tell you about the---

17 A It means that the primary tumor has recurred. In other
18 words, it recurred somewhere other than where it was, but
19 that's been resected.

20 Q Does that tell you anything about whether he had
21 metastatic cancer?

22 A Yes, that would certainly indicate that he had spread
23 this cancer and was metastatic.

24 Q Doctor, in your experience and your understanding,
25 could Mr. Farr have had no cancer in January of 2010 knowing

Barry Singer - Redirect examination
by Mr. Calloway

1 what we know from the records where he had a 9-centimeter
2 tumor in December of 2010?

3 A No, as I said earlier, I mean it takes cancer several
4 years to develop, even the more rapidly growing cancers, and
5 he had a moderately well differentiated or well
6 differentiated cancer. So it had to be present there for a
7 few years.

8 Q Does surgical resection remove every cancer cell from a
9 patient's body?

10 A Absolutely not. We, we certainly look at the lymph
11 nodes, but even in patients with pathologic stage, stage 1
12 lung cancer where every node is negative and every margin is
13 negative, 30 percent die cause they have metastatic disease
14 that turns up within a year or two.

15 Q And, in your opinion, is it, is it more likely than not
16 that that's what happened in Mr. Farr's case?

17 A Yes, sir.

18 Q Is it possible for cancer to metastasize after a tumor
19 has been surgically resected?

20 A No, you have to have a primary. Metastasis can
21 appear---

22 Q Right.

23 A ---after the tumor's been resected. But what happens
24 is that isolated cells go. Some remain dormant for a while.
25 Lung cancer is one of those that the cells regrow pretty

Barry Singer - Redirect examination
by Mr. Calloway

1 quickly. It's rare to see a metastasis appear in lung
2 cancer after three years. Whereas, in breast cancer, in
3 malignant melanoma, it can appear eight or ten years down
4 the road.

5 So by lung cancer, the cells have escaped obviously
6 before the tumor was resected. You have to have a primary
7 metastasis to occur, and what happens in some patients is
8 that their immune system may hold back the growth of the
9 cancer for a period of time. But eventually it fails and
10 the cancer regrows and that's where we see metastasis.

11 Q Now, diagnosing him with cancer on the right in
12 November area of 2010 and his ultimate death in, in June,
13 2012, is that, in anyway, inconsistent with metastatic lung
14 cancer?

15 A Absolutely not. It's almost very typical. Usually you
16 see it within one to two years, the metastasis appear, if
17 it's going to appear. That's why, when we say five years
18 survivals in lung cancer, generally if the patient survives
19 five years without a metastasis they are cured.

20 Q Do you remember Mr. Williford taking you through the
21 operative note from December of 2010 from Doctor Nguyen's
22 surgery?

23 A Yes, sir.

24 Q It -- he indicated or it seems to indicate in his
25 records some negative lymph node involvement.

Barry Singer - Redirect examination
by Mr. Calloway

1 Do you see that?

2 Do you remember that?

3 A Yes, sir.

4 Q Does that indicate to you or does that mean that there
5 couldn't have been metastatic process?

6 A No, as I said earlier, 30 percent of patients who have
7 completely negative findings at surgery still have
8 metastasis appear two, two years later.

9 Q Can you have metastasis appear even with negative
10 margins?

11 A Absolutely.

12 Q All right. Is it your opinion, to a reasonable degree
13 of medical certainty, that that's what happened in Mr.
14 Farr's case?

15 A Yes, sir.

16 Q Doctor Singer, also on, on cross-examination, he took
17 you through some of the records immediately after that
18 surgery in December of 2010.

19 Do you remember that, some indication that maybe he was
20 feeling a little bit better?

21 A Yes.

22 Q Okay. Does that mean that he couldn't later have a
23 metastasis appear?

24 A No. No. I mean that's normal postoperative course,
25 the patient feels well after surgery, and then something

Barry Singer - Redirect examination
by Mr. Calloway

1 appears later. Mr. Farr's case was typical of someone who
2 has recurrent metastatic disease.

