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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-001964

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19 2016

of Appeals

Philip Ethier and Jeanne Ethier,

Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.; Tuomey
Medical Professionals, Inc; And Pee Dee Emergency Medical
Associates, PA,

Defendants,

Of whom Guy R. Bibeau, M.D., is the Respondent.

RECORD ON APPEAL – VOLUME III

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1 matter. He was left in that position because of the
2 carelessness of Doctor Bibeau on April 10th, 2011. That's
3 what put him in that position. And you recall that those
4 three arteries, the popliteal artery and the posterior
5 tibial and anterior tibial, those three arteries in your
6 leg, they were blocked. They were blocked. So - or the
7 peroneal artery. I'm sorry, but - And in bad shape.
8 That's what was going on May 25th, 2011.

9 You will recall Doctor Holleman, the bow tie
10 doctor, the treating surgeon, he's the one that showed you
11 and talked to you as well as Doctor Adams our expert about
12 the procedures that they tried the wire procedure and the
13 administration of the TPA and the clot busting drugs. They
14 tried that, the conservative treatment, before you go in
15 and slice some guy from his groin to his ankle. They tried
16 the - a conservative treatment first and it did not work.
17 And two of those arteries they were just blocked solid,
18 blocked solid and those arteries remain blocked solid today
19 totally blocked today. But with the posterior tibial
20 artery they did manage to get some blood flow restored with
21 this procedure, with the thrombolysis procedure where the
22 wire and the catheter is inserted and the medication but
23 not sufficient. So of course they had to move on to the
24 actual bypass the moral bypass graft procedure which is a
25 surgery that Doctor Holleman did. And he described all

1 this to you and explained how you have to take a vein and
2 you cut a piece of a vein out of the leg and you reverse it
3 and then you put it in as an artery and you cut the guy
4 from way up here on in the thigh area near the groin all
5 the way down to his ankle to do all this. And you've seen
6 the photos of Phil's scars and the staples and all that and
7 you will have those in the jury room to look at again and
8 you'll see all of that. So that's what was done on May
9 25th or 27th, 2011 in that time period.

10 Now, as a result of all that the - Phil of course
11 suffered the compartment syndrome. That's where when your
12 body is deprived of the blood flow for a period and then
13 blood flow is restored you know everything sort of rushes
14 back in and the muscles can't handle it and they swell up
15 and it gets tight against that fascia. That's why they had
16 to do the thing called a fasciotomy; cut his leg open. You
17 saw the photos you can see them again. Big wound on the
18 side of his leg that had the wound vac for months and
19 months. That's where the fasciotomy was.

20 Now, you heard testimony from Doctor Porter.
21 Doctor Mark Porter, he was the neurologist, about how the
22 compartment syndrome and the blood loss caused his nerve
23 and muscle damage. It damaged those nerves in his leg
24 permanently and it damaged the muscles in his leg, his
25 right lower leg permanently. They're never coming back.

1 Two of those muscles, those anterior tibialis and the
2 peroneus, the longus muscles, those two muscles in the leg;
3 their fibrotic or fibrous tissue. That means they're not
4 muscle. They're dead; they're just filling space tissue
5 like sawdust in a joint or something. It's just they're
6 filling space but they don't work like a muscle. They
7 don't innervate like a muscle, they're just there. And
8 that combined with the nerve damage is why Phil can't move
9 his foot. You recall Doctor Porter taking his hand and
10 doing the foot? He says he can't. You pick his foot up
11 and down properly and he can't move it side to side.
12 That's because of the nerve muscle damage and that's
13 permanent. That's never gonna go away. And you saw the
14 brace that Phil now has to wear when he goes out of the
15 house. He doesn't wear it in the house all the time. He
16 doesn't wear that thing. And if he goes out in the back
17 yard he may not even wear it in the back yard all the time.
18 But if he goes somewhere and he's gonna be walking around
19 at all much he wears the brace.

20 Now, let's talk for a few minutes just about that
21 period from December 2011 up until March 2014. That's that
22 period when Phil goes back to work. Goes back to work at
23 the hospital in the middle of December 2011 after a seven
24 month recover period and he works a regular schedule. He
25 starts out at a regular schedule and the way he handles

1 this is he can't take those pain medications, those
2 narcotic pain medications he'd been taking forever since
3 the surgery, while he's working and driving. He cannot do
4 that. It's not safe and you definitely can't do that when
5 you're working in some kind of medical position. I mean
6 that's just crazy. So of course he couldn't do that and he
7 didn't do that. And so he would work all day or all night.
8 Sometimes his shifts were at night. And he would go home
9 and then try to take the pain medication or even double up
10 on it and try to take it and get relief. But he couldn't
11 get relief. Sometimes he could have but a lot of times he
12 couldn't and so then you - you can't sleep. So you've
13 worked all this shift and you worked all there all night,
14 go in and try to get some relief from the pain and you
15 can't get any relief and you can't get any sleep and then
16 you got to get up and do it all again in a few hours and do
17 it all over again. And that's the cycle that he got into.
18 That's that cycle that he got into and eventually you just
19 can't do that. A strong of a guy as Phil always was,
20 worked his entire life, sometimes had more than one job
21 especially when you consider all the things he did around
22 the house and out in the yard and the dog kennel that he
23 had for a while and the raising the little calves and the
24 chickens and all that stuff. I mean a working guy is never
25 still, over active, hyperactive almost. That's the kind of

1 guy he was. Big strong provider type of guy. But he
2 couldn't - he's just as strong as he was. That gets to you
3 after a while and so actually he had to scale back his
4 hours at the hospital. He scaled back his hours there
5 first and tried to keep doing that. And that's a
6 physically demanding job, lots of walking, lots of being on
7 your feet, and eventually he just had to quit. So he quits
8 the hospital in March 2013 and goes to home health thinking
9 that will be better. He's gonna drive around more, he's
10 gonna be on his feet less; he thinks that will be easier
11 and so he tries that. He starts out with a thirty-five
12 visit schedule, a full-load schedule. Gradually has to
13 scale that back because he's in the same kind of cycle. He
14 can't take the pain medication while he's working so he has
15 to scale back and eventually by December 2013 that's when
16 he's in really bad shape. I mean everything - He had
17 depression. He's had depression at times this whole time
18 but he sort of rallied you know where he would go back to
19 work and keep things going, keep it together. But by
20 December 2013 - this coming up on two, two and a half years
21 after all this happened to him - he just really couldn't
22 make it anymore and that's when he got to the point of
23 actually being suicidal and started thinking about taking
24 his own life and that's when it really got bad.

25 And it's that period from December 2013 to March

1 2014 when he's crying out for help. That's when he just
2 really is about to lose it and, you know, Bill's not gonna
3 be with us much longer if things didn't change. So he saw
4 Doctor Harari the psychologist, you may remember his name,
5 down in Columbia and Doctor Harari gave him test and looked
6 him over diagnosed him with major depression. He saw
7 Doctor Chen with the help of Jeanne. Jeanne had worked
8 with Doctor Chen at the hospital there in Rock Hill. Just
9 a professional working relationship, not best buddies, but
10 Doctor Chen saw him and Doctor Chen treated him and Doctor
11 Chen analyzed the case and took it all in and helped him
12 get back on his feet and helped him so that he did not any
13 longer have to work and wrote him out of work so that he
14 could not commit suicide and not be depressed all the time.
15 He's on antidepressant medication now. He's on pain
16 medication all day everyday now. That's his life. And
17 Doctor Chen I submit to you is, you know, she's -according
18 to the evidence she saved Phil's life. That's what the
19 evidence showed. If Doctor Chen had not stepped in - she
20 saved his life.

21 Now, let's talk just for a minute about the - all
22 the doctors, all the doctors have testified that the
23 damages Phil has were approximately caused by the failure
24 and in not having the non-emergency surgery shortly after
25 April 10th, 2011 when all this could have been repaired

1 either in the very less invasive procedure that Doctor
2 Adams told you about or in the femoral graft procedure;
3 that all the doctors have told us that - or all the
4 vascular surgeons have told us that. Doctor Holleman the
5 treating surgeon said that. Doctor Adams our expert said
6 that and Doctor Dorn Smith their vascular expert said that.
7 They all got on the stand and told you, plaintiff and
8 defense vascular experts including Doctor Holleman the
9 treating vascular surgeon said if Phil had had the non-
10 emergency surgery shortly after April 10th, 2011, if he had
11 been properly diagnosed and properly identified as a blood
12 vessel problem and referred to vascular and gotten the
13 right test and they found the problem and addressed it then
14 he would not have had this parade of horrors that
15 followed him. All of them said that he would not have had
16 the compartment syndrome which led to the fasciotomy. He
17 would not have had the seven month long recovery period.
18 His hospital stay likely would have been shortened. And
19 most significantly he would not have the permanent pain, a
20 chronic pain syndrome, and the permanent disability with
21 the foot drop. None of that would have happened to him if
22 he had gotten the surgery on a timely basis back in, you
23 know, shortly after April 10th, 2011.

24 And that's rather unusual to have both plaintiff
25 and defense experts agreeing that this - these horrible

1 horrible things that have happened to Phil and they put him
2 and Jeanne in the place they are today would not have
3 happened if he had gotten the surgery in a timely manner
4 and if he had been timely and properly diagnosed on
5 April 10th, 2011 by Doctor Bibeau.

6 All right. I want to spend my last few minutes
7 talking with you about damages and explain to you what we
8 believe Phil's damages to be in this case. And what I want
9 to start with is Doctor Wood's chart. You remember Doctor
10 Wood that talked about - He was the economic loss
11 consultant and he talked about the economic damages. Now,
12 understand the damages claims you're gonna hear the term
13 economic damages and non-economic damages - two types.
14 Economic damages are things like hard-dollar numbers.
15 They're things you can actually write down on a piece of
16 paper and add up. Hard dollar numbers things like medical
17 bills, the past medical bills. Things like past and future
18 lost income. You know what the numbers are you know what
19 the guy can make. Things like the personal service income
20 that you know he's lost. He can't do as much of around the
21 house; all future medical cost. Those are hard-dollar
22 numbers that can be calculated. That's economic damages.

23 Non-economic damages are - is everything else.
24 It's all the pain and the suffering and the mental anguish
25 and the depression and the effect on the loss of enjoyment

1 of life and the fact you can't do your hobbies and your
2 recreational activities anymore. That's all non-economic.
3 So let's talk first about the economic damages.

4 All right, what you see on the screen is what you
5 saw when Doctor Wood was here on his big-paper chart. And
6 here we have Chart One of the before trial loss. You've
7 got Phil's earning capacity and this is what he made or
8 what he lost in those years as a result of Doctor Bibeau's
9 negligence as a result of not being timely diagnosed and
10 having the non-emergency surgery. And you'll see he's got
11 a small, you know, the smaller loss in 2011. And then
12 you've got zero for '12, '13 and '14 and - Well, for part
13 of '14, part of 2014. And that's when Phil as we just
14 talked about was struggling to work. He was making money,
15 he was back at work as hard as it was but he had no
16 economic loss for wages during that period. Then 2014,
17 beginning in March he's out of work again. And you'll
18 recall that Doctor Wood took all the information about
19 Phil's past income and his earning ability and he's the
20 expert and he come up with a number. You see the loss and
21 earning capacity there of Fifty-eight Thousand Dollars.
22 And then you've got the personal service income - I mean,
23 the personal service figure. That's where there's a value
24 to doing things around the house. I think you remember
25 Doctor Wood talking about how if you think there's no value

1 to that and you're a guy especially well then let your wife
2 or your girlfriend leave that does all that stuff and see
3 if you think it's not worth paying somebody to that. It
4 has value, it has value to do all these chores around
5 the house regardless of who's doing it.

6 So, Doctor Wood explained that Phil, his ability
7 to do that kind of thing has been diminished. Not totally.
8 He can still do some of that. I think it dropped from
9 about eleven to twelve hours a week on average to about
10 three that he's able to do. So that's the loss that's
11 calculated here in personal service is just what he can no
12 longer do and the value of that. So the total for that is
13 Seventy Thousand and some dollars. And you'll have this
14 exhibit back in the jury room to look at so don't feel like
15 you have to memorize numbers.

16 All right, in chart two that Doctor Wood gave us
17 this is the present value of his after trial loss for the
18 income. So you'll recall Doctor Wood explained and, you
19 know, said that's what he does as an expert is he figures
20 out here's what the fellow can make this year, here's what
21 he's projected to make in the future. And then after you
22 add all that up you have to reduce it back down to present
23 value because as he told you the value of your dollar - of
24 a dollar in your pocket today has some value over time but
25 the theory is you can invest it and it can grow so then he

1 reduces it to present value and Doctor Woods already done
2 that. He's taken - As required by law he's taken this
3 information and shrunk the numbers back down to the present
4 day value for his future lost income. And that's where he
5 comes up with the - a figure of Four Hundred and Eighty
6 Thousand Dollars and when it's discounted to present value.

7 Now, on Chart Three you've got - that's a total
8 showing the earning capacity from the prior page; the
9 personal service figure. And the he's got the future
10 medical cost in there of the Ninety-two Thousand Dollars
11 and that you come up with a total of Six twenty-three, nine
12 sixty-five. That's Doctor Wood's number. And I believe
13 the final page just sort of summarizes it all. So there's
14 the three numbers again: The Before Trial Loss, the After
15 Trial Loss with a total financial loss being Six Hundred
16 and Ninety-four Thousand, Two Hundred eighty-eight dollars.
17 That's Doctor Woods' number.

18 And, again, that's the economic damage number.
19 That's the hard dollar number that we can say in dollars
20 and cents and figure it all out. You know it's easy to do,
21 it's just math. Complicated math a little bit but it's
22 just math. All right.

23 All right, now ladies and gentlemen, this is an
24 exhibit that sort of takes Doctor Woods' information that
25 we just talked about on economic damages. And you'll see

1 the before trial loss Seventy Thousand some dollars, Three
2 Hundred and Twenty-three dollars. The after trial loss;
3 there's that number, and the subtotal. So there's the
4 number Six Hundred Ninety-four Thousand, three hundred
5 eighty dollars. And then you've got medical bills. You
6 will have these medical bills back in the jury room with
7 you. You can look through them until your heart's content.
8 Pages and pages of them. There is a summary on the front
9 of it. You will recall that when Phil testified he - we
10 sort of walked through each of these providers. Most of
11 these providers - several of these providers you have heard
12 from directly in testimony. Doctor Johnson, Doctor
13 Nandurkar, Doctor Chen, Doctor Porter, Doctor Holleman the
14 treating surgeon. The hospital bill at Carolina's Medical
15 Center is in here. So these are the medical bills that
16 Phil has incurred in this case. And the doctor's have
17 testified about the care they provided in the case so those
18 are for your consideration. They total about a hundred and
19 ninety-four thousand dollars, right at a hundred and
20 ninety-five thousand dollars. So if you take those numbers
21 it comes up to Eight hundred and eighty-eight thousand
22 dollars, nine hundred and seventy dollars. See where I am?
23 There you are. 8-8-8, 9-7-0.