3 Q Doctor Singer, did Mr. -- did Mr. Farr die from COPD?

4 A COPD contributed to his illness at the end. But he
5 died of metastatic lung cancer.

6 Q Did he die of smoking?

7 A Yes, sir.

8 Q Okay. He died while he was smoking.

9 what was the cause of his death?

10 A The cause of his death ultimately was his lung cancer.
11 But the lung cancer was caused, in my opinion, initially,
12 the right lung, by his smoking.

13 Q One last thing I want to take a look at, doctor. This
14 document is already in evidence, what has previously been
15 marked as Plaintiff's Exhibit 2.

16 Do you recognize this document, doctor?

17 A Death certificate.

18 Q Okay. At the bottom there, what do you read there as
19 the cause of Mr. -- excuse me.

20 A Oh, the cause, metastatic lung cancer.

21 Q You -- and do you hold the opinion, to a reasonable
22 degree of medical certainty, that Mr. Farr died from
23 metastatic lung cancer?

24 A Yes.

25 MR. CALLOWAY: Your Honor, we have nothing further at

Barry Singer - Redirect examination
by Mr. Calloway

1 this time.

2 MR. WILLIFORD: Briefly, Your Honor.

3 THE COURT: I usually don't -- y'all want to approach?
4 Mr. Davis.

5 MR. DAVIS: Oh, yes, sir.

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

8 THE COURT: Yes, sir, go -- proceed.

9 (Pause.)

10 MR. WILLIFORD: Your Honor, I don't have any further
11 questions.

12 THE COURT: Okay. Thank you, doctor. You may step
13 down.

14 Any reason why that witness can not be excused?

15 MR. MCKINNON: Not from the Plaintiff, Your Honor.

16 THE COURT: All right. Thank you.

17 Sir -- any from the defense?

18 MR. WILLIFORD: No, Your Honor.

19 THE COURT: Thank you, sir.

20 MR. WILLIFORD: That's fine.

21 THE COURT: You may be excused.

22 Plaintiff ready to call their next witness?

23 MR. MCKINNON: Your Honor, may we approach?

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

1 THE COURT: All right. Ladies and gentlemen, we're
2 gonna need to take a short recess, and, again, I want to
3 remind you not to have any discussions among yourselves
4 about anything involving the case. But you may step back in
5 the jury deliberation room.

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

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

9 THE COURT: Madam Bailiff, will you bring the forelady
10 out?

11 You may be seated.

12 THE BAILIFF: I beg your pardon, Your Honor?

13 THE COURT: The forelady.

14 (WHEREUPON, the foreman comes into the courtroom at
15 this time.)

16 THE COURT: Mr. Jones, this is your first job as
17 foreperson of this jury.

18 THE FOREMAN: Yes, sir.

19 THE COURT: I've talked with the lawyers and what we've
20 decided to do is I'm gonna let the jury take an early lunch.

21 THE FOREMAN: Yes, sir.

22 THE COURT: There's some things we have to do outside
23 of your presence. No sense in holding you hostage back in
24 the back.

25 THE FOREMAN: Yes, sir.

1 THE COURT: Remind them not to have any discussions
2 with anybody about anything involving the case. Ask them to
3 be back in the jury deliberation room let's say by ten
4 minutes after 1:00 according to that clock. So that will
5 give them about an hour and a half.

6 okay?

7 THE FOREMAN: Ten after 1:00, sir?

8 THE COURT: Yes, sir.

9 THE FOREMAN: No problem, sir.

10 THE COURT: Thank you, Mr. Jones.

11 THE FOREMAN: Thank you.

12 (WHEREUPON, the following takes place outside the
13 presence of the foreman.)

14 THE COURT: All right. At this time we're gonna step
15 down.

16 MR. MCKINNON: Thank you, Your Honor.

17 MR. DAVIS: Thank you, Your Honor.

18 THE COURT: Thank you.

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

20 THE COURT: Anything before we bring the jury back?

21 MR. MCKINNON: We're ready to proceed, Your Honor.

22 MR. WILLIFORD: No, Your Honor.

23 THE COURT: All right. Let's see if the jury is ready.

24 THE BAILIFF: Yes, sir.

25 THE COURT: Did y'all email the stuff?

1 MR. CALLOWAY: We did.

2 THE COURT: Did the defense get that to you too?

3 MR. CALLOWAY: Yes, sir.

4 THE COURT: And, Mr. Davis, your proposed verdict form
5 you had this morning.

6 MR. DAVIS: Yes, sir.

7 THE COURT: Okay.

8 MR. DAVIS: Thank you, sir.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: Is the Plaintiff ready to call your next
12 witness?

13 MR. MCKINNON: We are, Your Honor.

14 THE COURT: Yes, sir.

15 MR. MCKINNON: Plaintiff calls Doctor William Woodruff.

16 THE COURT: Sir, just come right up here. Let the
17 Clerk of Court swear you in.

18 DOCTOR WILLIAM WOODRUFF, being first
19 duly sworn, testified as follows:

20 THE COURT: Sir, just have a seat in the red chair and
21 pull the red chair up to the microphone if you would. Be
22 sure you try to speak into the microphone cause the lady
23 that's behind you, the court reporter, as well as that very
24 last juror over there need to be able to hear you. So
25 really speak up if you would.

William Woodruff - Direct examination
by Mr. McKinnon

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MCKINNON:

5 Q Good afternoon, Doctor Woodruff.

6 A Good morning. Good afternoon.

7 Q Would you tell the jury your name please?

8 A My name's William W. Woodruff, III.

9 Q And where do you live, Doctor Woodruff?

10 A I live in Jamestown, North Carolina.

11 Q And what's that near?

12 What the closest big city to you there?

13 A It's next to Greensboro, North Carolina. That would be
14 the largest city.

15 Q Doctor Woodruff, what do you do for a living?

16 A I'm an M.D. and I'm a radiologist.

17 Q Okay. And what is a radiologist?

18 A A radiologist is -- I'm a diagnostic radiologist and I
19 spend the bulk of my time interpreting all kinds of images
20 like x-rays of all kinds, CT Scans, ultrasounds, mammograms,
21 nuclear medicine, et cetera.

22 Q Okay. Doctor Woodruff, let's go a little bit through
23 your background if that's okay.

24 Tell me where you went to college.

25 A I went to the University of North Carolina at Chapel

William Woodruff - Direct examination
by Mr. McKinnon

1 Hill.

2 Q Okay. And what did you get a degree in?

3 A It was a major in chemistry.

4 Q Okay. And then, after that, where did you go to
5 Medical School?

6 A I went to -- immediately after my undergraduate I went
7 to Duke University Medical School for four years.

8 Q Okay.

9 A Got my M.D. Degree.

10 Q And then did you do a residency after that?

11 A I did a year internship in, in surgery at Duke and then
12 stayed four more years at Duke and got my residency in
13 diagnostic radiology.

14 Q And are you board certified in radiology?

15 A I am.

16 Q And when were you board certified?

17 A I was board certified -- in radiology we get our or at
18 least at that time you did your board certification right at
19 the end of your residency. So I was board certified in June
20 of 1987.

21 Q And have been since then?

22 A I have been since then, yes.

23 Q And that's a national test?

24 A That is correct.

25 Q Can you tell the jury a little bit about what you have

William Woodruff - Direct examination
by Mr. McKinnon

1 to do?

2 A Well, in our case it's actually three tests. We have
3 a -- in, in the Fall before I finished residency I had to
4 pass both a, a written clinical examination and a written
5 physics examination. Then, in June, to finish up, you did
6 an oral examination where different examiners showed
7 different studies of different kinds.

8 Q And, doctor, when did you first start actually working
9 as a practicing radiologist?

10 A Well, I went straight from my residency to High Point,
11 North Carolina July 1st of 1987. We were a practice
12 called High Point Radiological Services and I've actually
13 been in the same situation for now 28 years. Now three
14 years ago my practice merged into a larger practice,
15 Greensboro Radiology, so that now they're my, my employer if
16 you will. So we're all part of the same practice.