24 And then you recall way back at the beginning of
25 the trial we heard from the lady just in a brief video

1 deposition Shelene Giles. And she's the lady who said, you
2 know, figure it up what it would cost if he had the non-
3 emergency surgery shortly after April 10th, 2011, because
4 Phil is gonna have to have surgery; he's gonna have to do
5 that no matter what even if it had been caught earlier. So
6 it was our job as plaintiff to figure out and ask someone
7 to figure out what is that number? And Shelene Giles
8 testified that it was Forty-six Thousand, Five Hundred and
9 Seventy-six dollars. Now that's the number for the open
10 femoral bypass graft procedure that he actually had...
11 Shelene Giles also talked about a thirty-six thousand
12 dollar some figure if he had that less invasive procedure
13 just where they do the smaller cut and the smaller opening
14 and do the stint and graft replacement. He did not have
15 that one. And I would submit to you that the proper thing
16 for you to do given that he did have the femoral bypass
17 graft procedure is to subtract the forty-six thousand, five
18 hundred and seventy-six dollars from the total, the
19 subtotal, leaving it with a total economic damage number of
20 eighty hundred and forty-two thousand, three hundred and
21 ninety-four dollars. So that's Phil's total economic
22 damage number. The hard-dollar number is eighty hundred
23 and forty-two thousand, three hundred and ninety-four
24 dollars.

25 Now let's talk about the non-economic damages.

1 And that's much more difficult. It's much more subjective.
2 It's what the twelve of you will have to put your heads and
3 your hearts together and figure out. And it's hard to do
4 that. You heard Phil's testimony and you heard Jeanne's
5 testimony about what their life is like now and the chronic
6 pain and the chronic foot drop and how things are different
7 now. All those are damages - and the effect on their
8 relationship - but how do you put a number on that? And
9 it's a very very difficult thing to do but it's doable and
10 jury's do it all day every day all across our country.
11 That's what jury's are ask to do in civil cases is to put a
12 number on that kind of non-economic damage.

13 Now when you're thinking about that I want to
14 suggest to you here's the thought process you can go
15 through. First of all, we're asking you to award sort of
16 past damages. A number that you believe is appropriate for
17 past non-economic damages from April 10th, 2011 to today.
18 That's one time period. And Phil is entitled under the law
19 - and you'll hear the judge's instructions to tell you
20 about this in more detail - but he's entitled to recover
21 for his physical pain and suffering and his emotional
22 distress and mental anguish; his physical disability, the
23 foot drop, and his loss of enjoyment of life. Those are
24 sort of the main categories. You will hear more details in
25 the instructions from the Court. Those are sort of the big

1 main categories that you think about when you're trying to
2 award these non-economic damages.

3 He's also got a life expectancy of 26.552 years.
4 That's what the statutory life expectancy tables us; that's
5 sort of - we just presume that. He may live a lot longer,
6 he may live less. There is no way to know that because we
7 can't see the future that way. But the statutory life
8 expectancy tables 26.52 years is the number that you can
9 use. The same thing though; he's entitled to recover for
10 his future damages that you believe are reasonably certain
11 to occur for those same categories: Physical pain and
12 suffering, emotional distress, and the depression and the
13 mental anguish, anxiety, and all that. And he's also;
14 entitled to recover for his physical disability and his
15 loss of enjoyment of life. And loss of enjoyment of life
16 that's all the hobbies and the recreational activities, the
17 camping, the hiking, and all that. The walking around the
18 block with his wife; everything from that to all the parts
19 of life that make life enjoyable that are not necessarily
20 part of your job but the things you do at home and outside
21 of work. That's loss of enjoyment of life.

22 All right, now the - I want to offer this to you
23 as a suggestive way to do this. These are suggested
24 numbers they are in no way numbers that you have to use or
25 should use or any way like that. I don't want to suggest

1 that at all. This is just sort of how you do the math and
2 one way to do it. One way to do it is on a per diem basis
3 to sort of figure out what is it worth to have physical
4 pain and suffering on a daily basis. And what is it worth
5 to have that foot disability on a daily basis. And what is
6 it worth to have that depression and the loss and enjoyment
7 of life on a daily basis. So you come up with whatever
8 number you think is appropriate for that per diem number
9 and you just do the math and you just sort of multiple it
10 out that way.

11 Here this example you have a thousand four
12 hundred and fifty nine days from April - for almost four
13 years from April 10th, 2011 to the present. And if you use
14 a hundred and twenty-five dollars a day for each of those
15 categories it comes out to that number. A total of five
16 hundred a day for all the categories and that's its math.
17 You just do the math.

18 The same thing for the future. You've got
19 physical pain and suffering; emotional distress, loss of
20 enjoyment of life, physical disability. What number is
21 appropriate on a per diem basis for that? And again you
22 just figure it out, you do the math and it's nine thousand,
23 six hundred and seventy-nine days; that's 26.52 years, and
24 that's how you come up with a number. You do not have to
25 do it that way. And of course you do not have to use these

1 numbers. You may think these numbers are too high that
2 I've used in this example. You may think these numbers are
3 too low. That's entirely in your discretion. But - And
4 you don't even have to do it on a per diem basis. You can
5 do it as some kind of a lump sum. You just decide that
6 this is the lump sum number I think is appropriate if you
7 decide to aware damages to Phil for non-economic losses
8 this is the number that I think is appropriate. And that's
9 also an equally appropriate way to do it. All right, now
10 this chart just sort of adds up what I would submit are
11 Phil's damages as a suggestion. Again, you've got the
12 economic damages eight forty-two, three ninety-four.
13 You've got the non-economic for the past and the future.
14 And you've got Jeanne's damages I would submit to you five
15 hundred thousand dollars. But that's my number, that's a
16 suggestion. There is no law that says it's this or that.
17 It's your discretion and your power and your authority to
18 decide that that would be. And if you add all that up it
19 totals slightly less than five million dollars. That's
20 what we believe Phil and Jeanne's damages to be in this
21 case. Again, it's entirely up to you.

22 All right, let me talk just - Well let me have
23 the verdict form. Let's do the verdict form. All right,
24 ladies and gentlemen, I just want to spend a couple of
25 minutes talking with you about the verdict form. This is

1 the form you'll actually use back in the jury room to
2 answer and render a verdict in this case.

3 Now, the first question you're gonna be faced
4 with, was the defendant Doctor Bibeau negligent, yes or no.
5 That's the first question you're gonna face. And as I
6 spent the last while talking about we believe he was
7 neglect for all the reasons we've talked about and all the
8 reasons we've presented to you all week, so we believe
9 Doctor Bibeau to be negligent in not doing the exam and not
10 identifying the blood vessel problem as a possible
11 diagnoses and then not sending Phil for further
12 consultation to a vascular guy or doing the proper test.

13 So, I would submit to you that your answer there
14 should be yes. Was the defendant negligent? Absolutely
15 yes so you would check yes. If yes go to question two. If
16 you check no that's the end of the case. The defendant's
17 not negligent, Doctor Bibeau is not negligent and you don't
18 believe he's negligent and he didn't do anything wrong you
19 check no that's the end of the case. But the answer I
20 submit to you and I urge you is yes he absolutely was
21 negligent and yes he absolutely was careless.

22 Now question two. Was the defendant Doctor
23 Bibeau's negligence at least one of the approximate causes
24 of the injury or damages to Phil? Again, the answer is yes
25 or no. So remember, I talked about we have to show that

1 Phil's damages were approximately caused by at least one of
2 the things that Doctor Bibeau did wrong. We don't have to
3 show that he did everything wrong. We don't have to show
4 that there were multiple breaches of the standard of care.
5 Just one, just one. And if one of those breaches of the
6 standard of care, one of those acts of negligence, or
7 careless, caused Phil's damages then you would check yes
8 that his negligence, Doctor Bibeau's negligence caused -
9 one of his acts of negligence caused Phil's damages so you
10 would check yes.

11 All right, now the next question is number three.
12 Was Phil negligent? And that goes back to what I talked
13 about a few minutes ago with the comparative negligence.
14 Is Phil at fault at all here? Is he to blame for part of
15 this? Should part of the fault or blame lie at his door
16 step? I would submit to you that the answer is no because
17 he was not negligent and followed up as he thought - and he
18 didn't do it officially. He did the curbside consult and
19 he didn't see the other doctor. Now he's not negligent.
20 He was doing what an LPN always does and continues to do
21 today for LP's that are still working. But I can - There
22 is an argument that Phil was partly at fault and partly to
23 blame for this. I can see that that could be a conclusion.
24 Again, Phil, whatever his percentage was, is way less than
25 fifty percent, way less than fifty percent down in the

1 small single digits if anything. That's your decision but
2 I would submit to you its way way less than fifty percent.

3 If you decide it's more than fifty percent and
4 that's the next question, first of all you have to say was
5 Phil negligent. If you say no, he wasn't negligent at all,
6 then you go on down the page.

7 THE COURT: Mr. Proffitt, I'm going to ask you to
8 bring this to a close by one o'clock please, sir.

9 MR. PROFFITT: I will. I'm almost done, your
10 Honor.

11 Was Phil negligent? No. The next question if
12 you say yes there was some negligence by Phil that he's
13 partly at fault then you'll fill out the - You're ask was
14 it at least - was his negligence at least one of the
15 approximate causes of his injuries and you would check - I
16 would submit the answer would be no. But if you do believe
17 Phil's partly at fault you would then assign a percentage.
18 And you have to assign a percentage to Doctor Bibeau and a
19 percentage to Phil. I submit to you that Phil's percentage
20 would be, if any, would be very very low and Doctor
21 Bibeau's would be most of the one hundred percent.

22 All right, then the next questions are very
23 straight forward and simple. It's what we talked about
24 what are the total economic damages that you award to Phil
25 and what are the total non-economic damages that you

1 award to Phil.

2 And then finally you will address the questions
3 about Jeanne Ethier and whether or not Doctor Bibeau's
4 negligence also caused damage to Jeanne and if so, what are
5 her damages. What is the amount of her damages that you
6 award to Jeanne.

7 Ladies and gentlemen, just let me close with a
8 couple of thoughts. I don't, I can't even begin to think
9 how to describe what Phil has gone through and what he's
10 gonna go through the rest of your life. There are twelve
11 of you out there that can help do that and twelve of you
12 out there that can understand what he's been through. And
13 I would just urge you and beg you on behalf of Phil and
14 Jeanne Ethier to be generous and just in your verdict and
15 to award them a fair and substantial verdict in the amounts
16 that we've ask for or more if you see fit to award more.
17 But don't give them just a half cup of justice but give
18 them the full measure of justice and give them a
19 substantial verdict. Thank you very much.

20 THE COURT: All right, ladies and gentlemen of
21 the jury, that concludes the plaintiff's closing argument.
22 The defense will be going next, however, we're going to
23 break for lunch at this time and I'll ask you to be back in
24 the jury room at two o'clock to hear that. We should start
25 pretty quickly after that, so, please be there on time. As

DEFENDANT'S CLOSING ARGUMENT BY MR. HOLLER AND MR. MYERS

1 please stand?

2 It appears that all jurors were able to comply.

3 We'll let the train go by and then we'll start.

4 (PAUSE.)

5 THE COURT: All right, when we broke earlier the
6 Plaintiff had completed his closing argument. At this time
7 the defense may proceed.

8 Mr. Holler, you may.

9 MR. HOLLER: May it please the Court?

10 THE COURT: Yes, sir, you may proceed.

11 MR. HOLLER: Thank you.

12 THE COURT: Yes, sir.

13 MR. HOLLER: On behalf of Guy Bibeau I want to
14 thank you for your service last week and this week. As we
15 have seen it appears you have done what we've ask you to
16 do. You've listened carefully, you watched the testimony,
17 you've seen the witnesses and the documents. You will have
18 those to deliberate with. And we trust that at the
19 conclusion of this case the twelve of you will work
20 together and ask the hard questions of everybody and every
21 witness and every fact and you will reach a verdict that
22 speaks the truth. A verdict that will speak the truth for
23 the plaintiff will also for Guy Bibeau. Thank you for your
24 service.

25 What I'd like to do, again, the twelve of you

1 MR. HOLLER: --- on April the 10th and some of
2 the 'witnesses' have testified about the April the
3 encounter. And then Mr. Myers is gonna talk about Doctor
4 Bibeau, his testimony as well as the damages that you are
5 ask to award.

6 April the 10th, 2011 there's some things that we
7 certainly can agree about and that is that on that date,
8 that Sunday afternoon, Mr. Ethier walked into the hospital
9 and he walked out of the hospital. Every doctor who
10 testified told you that neurotic pain, the pain when your
11 foot or any part of your body did not have blood supply is
12 one of the most awful pains that you could ever have.

13 Mr. Ethier claims that he told him it was one of
14 the most awful pains that he ever had. He said it was a
15 seven or eight out of ten. The nurse Samantha Anthony
16 wrote down that it was a five. Samantha Anthony is not a
17 defendant in this suit. No one has made any allegations
18 that she - what she knew ---

19 What reason would Ms. Anthony who is technically
20 a certified nursing assistant but is a candidate - senior I
21 believe the testimony was - for a four year Bachelor of
22 Science degree in nursing and at the time of her deposition
23 was a registered nurse. What credibility should be
24 assigned to her testimony and her ability to accurately
25 tell you what happened on April the 10th, 2011? Mr. Ethier

1 claims his foot was cold. Samantha Anthony's documentation
2 the skin was warm and dry and that Mr. Ethier told Ms. -
3 Doctor Bibeau the pain was better now.

4 You've been ask to believe, is it reasonable
5 that you're being ask to believe what Jerilyn Wadford a
6 forty-two year nurse did not see or touch? That's what Mr.
7 Ethier said. Didn't touch his foot didn't feel pulse. He
8 didn't do those things. And Jerilyn Wadford said in all
9 the time that she had ever done this when she signs the
10 sheet as an RN she always repeats those physical
11 examination. In every case she used the history and does
12 apply it.