17 Q And so you have 28 years of practicing radiologist?

18 A Correct.

19 MR. MCKINNON: Your Honor, the Plaintiff moves that
20 Doctor Woodruff be qualified as an expert in radiology.

21 MR. WILLIFORD: No objections, Your Honor.

22 THE COURT: Radiology?

23 MR. WILLIFORD: Yes, Your Honor.

24 THE COURT: Normally, ladies and gentlemen, normally a
25 person can not give opinion testimony. Normally, when a

William Woodruff - Direct examination
by Mr. McKinnon

1 person testifies, they must testify as to what they either
2 saw, heard, or sensed by smell, or something of that nature.
3 However, there is an exception when someone is qualified
4 because of education or experience. They are permitted to
5 give their opinion in certain areas if the Court qualifies
6 them that way.

7 This witness will be qualified in the area of radiology
8 to give opinion testimony in that area. That does not mean
9 that you must accept the opinion. But it is evidence for
10 you to use in anyway that you see fit.

11 Yes, sir.

12 MR. MCKINNON: Thank you, Your Honor.

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

14 CONTINUED DIRECT EXAMINATION

15 BY MR. MCKINNON:

16 Q Doctor Woodruff, how much of your time do you spend
17 practicing radiology and how much time doing expert witness
18 work like this?

19 A Well, I would say that I do 90 -- between 90 and
20 95 percent of my time is the clinical practice of radiology,
21 and so say somewhere five, maybe seven percent at the most.

22 Q Five percent of your time would be witnessing type
23 work?

24 A At, at most.

25 Q Okay. And I'm paying you to be here today?

William Woodruff - Direct examination
by Mr. McKinnon

1 A You are.

2 Q Right?

3 A Yes, you are.

4 Q How much am I paying you to be here?

5 A You're paying me 3,500 to be here today.

6 Q Okay. Come down from North Carolina and take a day, a
7 day off from work?

8 A Correct.

9 Q Doctor Woodruff, you yourself have been involved in a
10 couple med mal cases, right?

11 A You mean as a---

12 Q Personally.

13 A Yes, I have.

14 Q Just very briefly, do you want to talk about those?

15 A I've had two cases that both settled. One in 2001 and
16 one early 2002. One was -- several of us in my practice,
17 you know, we saw a lesion that we thought was a bone, bone
18 lesion called Paget's Disease. It turned out to be a rare
19 form of cancer and, and that went to that trial and we
20 settled that.

21 Q And you are a partner and one of the owners of your
22 firm?

23 A Yes. Yes.

24 Q Okay. Doctor, the main thing we're gonna be here
25 talking about today is x-rays --

William Woodruff - Direct examination
by Mr. McKinnon

1 A Yes.

2 Q -- and I know the jurors know what an x-ray is, but
3 you -- can you tell them a little about how they work, you
4 know, what it --.

5 A Right. Sure.

6 Basically what we do is -- an x-ray is a type of, of,
7 of -- it, it allows us -- it will penetrate soft tissues and
8 certain things, like, for instances, if we'll see air -- the
9 x-ray then completely goes through the air. That's why the
10 look -- the way we do it, it will look black when we show
11 you x-rays.

12 Bones stop the x-ray beam. So they will look
13 relatively white and soft tissues will be shades of gray
14 because they, they stop part of the, of the beam going
15 through. And we will do it -- we will -- you know,
16 basically patient stands in front of a, of a tube and then
17 there's a cassette and the image goes through and we
18 make up -- we make a, an image. I mean it can either be done
19 digitally or, in this case, they were done -- actually
20 captured on, on x-ray film.

21 Q And, doctor, in this case, we're gonna be talking about
22 two chest x-rays.

23 Why do physicians sometimes order two chest x-rays on
24 someone?

25 A Well, well, first of all, if I can correct you, it's

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1 actually two views of one---

2 Q Thank you.

3 A ---examination.

4 Q Thank you.

5 A Now, the reason that we normally do two views -- and
6 one is called a frontal view. It's also known as a PA
7 viewing going from the back to the front and -- but, but
8 it's a frontal view and that's, that's like I'm looking at
9 you now.

10 And if you think about how are we built, you know,
11 we're in three dimensions. So we have length, we have
12 width, and we have depth.

13 Now, if I show you just a plain old picture like, you
14 know, just like a photograph, you're gonna see length.
15 You're gonna see width. But there's the issue of depth.

16 So how do we solve that problem?

17 We turn you 90-degrees and then we take another
18 picture.

19 Now then -- so, therefore, the beam is going through
20 this way. Now, get length again, get length twice, but now
21 I'll have depth. So two pictures, three dimensions, and
22 that's really important to be able to look at all three
23 dimensions.

24 Q Okay. Well --.

25 A Oh, here we go.

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1 Q There we go.

2 A Yes.

3 Q Okay. Now, before we get to Mr. Farr's real x-rays
4 we're gonna talk a little about anatomy, doctor.

5 Can you tell me, is this a normal chest x-ray?

6 A Yes, sir, this was a study that -- actually you'll
7 notice that there's no patient name or anything on here.
8 This was actually x-rays that I chose off of Google. Google
9 has some cites, normal chest x-ray anatomy, and this was
10 actually a random image that I chose off of that.

11 So, again, it's no, no, no patient confidentiality
12 issues or anything, but this is what is touted to be a
13 normal chest. I believe it is a normal chest having looked
14 at it, and, you know -- could I stand up?

15 Am I allowed?

16 Q So this is a healthy person, doctor?

17 A This is a normal chest x-ray.

18 Q Okay.

19 A I mean as far as---

20 THE COURT: If you would, if you move away from the
21 microphone, be sure you speak up loud enough so that---

22 THE WITNESS: Okay.

23 THE COURT: ---the court reporter behind you can hear
24 you.

25 THE WITNESS: Tell me if there's a problem. I can talk

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1 pretty loud.

2 THE COURT: If you do step down, just be sure you speak
3 up.

4 THE WITNESS: Yes, sir. Yes, sir.

5 THE COURT: And, Madam Court Reporter, if ever you
6 can't hear him---

7 THE WITNESS: Please.

8 THE COURT: ---just let us know.

9 THE WITNESS: I'll, I'll talk loud.

10 THE COURT REPORTER: Okay.

11 THE WITNESS: I can carry.

12 (Witness comes down from the stand.)

13 THE WITNESS: Okay. Now, I want to just get you, first
14 of all, oriented a little bit.

15 Obviously this is -- and, again, if you looked at me,
16 this would be the, the direction that it, that it's going
17 in. Of course, up top is towards the patient's head. This
18 is towards the patient's feet. Remember this is the
19 patient's right side, the patient's left side. It's like
20 looking in a mirror. So, remember, every -- you know, to
21 your right -- well, I guess, you know, like to my right is
22 the patient's left.

23 Okay. So, therefore, this is the left lung and this is
24 the right lung.

25 Now, this structure in the middle here is the heart.

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1 This is the right side of the heart here, the left side of
2 the heart here.

3 Let me get up here a little bit.

4 This structure right here is the aorta and it comes up,
5 goes toward the left and down. This is what -- the main
6 artery that takes blood from the heart and takes it onto the
7 rest of the body.

8 Now, this black line here is the trachea, the main part
9 of the windpipe, and it divides into what's called the right
10 bronchus and the left bronchus, and these branch into
11 smaller little what we call bronchi and they get even
12 smaller to what's called bronchioles, but this is, is your
13 wind -- your, your wind tubes right in here.

14 You heard the words earlier the hilum and this is the
15 left hilum over here, the right hilum here, and what you see
16 here, this is where the pulmonary arteries come out. Like
17 this would be the pulmonary artery to the left upper lobe,
18 to the left lower lobe, right upper, right middle and lower
19 lobes up over here, and there's also pulmonary veins that
20 are running in here as well.

21 They all -- it sort of runs together a little bit on,
22 on this view. But that's basically the major anatomy.

23 Now here we go---

24 Q Doctor, would you mind explaining to the jury what
25 pulmonary arteries and pulmonary veins are?

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1 A Yes, of course.