13 Mr. Ethier told Doctor Bibeau it was ecchymotic
14 and his toes were purple. No one, no medical person other
15 than the plaintiff and his wife, have told you in the
16 encounter what black toes would seem. And on cross-
17 examination at the end of Doctor Adam's testimony, the
18 vascular surgeon from California who works - from Colorado
19 who works in California said - this is Doctor Adams - those
20 toes were never black it couldn't happen. It couldn't
21 happen. And why did he say that? He said that because he
22 was sitting in here during - I wrote his statement - and
23 that was the picture that was up on the board - if it was
24 visible in that monitor and that monitor - he was

1 they ought to do. That's not comparative negligence,
2 that's original neglect. If you didn't go to your doctor
3 and take care of your problems and your experts come into
4 court and say had you gone to a regular doctor for a
5 regular visit where they looked at you from head to toe as
6 opposed to a complaint specific examination they would have
7 found this popliteal aneurysm. If original neglect is why
8 this naturally occurring condition, disease process is not
9 found, it would be inappropriate to lay that at the feet of
10 Guy Bibeau. Not comparative negligence but original
11 neglect.

12 Briefly just a few witnesses. We talked about
13 Samantha Anthony. Ms. Anthony was challenged repeatedly on
14 whether the pain was only in the right foot. She clearly
15 testified again by video no blue or black skin anywhere.
16 The pain was described to her as moderate or a five and she
17 recorded it. And the pulse was - with excellent. Touched
18 on Jerilyn Wadford, forty-two years experience as an RN.
19 She also said the skin was warm and dry. Good pulses on
20 the foot. No coloration - discoloration of the skin.
21 Again, what reason would Ms. Wadford have to not tell you
22 what she knows to be true? And you'll have to decide why
23 she would tell you something that wasn't true.

24 Here's a question that may be of some use to you.
25 It has been submitted to you that this was a fictitious and

1 made-up call and that Doctor Bibeau simply came up with
2 spider bite out of nowhere. Obviously Doctor Bibeau
3 testified here to you and in his deposition and has always
4 said that Mr. Ethier told him he had been bit by a spider
5 or thought he might a been bit by a spider. But Rhonda
6 Gwynne told you that at 6:45 Mr. Ethier was supposed to be
7 at the hospital to start his shift. And the question has
8 been asked, or submitted, if you live five minutes from the
9 Chester Emergency Department, why would you drive to
10 Fairfield? A fair question to consider. If you're
11 supposed to be at work at 6:45, and at 4:30, there might be
12 a reason to call Fairfield. There might be a reason to
13 come to Fairfield. Would it be reasonable to assume if you
14 go somewhere where you don't get special treatment, Cheraw
15 or Chester - If you go to Chester you may be sitting
16 waiting to see a physician when your shift starts. Is that
17 a reasonable question? And whether you go to Fairfield or
18 whether you go to Chester - You've heard Doctor Bibeau and
19 several of the nurses say they staff the emergency
20 department on the weekends with one doctor, one RN, and one
21 LPN. And if you're at a new job and you're still in
22 training and you're not gonna show up, or you may not be
23 able to work that night, is it reasonable to think you
24 should give your employer notice you're not gonna be there
25 so you would call them? And if you call them would it not

1 was an aneurysm waiting to happen. I respectfully submit
2 to you that on April 10th that aneurysm hadn't occurred.
3 But I will respectfully submit to you that it was God
4 basically telling Phil Ethier to behave. Those cigarettes
5 that you're smoking stop it; the high blood pressure that
6 you're not treating for three years control it. When he
7 went into that ER on April 10th of 2011 he saw Doctor
8 Bibeau and Doctor Bibeau tried to what he could to access
9 the situation but it wasn't because there was an aneurysm.

10 When you look at a case, any case, the judge told
11 you in his opening charge that you got to look at the
12 credibility of a case. Credibility, folks, means
13 believability. You look at it as a whole and you look at
14 all the witnesses' that come before you on this witness
15 stand you can believe their case. I submit to you that
16 Phil Ethier has submitted to you an incredible case.

17 Now I'm only gonna talk to you about five
18 witnesses. But I think that when you look at these
19 witnesses' testimony you will see that the story that Guy
20 Bibeau has put forth it's certainly more credible and more
21 believable than Phil Ethier. You heard from Doctor Bibeau.
22 The testimony that you heard from Doctor Bibeau was that
23 he's a licensed practitioner for thirty some years; has
24 certifications in both the ER as well as family practice.
25 He treated Phil Ethier about four hours after the on-set of

1 Phil Ethier's pain. That was important because if you
2 remember Phil Ethier said that he felt the pain about one
3 o'clock. It felt cold he took some aspirin he massaged it
4 and it got better so by the time he shows up at the ER his
5 leg or the pain had already somewhat subsided. You heard
6 Doctor Bibeau say he rubbed the leg, he touched the leg.

7 Now Mr. Proffitt wanted you to believe that it
8 was a polar ice cap that it was cold. Doctor Bibeau
9 basically said that's a difference in degrees. He felt it
10 but it wasn't polar ice cold but it was cool to the touch.
11 He ask him some critical questions about his history. You
12 noticed that he had high blood pressure. Said he had been
13 smoking; talked to him about those things. Said he felt
14 his pulse. Said he felt the pulse which indicated to him
15 that he wasn't suffering from a vascular problem.

16 I respectfully submit to you that if he had been
17 suffering from a vascular problem on that day Doctor Bibeau
18 was competent and is competent enough to diagnose. He
19 testified that even after he checked all those things and
20 after he diagnosed it as a spider bite - I want to tell you
21 something about this spider bite. Is it unreasonable to
22 believe just as David Holler stood up here and told you
23 that a man who had to be at work at 6:45 wouldn't have
24 called in? He worked there; he had the telephone number,
25 he had access. He knew the telephone number and he knew

1 who to call. He knew when his shift was gonna start. The
2 man was living in Chester. Now I told you at one point I'm
3 an ole country boy from Swansea no different from Chester.
4 You walking outside as Phil Ethier says is it uncommon or
5 unreasonable that he may have been bitten by a spider? I
6 respectfully submit to you that's the story he gave when he
7 called in and that's the story he goes - that he gave to
8 Guy Bibeau when Guy Bibeau treated him. And Guy Bibeau
9 treated him because that's what Phil - You're told he
10 looked at him and he gave him Percocet and he discharged
11 him.

12 Now this wasn't an ordinary patient like you or
13 me someone who's gone in and doesn't have any knowledge of
14 the medical field; any knowledge of what a doctor is saying
15 to you when he or she talks to you. This is an LPN who
16 knew the terminology, who knew what Doctor Bibeau's saying;
17 who knew the medication that Doctor Bibeau was giving to
18 him. Doctor Bibeau discharged him and he told him follow-
19 up with your primary doctor. That's important folks
20 because at that point as Mr. Proffitt told you that Phil
21 Ethier and Ms. Ethier they trusted Guy Bibeau. They
22 believed Guy Bibeau. They trusted him enough to go see him
23 but then they didn't trust him enough to follow-up with his
24 own doctor. You can't have it both ways, folks. But they
25 trusted him so much and Doctor Bibeau is saying hey, I'm

1 fixin to get done the dad opens it up for him the little
2 boy puts a fork in one of 'em puts it in his mouth spits it
3 out. Looked at the can and threw the whole can away. The
4 little boy told his daddy that piece was sour. So they
5 threw the can away because they said and they realized
6 that if one piece was sour it was all sour.

7 The moral of that story is is that if one piece
8 of Mr. Ethier's story is sour it's all sour and that's what
9 has happened in this case. This man has not given you any
10 sort of credible testimony whatsoever to believe any of his
11 story. It's all sour; you got to throw it all away.
12 That's the only way this justice system will work. I
13 learned that at the age of six. It's obvious, blatantly
14 obvious that Phil Ethier has not learned that story. They
15 talk about justice; they talk about what the full arm of
16 justice is. I respectfully submit to you that justice is
17 returning a verdict in the favor of Guy Bibeau. That when
18 you look at that verdict form, when you look at the
19 questions that you have to ask I respectfully submit to you
20 that you can stop at question one and that is that Guy
21 Bibeau did absolutely nothing wrong. Or you can assume
22 that even after Doctor Bibeau discharged him from the ER he
23 told the man to follow up and if you consider these curb
24 side phone conversations or curb side conversations with

PLAINTIFF'S CLOSING ARGUMENT BY MR. COX

1 these other doctors that went on you can assume that Doctor
2 Bibeau had absolutely nothing to do with that.

3 That's your right; that's your oath. You took an
4 oath to be fair, you have no enemies to punish or no
5 friends to reward; you took an oath to Guy Bibeau that you
6 would hear this case fairly and impartially and
7 respectfully submit to you, folks, that the only verdict in
8 the case of *Ethier versus Bibeau* is that Doctor Bibeau was
9 not responsible for this man's injuries. Thank you.

10 THE COURT: Mr. Cox.

11 MR. COX: Thank you, your Honor.

12 THE COURT: Yes, sir.

13 MR. COX: Good afternoon, ladies and gentlemen.

14 I on behalf of Phil and Jeanne Ethier we certainly would
15 like to thank you for your patience and your service over
16 these last couple of weeks as well.

17 Today you are the most powerful agent of our
18 government. You're a jury you're gonna decide the truth of
19 this matter. Only you have that power. The judge is gonna
20 tell you the law but you're gonna decide what the facts are
21 and what the truth is. Nobody else can over rule you in
22 that regard and tell you what to do. The Governor of South
23 Carolina can't tell you how to decide this case. The
24 President of the United States can't tell you how to decide

1 this case. You have the power and the responsibility to
2 figure out what the truth is in this matter.

3 What you do here won't stay in this courthouse.
4 This is a public proceeding; been people, different people
5 in and out of here all week. And you have a voice and the
6 decision you make will be heard beyond this courtroom.

7 MR. HOLLER: Judge, if I may not an objection
8 of nullification. Move to strike those comments. That's
9 not in reply to anything that was said.

10 THE COURT: I'll ask you to speak and reply to
11 what was said.

12 MR. COX: Your Honor, it's argument. I ask for a
13 little bit of leeway. It is argument, your Honor.

14 THE COURT: Let's wrap it up and move on to
15 something else.

16 MR. COX: What you do here will have
17 ramifications. It will be discussed over water coolers.
18 It will be discussed at medical conferences. They're gonna
19 know --

20 MR. HOLLER: Judge, I'm gonna object again.
21 That's a request for nullification. This is a case decided
22 on these facts not about what people talk about at water
23 coolers.

24 THE COURT: I'm ---

25 MR. COX: I'm not --

1 THE COURT: --- not taking those as a request for
2 nullification.

3 MR. COX: Thank you, your Honor.

4 THE COURT: So I overrule that objection. But I
5 will ask you to speak in reply. That's what you're here
6 for.

7 MR. COX: Yes, sir, that's what I intend to do.

8 THE COURT: Thank you.

9 MR. COX: Doctor Bibeau is as you've seen
10 defended by some very capable and very able defense
11 attorneys. They've done the best they can to try to
12 explain the situation. And I'm gonna submit to you this
13 past week and a half you have heard some dozies (sic).
14 We've had a lot of things that were sort of presented to
15 you as smoking guns here. We got a smoking gun here you go
16 this is something you can base your decision on. We got a
17 smoking gun we need to show you; started out right during
18 opening statements. Right?

19 Remember defense attorney got up and said --

20 MR. HOLLER: Objection, Judge, I believe this is
21 supposed to be reply. We oppose to second closing. He's
22 not talking about the opening statement.

23 MR. COX: Your Honor, I'm gonna discuss what - a
24 portion of the testimony that he talked about in his
25 closing.

1 THE COURT: I'll let him go ahead.

2 MR. COX: Thank you. This call back to the ER
3 later in the evening to talk to Doctor - where he ended up
4 talking to Doctor Canty, that's the first time we've ever
5 heard that. That's just a terrible, you know, travesty
6 that we're just now hearing that. Well, that wasn't the
7 first time they heard that. That wasn't correct was it?
8 Doctor Bibeau got up here and testified said no I read Phil
9 Ethier's deposition I knew he already talked about the fact
10 that he called back to the ER and talked to Doctor Canty
11 that night so they knew that. It's not only they knew it,
12 they knew there was nothing wrong with that. That form,
13 that standard form, the discharge form that everybody has
14 to sign before they let you leave the emergency room it
15 says on there if you have a problem or you get worse either
16 come back or call us. Either come back or call us.

17 Doctor Bibeau he only worked 'til seven o'clock.
18 He was gone. When you call back you can't talk to him you
19 talk to the doctor who is there and you tell that doctor
20 hey I was in earlier and I saw Doctor Guy Bibeau and he
21 said I got a spider bite and, you know, this thing's
22 hurting pretty bad. And the doctor said well if that's
23 what he said just hang in there. You know he's right that
24 does take some time. Just give it some time. So is that a

1 smoking gun? Does that excuse anything that Doctor Bibeau
2 did?

3 The matter of the discharge instructions, you
4 been hit over the head with that for a week and a half.
5 Everybody before they leave the ER they get this paper they
6 make you sign it that say you read it and understood it and
7 it tells everybody that leaves that no matter what they
8 were there for to make sure you follow-up with your own
9 doctor. And in all the cases certainly that is necessary
10 and good advice. In this case they certainly want to keep
11 hammering that.

12 Now, there are two people involved here who you
13 might and it doesn't make any decision about who had more
14 responsibility for what happened here. Who was at fault?
15 Was this Doctor Bibeau's fault or Phil's fault; was it some
16 combination of the two? Doctor Bibeau obviously he's a
17 doctor and he had to undergo a lot of education and
18 training in order to become a doctor and he told you he
19 went to college for four years at Clemson. He got a degree
20 in microbiology to prepare him to go to medical school to
21 become a doctor. And then he went to medical school one
22 year, two years, three years, four years of medical school.
23 And then he did a residency further training in order to
24 become a doctor. One year of residency, two years a
25 resident, three years and plus a residency so he could get

1 the credentials and the education to become a doctor to try
2 to help people. And Phil, of course you've heard over and
3 over and over that he's got some education as well. He's
4 got a GED and one year of tech school.

5 So who's in a better position here to prevent
6 this calamity to happen to him? Who's got the education;
7 who's got the credentials; who's the board certified
8 expert? Who's qualified as an expert in front of you?
9 That's Doctor Bibeau. And Phil was an LPN and probably a
10 good one. He did his best to help people. But when it
11 comes down to determining who had the education, the
12 knowledge, the ability to prevent this situation Doctor
13 Bibeau, Phil Ethier? If Phil had any responsibility for
14 this I would submit to you it was very very little compared
15 to Doctor Bibeau.

16 And Keith wanted to hit us over the head with the
17 discharge instructions. Didn't follow up with your family
18 doctor. I told you, told you, told you. Look, can't count
19 on me. You got to go follow up with your family doctor.
20 That's where you really get proper diagnosis to make sure
21 you're okay. And you're gonna have this; this is in
22 evidence this is part of the Fairfield Memorial Hospital
23 record we been showing you for the last week and a half.
24 Doctor Bibeau this is one of the discharge sheets that they
25 made a big point of making sure that you saw Phil signed

1 this; he got this. Doctor Bibeau first of all he gave Phil
2 several prescriptions. One is that narcotic pain medication
3 they keep making a big deal about that you know when Phil
4 called back to the ER that night and now he's on narcotic
5 pain medication. Well Doctor Bibeau knew that he gave it
6 to him. I mean he knew that. And then he gave him another
7 pain medication. You see on here for pain Voltaren.
8 Fourteen of 'em and refilled. One refill. So use these if
9 you're still hurting like I told you it probably will be,
10 this kind of pain takes a while. These spider bites they
11 take a while, they last, they hurt for a while. Probably
12 still gonna be hurting so if you run out I'm gonna go ahead
13 and give you a refill so you can go get some more.

14 Did he do that because he thought Phil was gonna
15 be - You know he strongly urged Phil to go see another
16 doctor within the next two or three days. Is that why he
17 went ahead and gave him all these prescriptions plus
18 refills? You have to ask yourself that.

19 What about this history from the blood pressure
20 and the smoking? You know Phil was a smoker. Not any
21 more. He was a smoker. He had high blood pressure. He
22 told you he was a nurse; he tried to check his own blood
23 pressure. He tried to exercise like he was able to do back
24 then before this all happened to him. He thought he had it
25 fairly well under control without taking medication. Maybe

1 he did, maybe he didn't. He wasn't taking medication for
2 the most part for several years. That's undisputed.
3 What's that got to do with anything? If I understand what
4 the defense is suggesting, you know, kind of his own fault
5 that he's got a aneurysm. Shouldn't a - You know shouldn't
6 have taken blood pressure medication. Shouldn't been
7 smoking. If you get an aneurysm it's your fault.

8 Is that the way things work? Is that the way you
9 practice medicine somebody comes in and they got a cough or
10 spitting up blood, they got lung cancer, and you don't have
11 to diagnose 'em correctly cause their a smoker? You don't
12 have to refer 'em for proper treatment cause it might be
13 somewhat their own fault that some of their life style has
14 contributed to the problem they have? Is that the way
15 things work? You know it's not. That's ridiculous. Just
16 like the spider bite diagnoses it's ridiculous.

17 What about another smoking gun? We've seen it
18 repeatedly over the last week and a half. Zoom in on the
19 picture of his foot. There's another smoking gun. Ah, ha,
20 no dead black toe falling off of that foot. Gotcha.
21 That's ridiculous, you know that. Phil never said my own
22 toe turned black and fell off. Why do they keep saying
23 that? What's all this exaggeration about? Is that just -
24 Is that a smoking gun or is it a smoke screen? Phil said
25 it was just the tip of my toe like a blood blister; talking

1 about a little ole thing. I did show it to Doctor Bibeau
2 and he didn't think much about it. But that's all I'm
3 talking about. I'm not saying my little toe dried up and
4 fell off. I keep telling you that.

5 Doctor Jolin the only one that - he hit him over
6 the head with that and keeps saying black toe, you know,
7 one black toe he said, Mr. Holler, I'm just talking about
8 the skin, the skin on the surface; a little superficial
9 skin is all I'm talking about. And then with the whole
10 black toe thing they want to, you know that whole thing;
11 then show you the picture here. Look no black toe told
12 yaw. Well there never was a toe like they want to suggest
13 anyway. Phil's never said that. But then they show you a
14 picture that's taken months later - they don't even know
15 when - while he's sitting at home with, you know, he had
16 the fasciotomy where they like skinned his leg and cut his
17 leg open and he had to sit there with that wound vac on his
18 leg like sucking the juice out of it day after day. That's
19 when they took that picture. That's when that picture was
20 taken. He had to wear that wound vac he told you going on
21 four months. But sometime in there they took a picture and
22 it shows what it shows. But is it a smoking gun?

23 The truth is and we've heard a lot about, you
24 know, right from the opening we've heard they were here in
25 a search for truth. And that's the truth that is what

1 we're here for; that's what you're here for to determine
2 the truth. The truth is, the truth is Doctor Bibeau
3 botched this up. I mean he messed this situation up big
4 time. He wants you to believe somebody told me that there
5 was a phone call and somebody was coming in saying they
6 were bit by something and, you know, that's what got me off
7 track. That's why I ended up you know getting on the wrong
8 track. You know I did consider some other things. I did
9 think about chemicals and exposure on this page, then
10 trauma even no report of trauma but you know I got that
11 call in the back of my mind about this - somebody coming in
12 with a bite and so I thought spider bite. I don't know.
13 You know Phil denies making any call like that. Then they
14 stand up here today and say well you know he did have to
15 work that afternoon maybe he called and said, you know,
16 having a problem and might not be coming in to work.

17 He was going there to the hospital to the
18 emergency department where he did work. But while he was
19 there he could probably say given what's going on here I
20 don't think I'm gonna be able to work tonight. But, you
21 know, this whole idea of the phone call, that's what threw
22 me off. That's why I botched this up. Well I mean Doctor
23 Bibeau they showed you a picture of the exam room where,
24 you know, a gurney in there; you sit there in a little
25 private room and look at your patient carefully and talk to

1 them. Well if you think the guy might a been bitten by
2 something not rely on second hand information passed along
3 to you from some nurse who doesn't even know who she talked
4 to just ask him did something bite you; did you get bit by
5 a spider today before you came here? That would be one
6 approach.

7 Don't jump to conclusions based on some rumored phone
8 call. Doctor Bibeau didn't take his time; he was in and
9 out quickly. He did not take a proper history; he didn't
10 perform a proper exam and he didn't reach the right
11 diagnosis. And he didn't even consider the right
12 diagnosis. And despite what people are - You can argue
13 about how many Ps there were, but four of the Ps were
14 present. All of the doctor's agree if those were present
15 you got to consider strongly that you're looking at a
16 vascular problem here, a blood vessel problem, and he never
17 thought about it. We had to show him in his deposition you
18 said chemical exposure; said trauma. Said spider bite;
19 that's all I thought about. Never thought about it. And
20 the reason he went on to not perform a proper vascular exam
21 because he never thought about it. Never thought about it
22 being a vascular problem. Phil told you that Doctor Bibeau
23 never checked any pulses on my leg. He barely touched my
24 leg at all.

1 One thing that you been told and with all due
2 respect every doctor in the case, there is no doctor who
3 says that he didn't have the aneurysm already on April
4 10th. When he had the aneurysm everybody is unanimous on
5 that. The doctors are unanimous on that just like you're
6 gonna have to be unanimous in your verdict; with total
7 agreement on that. And we were told, you know, we don't
8 know but you could feel back there and you might not even
9 feel it. We'll never know for sure cause Doctor Bibeau
10 never did that and he was supposed to. This was everything
11 was telling him just look at the symptoms, look at what's
12 being presented to you; you're looking at a problem with
13 this guy's blood flow. Check his pulses, check all of 'em,
14 check the femoral, check the popliteal right there where
15 the aneurysm is. Compare this leg and that leg; do it
16 right. He didn't do that and Phil's paying the price and
17 Jeanne's paying the price.

18 Ms. Anthony did the triage. They told you, you
19 remember she takes down what the patient says specifically.
20 If the patient comes in and says I'm Jesus Christ she'll
21 write that down. We heard that. If the patient comes in
22 and says I got a spider bite that's why I'm here you would
23 think she would write that but she didn't because Phil or
24 anyone else ever told her or Doctor Bibeau that they'd been
25 bitten by anything much less a spider. Doctor Bibeau

1 didn't write that down either in his notes about talking to
2 Phil probably because he barely talked to him. Didn't talk
3 to him about much.

4 You know we heard about Doctor Weinstein one of
5 their experts, ER doctor, here yesterday; a real fast
6 talker, smooth talk doctor guy. You know he gives a
7 deposition a long time ago and we had to read it to him to
8 get him to admit what he said before. And he agreed at
9 that time these Ps are important and everybody knows you
10 look at these Ps on how to diagnose this vascular stuff and
11 he got four of 'em here on this record. That's what he
12 testified to in his deposition and we had to go back and
13 read it and make him admit it again that he'd said that
14 before because when he got in here in front of you and
15 turned on the board over there we're down to two Ps now.
16 Started out with four now we're down with two - down to two
17 cause we got Doctor Bibeau admitting that he never even
18 thought about vascular and if there were four Ps there he
19 would have had to think about vasculars and now we got to
20 go back and subtract some Ps; got to redesign my testimony;
21 shift on the fly. So then he says we're down to two and
22 he's arguing about well you know it wasn't cold, it was
23 cool. Okay. So you got to ask yourself is that credible
24 or is he just here to make excuses. Are we on a search
25 for truth or are we on a search for excuses? And I submit

1 to you seen and heard about a lot of smoke screens and
2 heard about a lot of excuses cause this is a situation
3 that's pretty hard to explain why somebody that hadn't been
4 bit by a spider and you send them out with a diagnoses of
5 Spider bite while they got a ticking time bomb behind
6 their right knee. A popliteal aneurysm.

7 Another point of agreement I'm gonna agree with 'em.
8 Only God knows when one of these aneurysm's is gonna start
9 throwing off clots. We've heard that repeatedly. I agree,
10 if you want to look into the future you got an aneurysm
11 doesn't throw off clots everyday don't know when it's gonna
12 happen but it's a dangerous situation. You got one of 'em
13 you need to know about it and you need to get it fixed.
14 But you don't know when it's gonna happen but any - any
15 competent emergency room doctor who is presented with the
16 symptoms that Phil had ought to be able to tell you that
17 it's already happened. We've already got the blood flow
18 blocked here; we got a clot going on. We don't have to ask
19 by then; its right in front of us.

20 What about the surveillance video? Got you under
21 surveillance staked out over here in the bushes and we
22 watching you and we'll get us another smoking gun here.
23 Uh-huh, caught you, walked off of your porch and out to the
24 edge of your yard. Gotcha. You stepped up on a step
25 ladder and stapled something. You sat in your rocking

1 chair for six minutes, we gotcha. That's what we're
2 supposed to believe that's a smoking gun? You heard, had
3 to ask him. No. Didn't see Phil doing anything like he
4 used to do. Nothing more fun than rocking in the rocking
5 chair. No exercise, no walking or hiking or fishing; no
6 doing anything that he used to like to do and he did all
7 the time. No spending quality time with his wife. No
8 walking hand in hand with her down the street or around the
9 block. You didn't see any of that.

10 Ladies and gentlemen, the time for smoke screens
11 and excuses is over. The time for you to find the truth
12 and let your voice be heard is now. Let your voice be
13 heard over at the Fairfield Memorial Hospital. Let your
14 voice be heard all over South Carolina from the mountains
15 to the coast. Doctor Bibeau is now out practicing medicine
16 in Texas. He's got patients out there that are counting on
17 him. They're counting on him. He's got to do better than
18 this. You got to ask yourself, is this okay what happened
19 here or does he have to do better than this? Let your
20 voice be heard from here to Texas. The time for excuses is
21 over; the time for justice is now. Thank you.

22 THE COURT: Ladies and gentlemen, that completes
23 the closing arguments by counsel. I'm going to give you a
24 short break; step back to the jury room because I'm going
25 to charge you on the law at this point in time. As always

JURY CHARGES

1 plaintiff's not entitled to be compensated for those
2 problems as well. There is a claim by Mrs. Ethier for what
3 is referred to as loss of consortium. That's a claim --
4 that's a claim that she has made. The companion and
5 society of a spouse are not articles of commerce which can
6 be weighed or measured, bought or sold. No expert is
7 competent to testify as to their value. The consideration
8 on which they are given is not monetary, but the plaintiff
9 spouse, Mrs. Ethier, is entitled to compensation and money
10 for their loss should you find that the defendant's medical
11 negligence was the proximate cause of the loss of her
12 rights of consortium. The amount of that compensation may
13 be determined by you not from the evidence of their value
14 but from your own observation, experience, knowledge
15 conscientiously applied to the facts and circumstances of
16 the case. If you find that the defendant -- the defendant
17 liable in damages to the plaintiff spouse and the plaintiff
18 spouse is entitled to recover the value of those services
19 of her spouse which were lost, including the loss of her
20 spouse's society and companionship in the home, the
21 plaintiff also is entitled to recover for any expenses
22 incurred for care or treatment of her spouse because of the
23 illness or bodily harm suffered by the spouse and for any
24 medical expenses which the plaintiff has incurred.

1 Now, ladies and gentlemen of the jury, you're
2 going to be asked to also on the verdict form assign
3 relative negligence or comparative negligence. The
4 defendant claims that the plaintiff's own negligence also
5 proximately caused the plaintiff's injuries. If you find
6 that the defendant was negligent, you must then decide
7 whether the plaintiff was also negligent. The defendant
8 must prove by the preponderance or the greater weight of
9 the evidence that the plaintiff breached a duty of care
10 which proximately caused the plaintiff's own injuries. The
11 same law which I've told you to use in deciding whether the
12 defendant was negligent would also be used in deciding
13 whether the plaintiff was negligent. In order to prove
14 that the plaintiff was negligent, the defendant must prove
15 by the preponderance or greater weight of the evidence that
16 the -- excuse me -- that the plaintiff -- plaintiff owed a
17 duty of care -- and this is a question of law -- and you
18 must then decide whether or not the plaintiff breached that
19 duty of care by a negligent act or omission. Negligence
20 means that a person has done something that a reasonable
21 person would not have done or has failed to do something
22 that a reasonable person would have done in the same or
23 similar situation.

24 Now, if you find that the negligence of both the
25 plaintiff and defendant proximately caused the plaintiff's

1 injuries, then you must decide how much negligence of the
2 plaintiff contributed to the plaintiff's injuries and how
3 much of the defendant's negligence contributed to the
4 plaintiff's injuries. In deciding the percentages of
5 negligence of the plaintiff and defendant, you may consider
6 among other things the following factors: Whether each
7 party was -- conduct was only inadvertent or whether it was
8 engaged with an awareness of the danger involved, the
9 magnitude or the risk created by each party's conduct and
10 the possible severity of the injury that could result; each
11 party's capabilities and abilities to realize and eliminate
12 the risk involved; the particular circumstances confronting
13 each party at the time the conducted occurred, such as the
14 existence of an emergency requiring quick decisions; the
15 relative closeness of the causal relationship of the
16 negligent conduct of the defendant and the harm to the
17 plaintiff.

18 Now, I will give you a written verdict form with
19 special questions on you to reach your verdict on this
20 particular issue. The form will have spaces for you to
21 write your decisions about the percentages of negligence,
22 if any, both parties -- of both parties which proximately
23 caused the injuries of the plaintiff. I'll go over that
24 form with you in just a few minutes when I have assigned
25 the foreperson of the jury in this case.