2 The pulmonary arteries -- okay. What, what -- the way
3 this works is we have our, you know, the -- first of all,
4 the aorta takes the blood -- you know, what's -- what do the
5 lungs do?

6 The lungs basically -- let me just sit down here a
7 minute. That light is catching my eyes there. I'm sorry.

8 (Witness returns to the stand.)

9 A You know, the lungs exchange, you know -- it's, it's
10 where oxygen gets into the blood.

11 Okay. So we have to get blood to and from the lungs.
12 So what happens is -- let's start off with blood coming
13 back. You know, the, the aorta takes blood full of oxygen
14 and takes it on down through the arteries to all the
15 tissues -- all the organs in the body and they extract
16 oxygen so that we can, can do what we do.

17 Then, of course, then the veins take the blood that
18 needs more oxygen and takes it back up through a tube, well
19 actually there's two tubes, that one is, is the inferior
20 vena cava from down below, and the other -- and this one's
21 kind of hard to see. But right next to the trachea on the
22 right would be what's called the superior vena cava.

23 (Witness comes down from the stand.)

24 A So those vessels take the, the blood to the right
25 atrium and into the right ventricle then out through the

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1 pulmonary arteries to the lungs. That's where the oxygen
2 exchange occurs and the pulmonary veins take it to the left
3 atrium, to the left ventricles, then out the aorta, and it's
4 a continuous cycle, and, of course, our beating hearts is
5 what keeps it going.

6 And just to finish up a little bit of the anatomy, this
7 is the right diaphragm, the left diaphragm. The stomach
8 would live here. Liver would live over here. Of course,
9 all of these bones right here are ribs and in the middle is
10 the, the spine.

11 And, again, if you look at that view, you see length.
12 You see width. You infer depth just because, you know, you
13 live, you live your life, but you really don't see depth
14 here. That's why we have to have that second view.

15 Q Doctor, what is the kind of black area in the x-ray?
16 what is that?

17 A Oh, here?

18 Q Right.

19 A Okay. Remember that the, the, the lungs are maybe
20 filled with air and the x-ray goes through and it's not
21 stopped by air. So the blood -- what is black is air
22 filled -- it is lung.

23 Now, again, here's the lateral view. So say---

24 Q Doctor, if I could just stop you for one moment?

25 A Oh, I'm sorry.

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1 Q It's okay.

2 Doctor, tell me what -- whose x-ray is this or is
3 this---

4 A Okay. Same view as before. This is, again, another
5 normal patient that we got off of the Goggle site for normal
6 chest x-ray anatomy. So here we are.

7 Q What view of -- what view is this?

8 A And this is the lateral view. This is the one that
9 gives us the depth.

10 Okay. And, again, let's just look at some structures
11 again. Everything that's dark or the, the black stuff is,
12 is lung.

13 Now here's our heart here. Here's the patient's front
14 by the way. Here's the patient's back and that's easy
15 because you've got the spine, which, of course, we know is
16 in the back. This is towards the head, towards the feet.

17 Again, here is the heart and I'll just tell you that
18 the right heart normally is more towards the front compared
19 to the left heart if, if you actually were to take a cadaver
20 and, and look at that. So this is the right heart here,
21 more of the left heart back here. There is some overlap
22 here.

23 Here is that aorta coming out and around. Here are
24 the -- here are the hilum. Now, this time you'll notice
25 that they're superimposed on each other. But here's where

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1 the pulmonary arteries and veins live here.

2 Now notice this space here is kind of clear. That's
3 gonna become important later on. But this space right in
4 here is, is where the lungs meet in the front and normally
5 there isn't much that lives there. So if you see something
6 living there that's a little denser, that is something you
7 got to be careful about it being abnormal, and, of course,
8 we see bones and we see spine. We see some ribs coming down
9 here. Here's the diaphragms superimposed here.