1 Now, I'm going to, as I said, give you that
2 verdict form and go over it with you in a minute. There
3 will be several questions on that form. I will tell you
4 that before the jury can reach a decision as to those
5 questions, your verdict must be unanimous. That means all
6 12 of you must agree as to the answer to the question in
7 order for it to become the verdict of the jury on that
8 question. In other words, all 12 of you are required to
9 agree with the verdict before it is the verdict of the
10 jury. I'm going to ask Connie Pete to raise her hand,
11 please.

12 (WHEREUPON, JUROR COMPLIES)

13 THE COURT - You're going to be the foreperson of
14 the jury. That means you're going to be the person who
15 will be responsible to lead the discussions of the jury.
16 Should the jury have a question during deliberations, I'll
17 ask that you write it on a piece of paper, knock on the
18 door and tell the bailiff of that, pass it out to the
19 bailiff. I'll review it with the lawyers and decide what
20 the appropriate answer is. There are some questions I
21 can't answer at all, but I'll make that decision; you don't
22 have to edit the questions. Also, it'll be your
23 responsibility once a verdict is reached as to the
24 questions presented to you, to record that verdict on the
25 verdict form. Once all the questions have been answered by

1 emergency room physicians, and I take exception to that. I
2 would ask the Court ---

3 THE COURT - I understand your exception. I'm
4 going to leave the charge as it is.

5 MR. SMITH - Yes, sir. And, Judge, lastly,
6 consortium, I take exception with that charge in regards to
7 your charge -- if I -- let me get to it real quick. If
8 you'll give me a second. My IPAD's on the internet. That
9 takes a little while to load down. Here it is. Judge, the
10 bottom in small print on what you've sent me, it says, if
11 you find the defendant is liable for damages of the
12 plaintiff spouse in damages, the plaintiff spouse is
13 entitled to recover the value. Judge, I still think the
14 plaintiff spouse has to prove that there was value, and you
15 state in there she's entitled to ---

16 THE COURT - I'll be glad to correct that
17 impression for the jury.

18 MR. SMITH - Yes, sir. And that was in two places
19 in that, entitled and I think the burden of proof is still
20 on the plaintiff's spouse to prove that and no one's
21 entitled to damages, is only entitled if they prove it.

22 THE COURT - What I intend to do is, it's up to
23 the defendant spouse to prove that they are entitled.

24 MR. SMITH - Yes, sir, that's -- that's certainly
25 better.

1 THE COURT - Let me be sure I've found that so I
2 can ---

3 MR. SMITH - It was right above the general
4 denial, Your Honor.

5 THE COURT - I'm trying to find the -- I'm getting
6 there. I'm just about there. I'm getting there. All
7 right, I see it. All right, do we have an agreement as to
8 the exhibits?

9 MR. SMITH - Yes, sir, Your Honor.

10 THE COURT - All right, and the verdict form.
11 Before I hand it to them I want you to look at it one more
12 time to be sure there's no objection.

13 MR. SMITH - Judge, the only other thing I would
14 mention to the Court, just -- I don't know if they have an
15 expectation, but I understanding -- you're -- no way you're
16 going to be here tomorrow and ---

17 THE COURT - Well, I'm just going to tell them to
18 begin their deliberations and explain to them how we're
19 going to proceed and we'll go as long as we can.

20 MR. SMITH - Yes, sir.

21 THE COURT - If I have to be here, I can be here
22 tomorrow, but ---

23 MR. SMITH - I don't want you to. I may go to the
24 beach, Judge.

1 (WHEREUPON, DISCUSSION HELD REGARDING SPRING
2 BREAK, ETCETERA WHICH WAS NOT REPORTED.)

3 (WHEREUPON, COUNSEL REVIEWING VERDICT FORM)

4 MR. SMITH - Yes, sir, Judge, we're fine.

5 THE COURT - Okay, any objections?

6 MR. PROFFITT - No, sir, Your Honor.

7 THE COURT - Other than previously stated. I'm
8 sure there were some earlier.

9 MR. PROFFITT - Nothing else, Your Honor.

10 THE COURT - All right. All right, bring the jury
11 in.

12 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

13 THE COURT - All right, the record will reflect
14 that the jury has returned to the courtroom. There is one
15 matter that I do want to correct concerning my charge. In
16 charging you concerning the plaintiff's spouse's claim for
17 loss of consortium, I want to be sure that you understand
18 that should you decide that the plaintiff is entitled to
19 recover damages from the defendant, then you may consider
20 the question of whether or not the plaintiff's spouse is
21 entitled to damages for loss of consortium. In that case
22 the plaintiff's spouse would have to prove that she's
23 entitled by the greater weight or the preponderance of the
24 evidence to recover the value of those services of her
25 spouse which were lost, including the loss of her spouse's

1 society, companionship in the home. The plaintiff is also
2 -- then also required to prove that she is entitled to
3 recover for any expenses incurred for the care and/or
4 treatment of her spouse because of illness or bodily harm
5 suffered by the spouse and for any medical expenses which
6 the plaintiff spouse has incurred, so it would -- it does
7 require that the plaintiff's spouse prove a requirement or
8 a need for that. And again that proof is by the greater
9 weight or the preponderance of the evidence. I want to be
10 sure I was clear on that point.

11 Now, I'm going to pass over, Ms. Pete, the verdict
12 form that we're going to use in this case and I'll ask the
13 bailiff to hand this to you. I want to go over it with you
14 so that we've got an understanding on that.

15 (WHEREUPON, VERDICT FORM HANDED TO THE
16 FOREPERSON)

17 THE COURT - Now, ma'am, if you'll look at that
18 form, at the top part of the form you'll see that it
19 indicates the state and county in which we're located. It
20 has the name of the case, Philip Ethier and Jeanne Ethier
21 vs. Dr. Bibeau. Below that it begins to ask questions of
22 you. We'll start with question number 1, and again, I'll
23 point out to you that a verdict by the jury cannot be
24 reached until there's unanimous agreement as to the answer
25 to be given to the questions. The first question, was the

1 Defendant, Dr. Bibeau, negligent? And then you'll either
2 check yes or no. I'll point out to you that the order in
3 which I put these on the form should not be considered as a
4 preference by me. These are the way they are on my
5 computer. I'm not indicting a preference one way or the
6 other by the order in which they appear on the form. Now,
7 if the answer -- below that you will see a note, if the
8 answer is yes to question -- the question, then you'll
9 answer question number 2. If the answer is no to that
10 question, then that would end your deliberations and you
11 inform the bailiff that a verdict's been reached. Question
12 number 2, was the Defendant, Dr. Bibeau's negligence at
13 least one of the proximate causes of the injury or damages
14 suffered by Philip Ethier, and again the answer is either
15 yes or no. If the answer is no, then you would stop
16 deliberations. If the answer is yes, then you will go on
17 to number 3, and that is a question as to Phil Ethier's
18 negligence, and again, the question is, was he negligent,
19 and the answer is either yes or no. If the answer is yes,
20 then you'll go to question number 4. If the answer is no,
21 you'd go to question number 6. Let's go to question 4;
22 we'll assume that you had to answer question 4. Was Mr.
23 Ethier's negligence at least one of the proximate causes of
24 the injuries sustained by him? Again, the answer is yes or
25 no. If the answer is yes, you go to question 5; if the

1 answer is no, you go to question 6. Question number 5, if
2 you get to that question, it's where you would assign the
3 percentage -- a relative percentage of negligence. It
4 says, taking into consideration that the total percentage
5 of negligence of Dr. Bibeau and Mr. Ethier is 100 percent,
6 they ask you to assign the percentage of negligence to both
7 of them, and there's a blank for you to do that in that
8 place. Those percentages, however, must add up to 100
9 percent. Now, question number 6 is a question -- and
10 question number 7 -- I'll talk about these kind of
11 together. Question 6 and 7 are where the jury would
12 determine -- if you get to those questions -- the amount of
13 damages. Question 6 deals with economic damages; question
14 7 deals with non-economic damages. I want you to put the
15 total amount of damages that you would award; do not
16 consider the percentages of negligence. In other words,
17 your verdict there is for the total amount of the damages
18 for that particular element of damages. You'll note the
19 instruction after the question. Do not reduce the sum by
20 any percentage of negligent that you may have noted in
21 question 5. In other words, you'll put down the total
22 amount of damages for that in that blank. Do you
23 understand that, Ms. Pete, ---

24 FOREPERSON (MS. PETE) - Yes, sir.

1 THE COURT - --- what I'm saying there? Okay.
2 Now, question number 8 has to do with the loss of
3 consortium claim, and that was -- be -- do you find that
4 Mrs. Ethier has proven by the preponderance of the evidence
5 that Dr. Bibeau's negligence was the proximate cause of
6 loss of consortium. Again, the question is yes or no. If
7 you find yes that that's true, then you would go to
8 question 9, which is to assess the damages for loss of
9 consortium. Now, once you've completed the form, you'll
10 sign it as foreperson and date it and inform the bailiff
11 that the form has been completed. Ms. Pete, do you have
12 any questions about what I went over with you?

13 FOREPERSON (MS. PETE) - No, sir.

14 THE COURT - All right. Now, you're going to be
15 allowed to have the exhibits back in the jury room with
16 you. The bailiff will deliver that to you. I know it's
17 late in the afternoon, and we have ordered pizza for you.
18 It's going to be delivered in about an hour, maybe an hour
19 and a half, so you'll have something to eat.

20 CLERK - It's going to be sooner than that, Judge.

21 THE COURT - Beg your pardon?

22 CLERK - About 5:30.

23 THE COURT - About 5:30, so it's going to be
24 quicker than that. So you'll have something to eat while
25 you're back in the jury room. Now, if there's anyone that

1 you would like the clerk's office to call and explain where
2 you are and what you're doing, pass out your name, the
3 person you want us to call and the number you want us to
4 call. We'll be glad to get in touch with anyone and let
5 them know where you are and what you're doing at this point
6 in time.

7 Now, at this point in time I'm going to ask that
8 the jury retire to the jury room, begin your deliberations
9 in the case. That's true all except for the alternate.
10 Ma'am, are you the alternate? I want you, if you will, to
11 stay in the courtroom and have a seat. So then the jury
12 now is asked to step back to the jury room and begin your
13 discussions about the case.

14 (WHEREUPON, JURY EXITS THE COURTROOM TO BEGIN
15 DELIBERATIONS AT 4:50 PM.)

16 (WHEREUPON, DISCUSSION IS HELD REGARDING
17 REVIEWING EXHIBITS WHICH WAS NOT REPORTED.)

18 MR. SMITH - Judge, can I just place on the
19 record, and I don't recall the specific thing, but
20 certainly these are admitted and Dr. Wood's chart was for
21 the jury's information. I think it was cumulative and the
22 objections -- I just want to make sure I'm not waiving any
23 objections by submitting that.

24 THE COURT - I understand that. Objection's
25 noted.

1 MR. SMITH - Yes, sir. Thank you.

2 THE COURT - It is in evidence and I'm sending it
3 back.

4 All right, ma'am, I believe you're Sandra
5 Mitchell. Did I get that right?

6 ALTERNATE JUROR - (Indicating yes)

7 THE COURT - All right, Ms. Mitchell, let me
8 mention to you, I want to thank you very much for your
9 assistance in this case. As you're aware one of the
10 alternates was seated; you were not seated. The law says
11 that if we get to this point in the trial and they begin
12 deliberations, you're released from any further
13 responsibility in the case. Up to this time I've told you
14 not to discuss the case with anyone. I'll tell you now
15 that you have the right to do so; you also have the right
16 not to do so. You see, a citizen owes no one an
17 explanation for their service on a jury panel. You're not
18 required to discuss this with anyone unless you choose to
19 do that. Now, if someone were to harass you or bother you
20 concerning your service on the jury panel, please let the
21 clerk's office know; we'll take appropriate actions in that
22 situation. So at this time you're free to go if you'd like
23 to go. You can also stay if you wanted to. That's
24 entirely up to you. The bailiff will check you out.

JURY QUESTIONS AND JURY VERDICT

1 Again, thank you for your assistance in the case. Thank
2 you. They'll see you out in the hallway when you step out.

3 (WHEREUPON, ALTERNATE JUROR RELEASED)

4 THE COURT - Any objections to my final
5 instructions from the plaintiff?

6 MR. PROFFITT - None, Your Honor.

7 THE COURT - Any from the defense?

8 MR. SMITH - No, sir, Your Honor.

9 THE COURT - All right, we're in recess until a
10 verdict's reached. Thank you.

11 MR. COX - Thank you, Your Honor.

12 (WHEREUPON, COURT IN RECESS AWAITING VERDICT)

13 (WHEREUPON, NOTE FROM JURY AT 6:35 PM.)

14 THE COURT - Thank you very much. You can be
15 seated.

16 All right, I have received a question -- or
17 actually two questions or inquiries from the jury panel.
18 It's going to be necessary for them to be brought into the
19 courtroom to answer it. If you'll bring the jury in,
20 please.

21 (WHEREUPON, JURY ENTERS THE COURTROOM)

22 THE COURT - All right, the record will reflect
23 that the jury has returned to the courtroom. I've received
24 two inquiries from the jury. The first one states, may we
25 have the economic damages breakdown to answer question

1 number 6. The second inquiry, may we have the non-economic
2 damage breakdowns to answer question number 7. Madam
3 forelady and members of the jury, whatever documents are in
4 the record have been presented to you, the ones that are in
5 evidence. If you're referring to documents that might've
6 been used by the attorneys in their arguments before you in
7 closing, those were for demonstrative purposes. They were
8 not put into evidence, and therefore I cannot send those
9 back to you in the jury room. In other words, they were
10 used for argumentative purposes, but didn't actually get
11 put into the record of the case. So we've presented to you
12 the evidence that is in the record. You're welcome to use
13 any of that, and, of course, you have your recollection as
14 to any other information that might've been given to you
15 during the arguments, but there are no -- there is no other
16 evidence to give you. You have all the evidence in the
17 case at this time. So I'll ask you to return to the jury
18 room to continue your deliberations. Thank you very much.

19 (WHEREUPON, JURY EXITS THE COURTROOM TO CONTINUE
20 DELIBERATING.)

21 THE COURT - All right, any objection to the
22 Court's response from the plaintiff?

23 MR. PROFFITT - None, Your Honor.

24 THE COURT - Any from the defense?

25 MR. SMITH - No, sir, Your Honor.

1 THE COURT - All right, I'll have the inquiry made
2 a Court's Exhibit and part of the record, and we'll be in
3 recess until a verdict's been announced. Thank you very
4 much.

5 MR. COX - Thank you.

6 (WHEREUPON, NOTE FROM JURY MARKED AS COURT'S
7 EXHIBIT NUMBER 16.)

8 (WHEREUPON, COURT IN RECESS AWAITING VERDICT)

9 THE COURT - Thank you very much. You can be
10 seated.

11 MR. PROFFITT - Your Honor, the plaintiffs are
12 downstairs in the restroom. Norman took them down there.

13 THE COURT - I'll wait til they get here.

14 (WHEREUPON, BRIEF PAUSE IN THE RECORD.)

15 (WHEREUPON, THE PLAINTIFFS ENTER THE COURTROOM.)

16 THE COURT - I've been informed by the bailiff
17 that a verdict has been reached. Is the plaintiff ready to
18 receive the verdict?

19 MR. PROFFITT - We are, Your Honor.

20 THE COURT - Defense ready?

21 MR. SMITH - Yes, sir, Your Honor.

22 THE COURT - Bring the jury in.

23 (WHEREUPON, JURY RETURNS WITH VERDICT AT 7:23
24 PM.)

1 THE COURT - The record will reflect the jury has
2 returned to the courtroom. Madam forelady, I'm informed a
3 verdict's been reached. Is it true?

4 FOREPERSON (MS. PETE) - Yes, sir.

5 THE COURT - Pass the verdict to the bailiff.
6 Thank you.

7 (WHEREUPON, VERDICT IS HANDED UP TO THE COURT FOR
8 REVIEW.)

9 THE COURT - Madam Clerk, you may publish the
10 verdict.

11 CLERK - In the case of Philip Ethier and Jeanne
12 Ethier vs. Guy Bibeau, the verdict reads as: Was the
13 Defendant, Dr. Bibeau, negligent? Yes.

14 THE COURT - Want me to read it? I'm familiar
15 with it. I'll publish it.

16 CLERK - Okay. That's good. Thank you.

17 THE COURT - All right, question number 1: Was
18 the Defendant, Dr. Bibeau, negligent? Answer, yes.
19 Question number 2: Was the Defendant, Dr. Bibeau's
20 negligence at least one of the proximate causes of injury
21 or damages sustained by Philip Ethier? Answer is yes.
22 Question number 3: Was Philip Ethier negligent? Answer,
23 yes. Question number 4: Was Mr. Ethier's negligence at
24 least one of the proximate causes of injury and/or damage
25 sustained by him? Answer, yes. Question number 5: Taking

1 into consideration the total percentage of negligence of
2 Dr. Bibeau and Mr. Ethier as 100 percent, assign percentage
3 of negligence to both of them. The answer is: 30 percent
4 for Guy R. Bibeau, 70 percent for Philip Ethier. Question
5 number 6: The total amount of economic damages that Mr.
6 Ethier sustained as a proximate result of the negligence of
7 the defendant, one million two hundred and fifty thousand
8 dollars is the answer. Question number 7: What is the
9 total amount of non-economic damages that Mr. Ethier
10 sustained as a proximate result of the negligence of the
11 defendant? The answer for number 7 is five hundred
12 thousand dollars. Question number 8: Do you find that
13 Jeanne Ethier has proven by the preponderance of the
14 evidence that Dr. Bibeau's negligence was the proximate
15 cause of loss of consortium? Answer is yes. What is the
16 total amount of damages sustained by Jeanne Ethier for any
17 loss of consortium? Answer is two hundred and fifty
18 thousand dollars.

19 You want to inquire of the jury concerning the
20 verdict, Madam Clerk?

21 CLERK - Ladies and gentlemen, was this your
22 verdict and still now your verdict? Please signify by
23 raising your right hand.

24 (WHEREUPON, JURORS CONFIRM)

1 CLERK - Let the record reflect all jurors raised
2 their right hand. Verdict stands as read.

3 THE COURT - Thank you, ma'am. Anything from the
4 plaintiff before I release the jury?

5 MR. PROFFITT - No, Your Honor, not before you ---

6 THE COURT - Anything from the defense before I
7 release the jury?

8 MR. SMITH - Can we look at the verdict form real
9 quick before you release the jury?

10 THE COURT - Yes, sir.

11 (WHEREUPON, COUNSEL REVIEWS THE VERDICT)

12 MR. SMITH - No, sir, Your Honor.

13 THE COURT - Anything further from the jury? Is
14 that a no, sir?

15 MR. SMITH - Nothing. I'm sorry. No, sir.

16 THE COURT - All right, thank you very much.

17 MR. COX - Can we have one moment?

18 THE COURT - Yes, sir.

19 (WHEREUPON, BRIEF PAUSE)

20 MR. COX - Nothing else for the jury, Your Honor.

21 THE COURT - All right, thank you very much.

22 Ladies and gentlemen of the jury, throughout this
23 trial I have instructed you not to discuss this case with
24 anyone. I now will advise you that you have the right to
25 do so. You also have the right not to do so. A citizen

1 owes no one an explanation for their service on a jury
2 panel. You're not required to discuss this matter unless
3 you choose to do that. Should anyone harass you or bother
4 you about your service on the jury panel this week, please
5 contact the clerk's office here in Fairfield County;
6 appropriate action will be taken should that occur.

7 Let's see, Madam Clerk, do you have information
8 for them.

9 CLERK - We don't have your checks that we can
10 give you tonight, but we have a statement you can take to
11 your employer and we will put your checks in the mail.
12 tomorrow.

13 THE COURT - You want to pass those out to them?

14 CLERK - Yes, sir.

15 THE COURT - Just remain seated, ma'am. I'm going
16 to dismiss you all at one time. Thank you.

17 (WHEREUPON, CLERK DISBURSES STATEMENTS TO JURORS
18 AND ADDRESSES THE JURY WHICH WAS NOT REPORTED.)

19 THE COURT - And I do want to thank you for your
20 service to the Court for the last week and a half I guess,
21 and we do appreciate your willingness to cooperate with us
22 in that regard. You're going to be free at this point in
23 time to go. Thank you very much for your service.

24 (WHEREUPON, THE JURY IS RELEASED AND EXITS THE
25 COURTROOM)

1 THE COURT - All right, post-trial motions?

2 MR. PROFFITT - Your Honor, we request ten days to
3 make any post-trial motions we might like to make.

4 THE COURT - Any objection to that?

5 MR. SMITH - No, sir, Your Honor.

6 THE COURT - All right, I'll leave the record open
7 for ten days for either side to file any post-trial
8 motions. Thank you very much.

9 MR. SMITH - Thank you, Your Honor.

10 MR. PROFFITT - Thank you.

11 THE COURT - Court is adjourned.

12 (END OF TRANSCRIPT)

13

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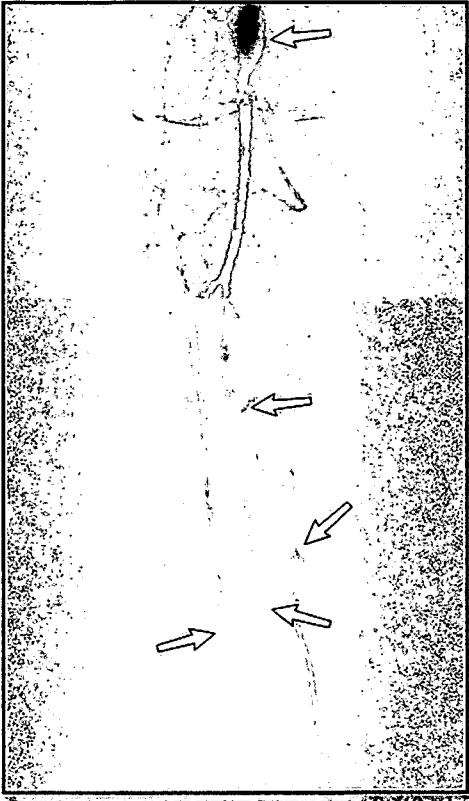
22

23

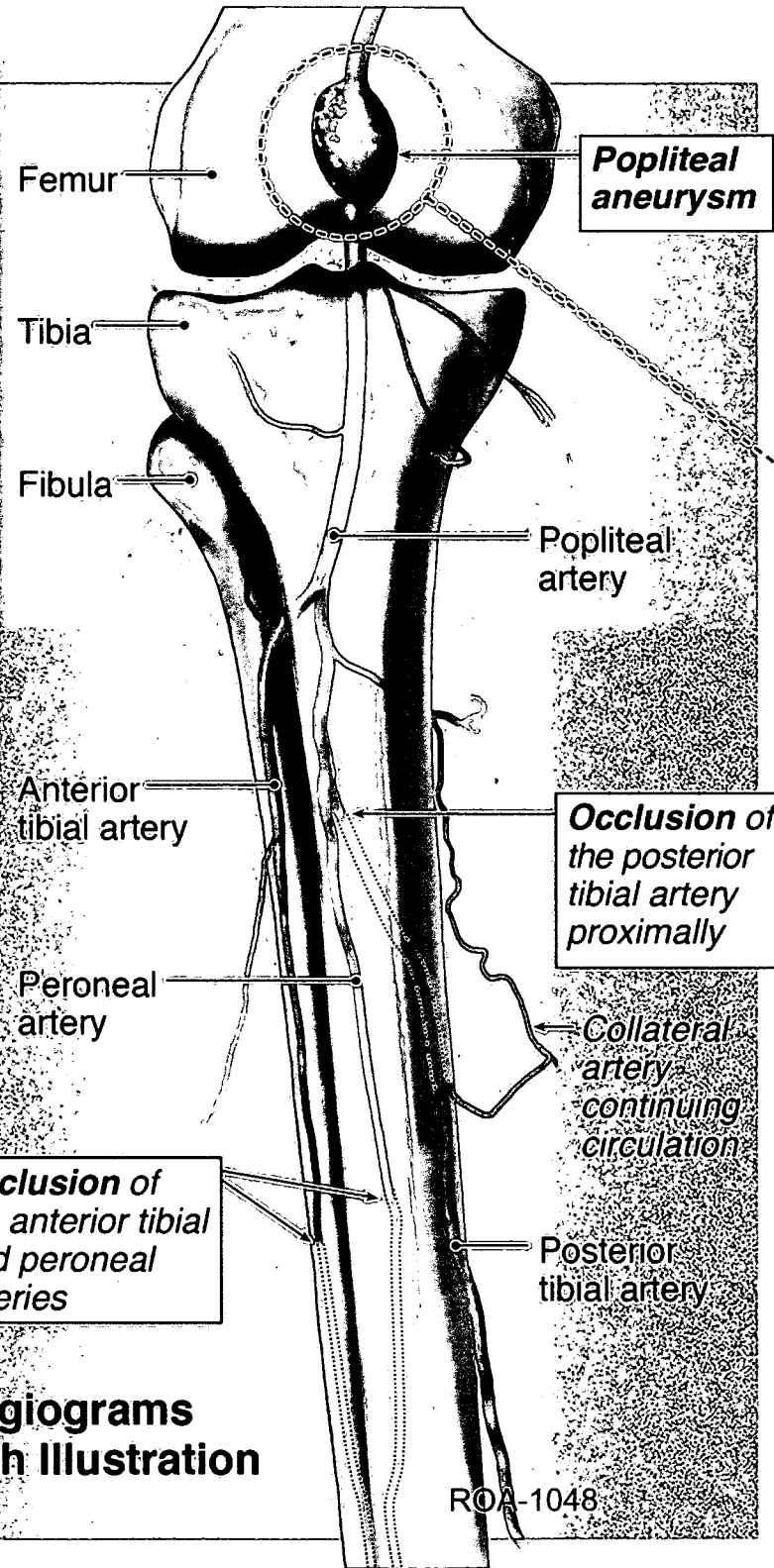
24

25

Right Lower Extremity Angiogram Findings



5/25/11
Angiograms



Occlusion of the anterior tibial and peroneal arteries

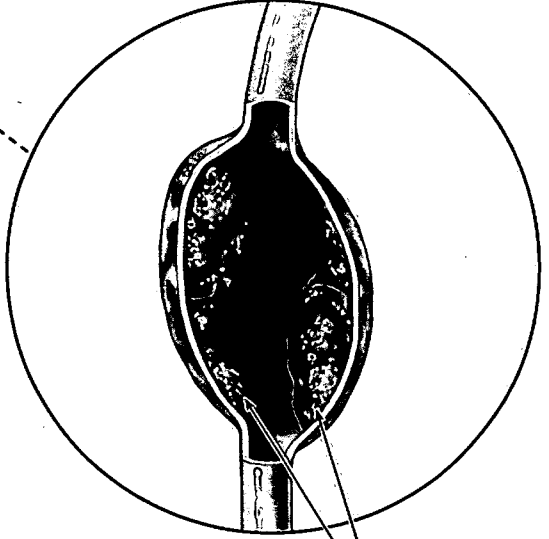
Popliteal aneurysm

Occlusion of the posterior tibial artery proximally

Angiograms with Illustration

ROA-1048

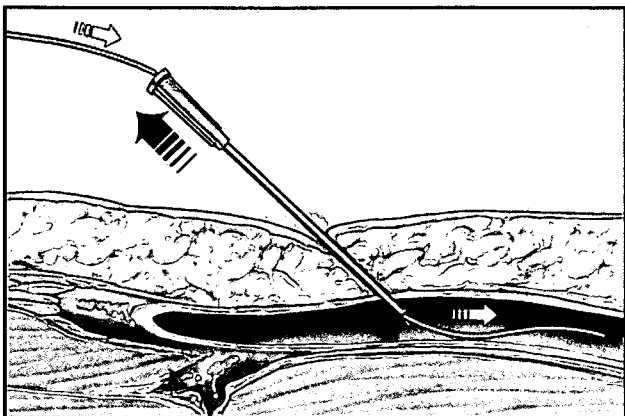
Cross-Sectional View of Popliteal Aneurysm