10 Q Thank you, doctor.

11 A Yes, sir.

12 Q Doctor, as part of your work in this case, have you
13 reviewed the actual x-rays that Doctor Wan took of Mr. Farr?

14 A I did.

15 Q Doctor, if we want to pull those, I'll help you get the
16 box up here.

17 A Sure.

18 Q You can orient that however you like so the jury can
19 see it.

20 A Sorry about the light.

21 Q I'll put the x-rays up and then we can turn it on.

22 (Pause.)

23 Q Okay. Doctor---

24 A Okay. All right now.

25 Q Doctor, just tell us, in general, what, what do we have

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1 here?

2 A Okay. Now this, this was Mr., Mr. Farr's x-rays from
3 January 11, 2010, and here's -- his name is up here, William
4 Farr, and these were the, the x-rays that were sent to me to
5 review that were obtained and interpreted by Doctor Wan.

6 Now, first I want to start off on this, this lateral
7 view, the one that shows you length and depth. And, again,
8 you know, we go back into like black is, is lungs here.
9 Again the diaphragm's here. Here's the heart. Right heart
10 coming up here. Left heart. Your pulmonary vessels are
11 sort of in the middle back here.

12 Now remember where I told you that the area that's,
13 that's in here that ought to be sort of, you know, dark?

14 Notice this white area here, this density right here?

15 That is not normal. That is absolutely not normal and
16 it's, again, I think it's readily apparent and -- now,
17 coming over to this x-ray, and, and I'll be honest, this
18 one's a little harder, and if, and if I didn't have this
19 this would be harder. If you look carefully, you see --
20 normally these ought to be about equally dense and you see
21 that there's more density here than here.

22 Now, again, that's kind of subtle, but, if you look
23 over here, and I've lined it up, you know, this projects
24 over here. So, on first glance, this may look like oh,
25 that's just a big pulmonary artery over here, but, no,

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1 actually you got to think in three dimensions, it's this
2 density here superimposed here.

3 So if you look at this, this is abnormal and you can
4 see the difference between here and here, but you really
5 have this view -- this lateral view to bring it out, and,
6 again, this looks extra dense not because it's pulmonary
7 artery. It's because this is lined right over top of it in
8 this view.

9 Again, second view to give you the depth. You've got
10 to have it and now you see that's, that's the lesion right
11 there. That's the abnormality.

12 Q Doctor, can you show us, on the side-view of the right
13 x-ray, on the pulmonary artery if you don't mind?

14 A Yes, I can.

15 Pulmonary arteries -- the main pulmonary artery is
16 living here and then they branch out. Now notice -- let me,
17 let me just take this on Mr. Farr also on the normal.
18 You'll notice that, that these vessels become smaller as
19 they go out, and that makes sense because they're, they're
20 branching. And the way to think about this is just like
21 tree branches.

22 You know, how tree, you know, the branches get smaller
23 and smaller, and we actually use the word arborization in
24 arbor like a tree to explain cause the, the vessels -- and
25 as far as that goes, the, the breathing tubes, they get

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1 smaller as they branch out, and we see that on, on here and
2 you'll see it on this lateral view as well. I -- personally
3 I think it's a little easier to proceed -- to appreciate on
4 this view, but it's the same thing on both.

5 Q And, doctor, on that side-view, do you think it's
6 possible to confuse the pulmonary artery with that, that
7 abnormality you talked about?

8 A Right here?

9 Q Right.

10 A Personally I do not.

11 Q Okay. And, doctor, doctor, just to be clear, on that
12 side-view, lateral view, can you show where the heart is?

13 A Yes, sir, the heart -- again, this is the heart right
14 here, from here to here, and we know the right heart is
15 coming up and it comes up, and, if you remember, it was a
16 nice even density and suddenly you've got this thing
17 superimposed and we know it's separate from the heart on
18 this view as well because here is the right heart coming up
19 to about here, and this is above and to the, to the right
20 side of the heart.

21 So this is clearly separate from the heart. It's
22 separate from the pulmonary arteries. It's in the right
23 lung. It's in the front part of the upper part of the lung.
24 So this is in what's called the anterior segment of the
25 right upper lobe.