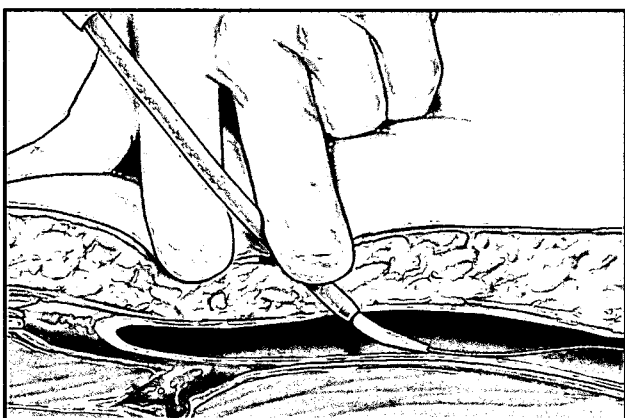
Blood clots within aneurysm

PLAINTIFF TRIAL EXHIBIT 1

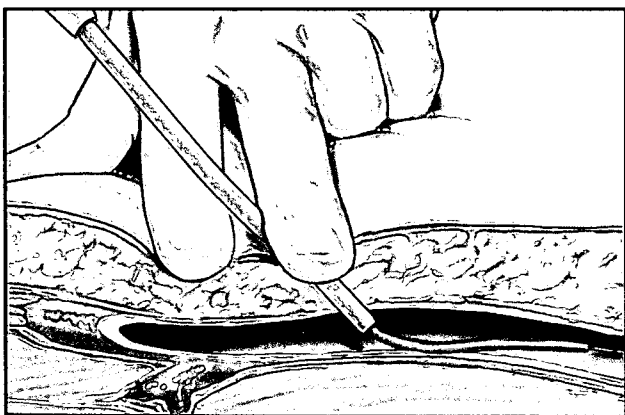
Catheterization Process



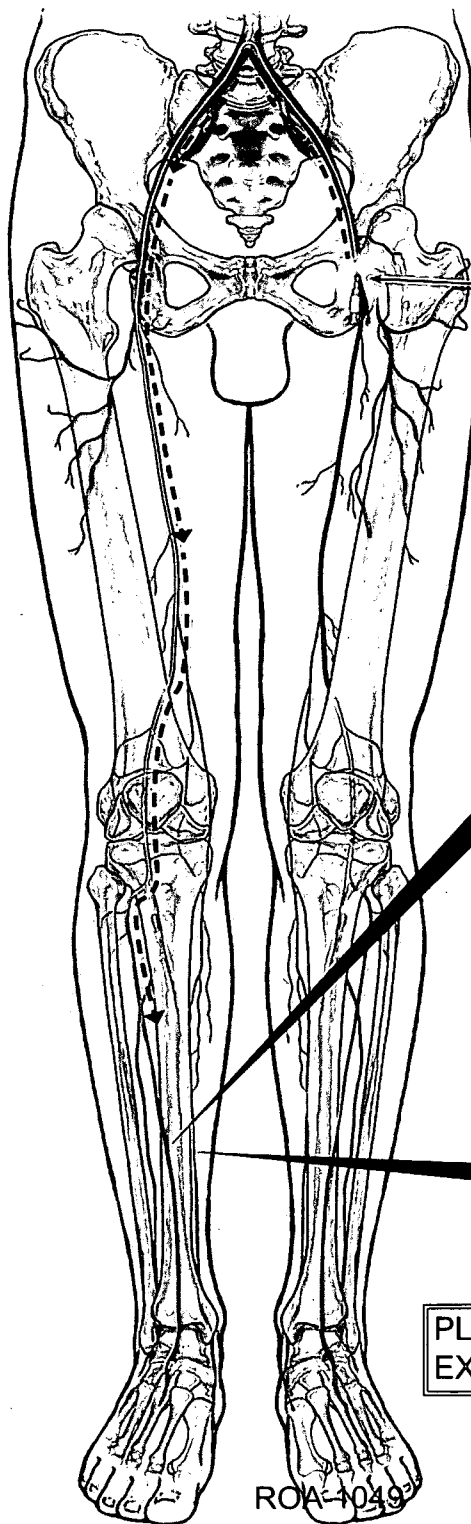
Needle introduces guide wire into artery



Dilator and sleeve over wire



Catheter inserted through sleeve



Mr. Ethier: 5/25/11 Right Lower Extremity Thrombolysis

Catheter placed in
left femoral artery



Attempted Aspiration of Thrombus

Passes made by aspiration
catheter are unsuccessful
in releasing occlusions in
both the anterior and
posterior tibial arteries

Thrombus (blood clot)

Guidewire



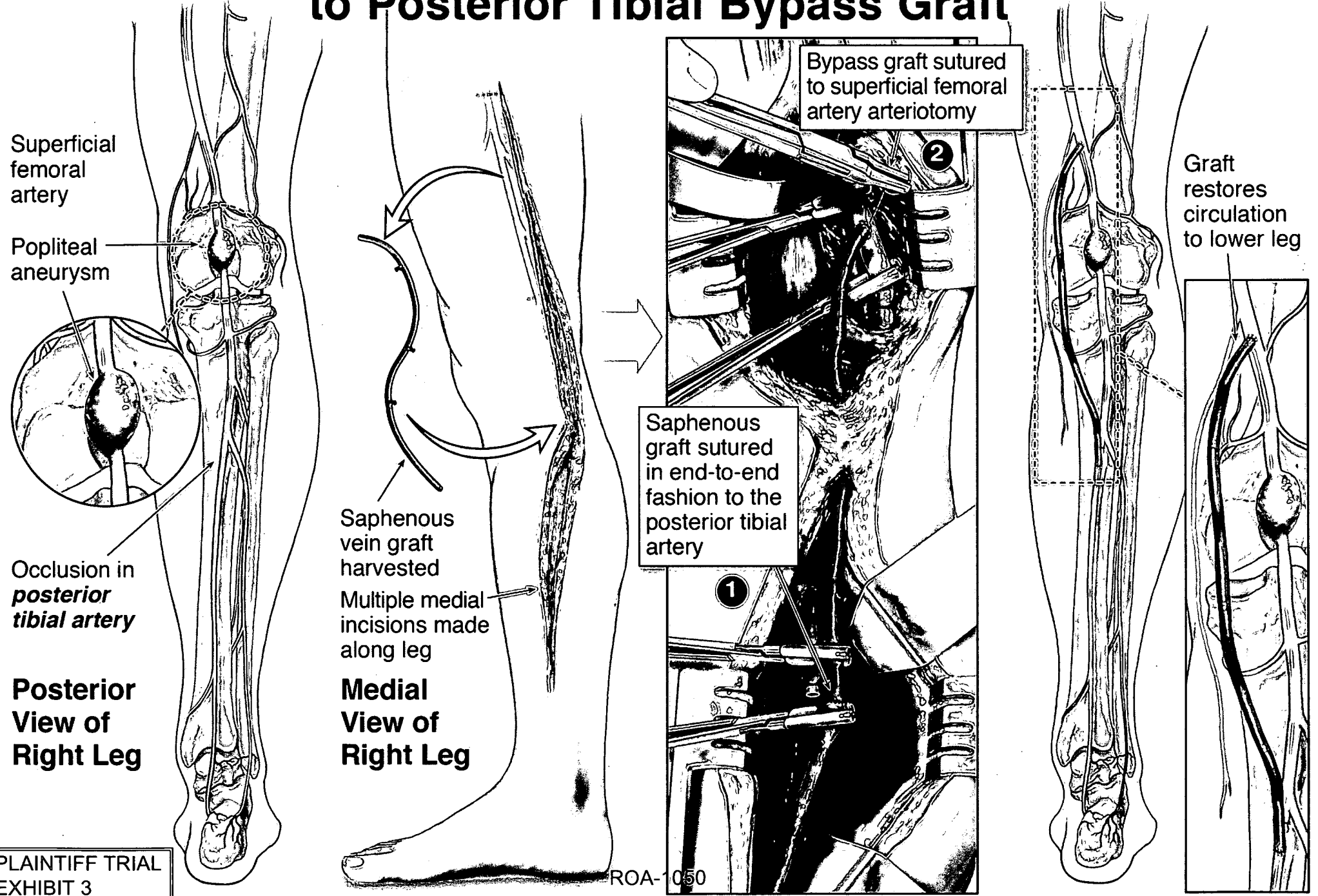
Application of Thrombolytics

Infusion catheter
pulses TPA
(thrombolytics) to
breakdown
thrombus
in the posterior
tibial artery

PLAINTIFF TRIAL
EXHIBIT 2

ROA-1049

Mr. Ethier: 5/25/11 Right Superficial Femoral to Posterior Tibial Bypass Graft



PLAINTIFF TRIAL
EXHIBIT 3

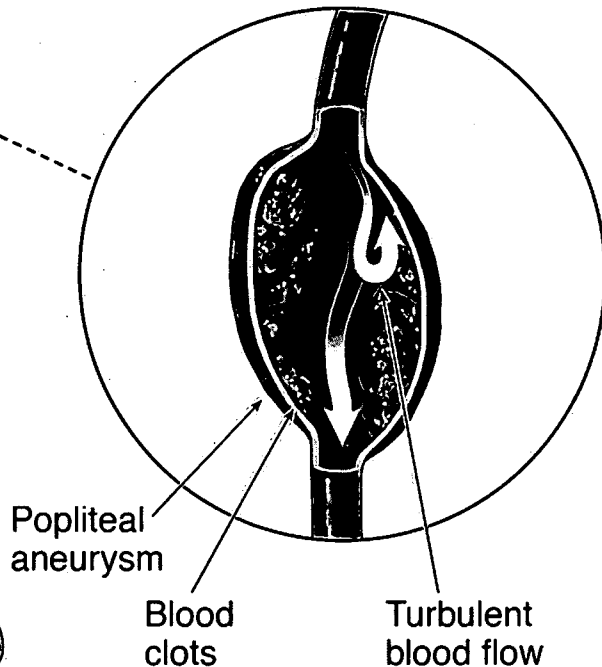
ROA-050

Mr. Ethier: Minimally Invasive Graft and Stent Placement

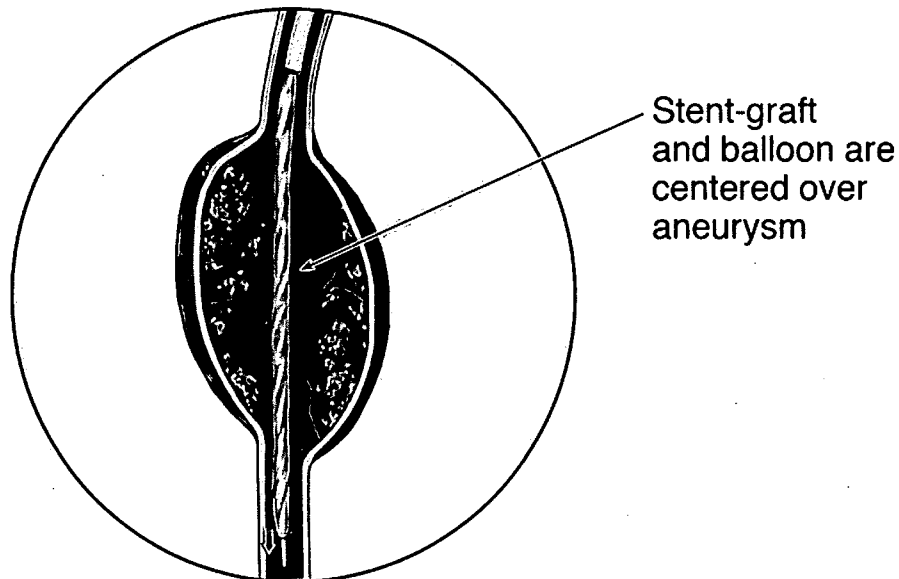
Femoral artery

Popliteal artery

Cross-Sectional View of Popliteal Aneurysm

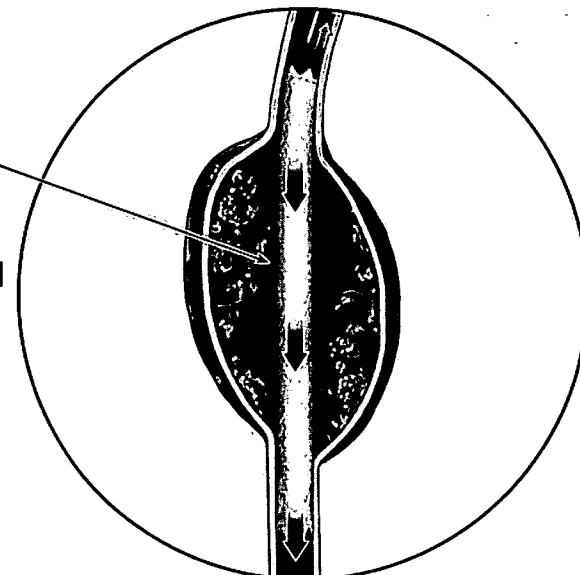


A Placement of Stent



B Blood Flow Restored

Balloon inflated expanding stent-graft allowing continued arterial flow to lower leg



PLAINTIFF TRIAL EXHIBIT 4

ROA-1051

PLAINTIFF TRIAL EXHIBIT 22

Fairfield Memorial Hospital
 P.O. Box 620 • Winnsboro, S.C. 29180

60961 /465960 04/10/11
 ETHIER, PHILIP LEO
 BIBEAU, GUY /OTHER, DR
 04/17/1958 52 M

ADMISSION NO. 465960		<input type="checkbox"/> INPATIENT		<input type="checkbox"/> OUTPATIENT		<input type="checkbox"/> OBSERVATION		<input type="checkbox"/> ER		SERVICE		CLERK	
NAME FIRST NAME MIDDLE INITIAL ETHIER, PHILIP L				PATIENT TYPE 12 ER				ER EMERG ROOM				AS	
ADDRESS (STREET) 1235 WISHER CT						ATTENDING DOCTOR BIBEAU, GUY		1466		ADMITTING DOCTOR BIBEAU, GUY			
CITY CHESTER		STATE SC		ZIP 29706		PATIENT TELEPHONE 803-209-0167		ROOM NO.		DATE OF ADMISSION 04/10/11		HOUR 16.30	
AGE 52	DATE OF BIRTH 04/17/1958	SEX M	RACE W	MARITAL STATUS MARRIED		PATIENT SOC. SEC. NO. 030-50-7291				DATE OF DISCHARGE HOUR			
NEAREST RELATIVE OR FRIEND (CONTACT IN CASE OF EMERGENCY) ETHIER, JEANNE						RELATIONSHIP SPOUSE				PREVIOUS OUTPATIENT ADMISSION DATE			
ADDRESS CHESTER SC 29706						EMERG CONTACT PHONE 803-209-0167				PREVIOUS INPATIENT ADMISSION DATE			
GUARANTOR NAME ETHIER, PHILIP L						GUARANTOR SOCIAL SECURITY NO. 030-50-7291				CLERGY			
ADDRESS CHESTER SC 29706						GUAR TELEPHONE 803-209-0167				EMPLOYER TELEPHONE 803-636-5548			
GUARANTOR EMPLOYER NAME (SOURCE OF INSURANCE) ADDRESS FAIRFIELD MEM HOS P O BOX 620						DISPOSITION PART-TIME							
CITY WINNSBORO		STATE SC		ZIP 29170		SUBSCRIBER NAME ETHIER, PHILIP L		GROUP		CONTRACT NO. U40492042			
FC 02	PAYOR CODE 3258	PRIMARY INSURANCE CIGNA		SUBSCRIBER NAME ETHIER, PHILIP L		GROUP		CONTRACT NO. 030507291					
FC 19	PAYOR CODE 1900	SECONDARY INSURANCE SELF PAY INSURANCE		SUBSCRIBER NAME ETHIER, PHILIP L		GROUP		CONTRACT NO.					
FC	PAYOR CODE	TERTIARY INSURANCE		SUBSCRIBER NAME		GROUP		CONTRACT NO.					
ADMITTING DIAGNOSIS LOWER RT LEG PAIN								ADVANCE DIRECTIVE U		FAMILY DOCTOR 99 OTHER, DR		SIGNATURE ON FILE Y	
ALLERGIES NKA			ADMIT TYPE 1 EMERGENCY			ADMIT SOURCE 1 NONHLTH CARE			DISCHARGE STATUS				

Pre-cert phone no. _____ Discharge Planning: _____
 Pre-cert no. _____ Patient is from: **NONHLTH CARE**

- PATIENT DISCHARGE STATUS:**
- 01 DISCHARGED
 - 02 TRANSFERRED TO OTHER HOSPITAL
 - 03 TRANSFERRED TO SNF
 - 05 TRANSFERRED TO ANOTHER TYPE OF INSTITUTION
 - 06 TRANSFERRED TO HHA
 - 07 LEFT AMA
 - 20 DIED
 - OTHER: _____

Notes: annes ,04/10/11-INS VERIFIED BY HL

FAIRFIELD MEMORIAL HOSPITAL
CODING SUMMARY

PAGE: 1

PATIENT DATA

PAT.#/ADM.#: 50961 / 465960 NAME: ETHIER, PHILIP LEO LOS: 0 SEX: M AGE: 52

ADMISSION DATE: 04/10/11 DISCHARGE DATE: 04/10/11 DISCHARGE STATUS: 01

PATIENT TYPE: 12 PRIMARY PAYOR: 02

ATTENDING DR#: 1466 NAME: BIBEAU, GUY

DIAGNOSIS

ADMT: 7295 PAIN IN LIMB

PRNC: 4019 UNSPECIFIED ESSENTIAL HYPERTENSION

SC01: 3051 TOBACCO USE DISORDER

SC02: 30500 ALCOHOL ABUSE, UNSPECIFIED DRINKING BEHAVIOR

SC03: V1083 PERSONAL HISTORY OF OTHER MALIGNANT NEOPLASM OF SKIN

PROCEDURES

PRNC:

DATE:

PHYSICIAN:

"I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge."



ETHIER, PHILIP LEO

BIBEAU, GUY / OTHER, DR

04/17/1958 52 M

42 **Fairfield Memorial Hospital**
EMERGENCY PHYSICIAN RECORD
Lower Extremity Problem (5)

TIME SEEN: 1:59 on arrival ROOM: 1 EMS Arrival

HISTORIAN: patient spouse paramedics

HX / EXAM LIMITED BY:

HPI R/L foot pain stroke

chief complaint: pain swelling altered sensation
(R/L FOOT ANKLE LEG KNEE THIGH HIP BACK)

started: 1340
cold / numb / achy pain
to several feet

time course: constant sudden-onset needed better
 still present: Intermittent episodes lasting more
 better worse / persistent since

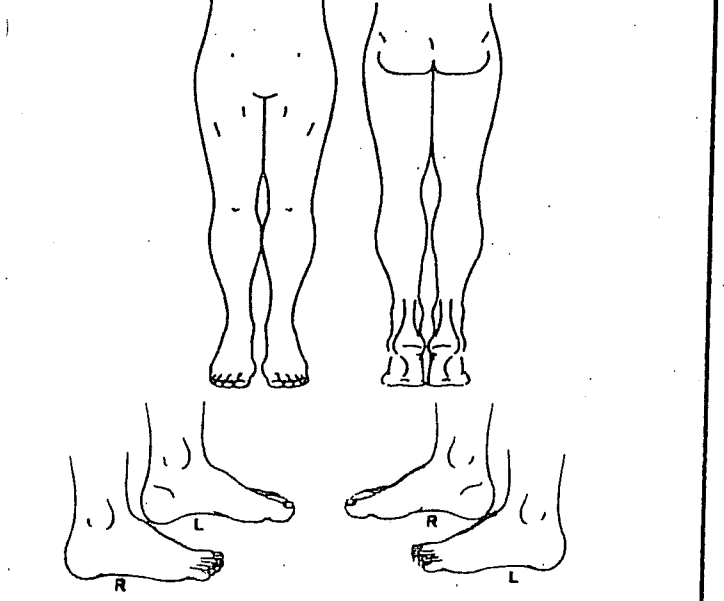
recent injury? no yes possibly
 How (context)? of white injury

prolonged pressure on extremity all day

When? as above

Where? home work

location: P = Pain S = Swelling T = Tenderness E = Erythema



severity:	exacerbated by:	relieved by:
mild	walking movement	rest ice
moderate	nothing	aspirin nothing
severe		

similar symptoms previously

Recently seen / treated by doctor

ROS

CVS / PULMONARY
 cough
 chest pain
 trouble breathing
 palpitations

CONST / SKIN / LYMPH
 fever
 subjective / to _____ °F
 skin rash
 lumps / swelling

MS
 back pain

NEURO / EYE / ENT
 headache
 trouble with vision
 sore throat
 syncope
 dizzy

GI / GU
 abdominal pain
 vomiting
 diarrhea
 black / bloody stools
 dysuria

all systems neg except as marked

PAST HX negative

intervertebral disc disease
 lumbar thoracic cervical
 back injury
 chronic back pain
 diabetes Type 1 Type 2
 diet / oral / insulin
 DVT / PE risk factors
 cast cancer recent surgery
 leg swelling bedridden paralysis
skin cancer

heart disease
 CHF MI angina ASCVD
 peripheral vascular disease
high blood pressure
 high cholesterol
 peptic ulcer disease
 gout
 aortic aneurysm

Surgeries / Procedures none

back surgery
 knee surgery
 appendectomy

cholecystectomy
 c-section / hysterectomy
 cardiac bypass
 TURP

skin ca removed

Medications none see nurses note
 ASA NSAID acetaminophen
 BCP's

Allergies NKDA
 see nurses note

SOCIAL HX smoker drug use / abuse
 recent ETOH

1581

**Fairfield Memorial Hospital
Emergency Department
Triage Record**

Date: 4/10/11 Time of Arrival: 1640
Mode of Arrival: Walk-in W/C Stretcher EMS Carried
Accompanied by: wife

50961/465960 04/10/11
ETHIER, PHILIP LEO
BIBEAU, GUY /OTHER, DR
04/17/1958 52 M

Name: _____ Age/DOB: _____

VITAL SIGNS: Temp: 97.2 Pulse: 88 Resp: 20 BP: 181/108 O2Sat: 98%
Height: _____ Weight: 225
ALLERGIES: NCA

Mental Status <input checked="" type="checkbox"/> Alert <input checked="" type="checkbox"/> Oriented <input type="checkbox"/> Confused <input type="checkbox"/> Lethargic <input type="checkbox"/> Unresponsive	Respirations <input checked="" type="checkbox"/> Non-labored <input type="checkbox"/> Wheezing <input type="checkbox"/> Labored <input type="checkbox"/> Absent	Skin <input checked="" type="checkbox"/> Warm/Dry <input type="checkbox"/> Pale <input type="checkbox"/> Diaphoretic <input type="checkbox"/> Cyanotic	Abdomen <input type="checkbox"/> Non-tender <input type="checkbox"/> Tender <input checked="" type="checkbox"/> BS <input checked="" type="checkbox"/> BS	LBP Date: _____ <input type="checkbox"/> N/A <input type="checkbox"/> Irregular <input type="checkbox"/> Pregnant Etc: _____	Immunizations <input type="checkbox"/> Up to Date <input checked="" type="checkbox"/> Last tetanus <u>5644 or mac</u>
---	--	---	--	--	---

CHIEF COMPLAINT: 52yr old male dx @ foot pain since 1300. Pt states he was unloading his truck when his @ foot started to turn ecchymotic and dx "pressure". Pt states pain started getting worse @ worse around 1530. Pt had eqg refill with 1 sec c + 2 @ pedal and @ post-lib pulses

Pain Assessment: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Location: <u>@ foot</u>	Intensity: <input type="checkbox"/> Mild <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Severe	Duration: <u>1300</u>	Description: <input type="checkbox"/> Dull/Aching <input type="checkbox"/> Shooting/Stabbing <input type="checkbox"/> Burning <input checked="" type="checkbox"/> "pressure" Other _____
---	-----------------------------------	---	---------------------------------	--

PAIN SCALE: 0,1,2,3,4,5,6,7,8,9,10 (0 - No pain - 10- worse pain)

Medications <u>none currently</u>	TB ASSESSMENT
	History of TB YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	History of Exposure YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
	History of Symptoms YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
	Productive cough X more than 2 wks
	Night sweats, fever/chills, Wt. loss
	Loss of appetite, fatigue

Other Injuries <input type="checkbox"/> Gunshot <input type="checkbox"/> Stab <input type="checkbox"/> Fall <input type="checkbox"/> Bike <input type="checkbox"/> Altercation	SOCIAL HISTORY Tobacco use <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Alcohol use <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Drug use <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Type <u>1</u> Packs per day Type <u>beer</u> Frequency <u>"couple beers"</u> Type _____ Frequency <u>"couple week"</u>
--	---

FAMILY DOCTOR: blue granite Date of Last Visit: last sep

Triage Condition: <input type="checkbox"/> Stable <input type="checkbox"/> Potentially Unstable <input type="checkbox"/> Unstable <input type="checkbox"/> Critical	Triage Disposition: <input type="checkbox"/> Exam Room: <u>2</u> <input type="checkbox"/> Registration <input type="checkbox"/> Waiting Area
--	--

Religious/cultural beliefs that may effects this visit? No Yes Time to Exam Room: 1607 Beds: 2
age RN: Philipe newdyke

Past Medical History:
 HTN SZ
 CAD DM
 CVA HIV
 Asthma
 Ca MI
 Hepatitis
Other: skin ca

Past surgeries
Ca removal

Treatment Prior To Arrival:
 None
 Spinal
Immobilization
 IV
Site _____
 Cardiac Monitor
 Blood Sugar
 Intubated: Site _____
 O2
 Meds given
ASA 3 3 days
lyenal 3° ago
ASA 4° ago
 Other

FAIRFIELD MEMORIAL HOSPITAL
P.O. Box 620
Winnsboro, SC 29180

EMERGENCY DEPARTMENT
DISCHARGE SHEET

Health Information Management
 Phone 803-635-0237 FAX 803-635-5641

50961/465960 04/10/11
 ETHIER, PHILIP LEO
 BIBEAU, GUY /OTHER, DR
 04/17/1958 52 M

Date 4/10/11
 Diagnosis probable spider bite

Released to _____

Prescriptions given yes no

Name of Medication	Strength	#	Directions	Refills
<u>Valprofen</u>	<u>75mg</u>	<u>14</u>	<u>1200 20 → Odan</u> <u>FOR BED PAIN</u>	<u>1</u>
<u>Procoxol</u>	<u>51324</u>	<u>14</u>	<u>W2 A Q X 10 PAIN</u>	<u>1</u>

Diet _____ Return to Work/School 4/11/11

Return to Emergency Room _____

Recheck with Dr. Primary MD this week

Treatment

- Sutures Sling Elevate Advil
- Splint Crutches Ice to area Tylenol

Activity:

Unlimited Specific: _____

Additional Instructions: _____

Fact Sheet Given yes no Fact Sheets: Sprains Muscle Strain Head Injury
 Wound Care Fever in Children Gastroenteritis
 Verbalizes Understanding yes no Otitis Chest Pain Abdominal Pain
 Meningitis (fever)

Physician/Nurse Signature: _____

Patient/Representative Signature: _____

Vital Signs: B/P 165/107 R 20 P 84 T 97.2

IS-087
 Revised 12/08

Fairfield Memorial Hospital Discharge Information Sheet

Thank you for choosing Fairfield Memorial Hospital today. The staff here at FMH has tried their best to teach you about your medical condition today. Please keep in mind that in an emergency room the staff has to care for a large number of seriously ill patients in a limited amount of time. Our goal is to make sure that you are not suffering from a life threatening condition today, and to do our best to make you feel better. To get more detailed information on your condition today please talk with your family doctor.

Please also keep in mind that any medical condition can change. It is important to understand that some diseases can be altogether missed or get worse even though proper diagnostic tests and treatment were applied. Other problems start out with uncommon or unclear signs and symptoms, and may require the passing of time in order for those signs and symptoms to develop before the correct diagnosis and treatment can be applied. So, it is very important to call or return for re-examination if your condition changes a lot. In any case it is very important to make a follow-up appointment with your doctor as instructed.

Also, all X-rays and CT scans are interpreted by a radiologist (doctor specializing in reading x-rays, CT scans and MRI's). This is usually done within 24 hours. If there is any major difference between your doctor's interpretation and the radiologist's interpretation of your particular study, you will be promptly notified. Please be sure that you have given us your correct phone number so that we can call you should this happen.

If you have been given a medicine to take home with you by your doctor, please make sure that you read all of the instructions given to you about this medicine, especially on how to take it and about the side effects. Take your medicine exactly as instructed. Don't take more or less of it than what you are told, and don't take it more often than prescribed by your doctor. Ask your doctor to explain anything you do not understand about your medicine or how to take it.

Before taking this medicine, tell your doctor what medicines you are allergic to, as well as telling him what prescription and nonprescription medications, vitamins or herbs you are taking. Tell your doctor if you have a family history of sudden infant death syndrome (crib death) or if you have ever had trouble urinating, glaucoma, epilepsy (seizures), ulcers, asthma or lung disease, high blood pressure, or heart or liver disease.


Tell your doctor if you are pregnant, plan to become pregnant, or are breast-feeding. If you become pregnant while taking this medicine, call your doctor.

Always keep medication in a safe container and out of reach of children. Don't ever give your medicine to anyone else.

If you experience a reaction to this medicine, please make sure that it is not just a listed side effect. If it is not listed, please call your doctor if the reaction is not severe. Call the ER or 911 if you are experiencing severe reaction symptoms like trouble breathing, rash or swelling all over your body, feeling faint, heart racing or uncontrollable vomiting. In case of overdose, call your local poison control center at 1-800-222-1222.

Lastly, thanks again for choosing FMH for your medical needs. We hope that you are pleased with the care and treatment you received by our staff. Please call us with any further questions or problems you have and we will be happy to address them for you.

I have read and understand the above:


Patient Signature

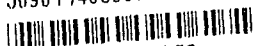
4-10-11
Date


Nurse/Tech Signature

4-10-11
Date

50961/465960

04/10/11



ETHIER, PHILIP LEO

BIBEAU, GUY /OTHER, DR

041171058 52 M

White - CHROA-1060 Yellow - Patient

1596

Nursing Assessment Reviewed VS BP 121/88 HR 68 RR 20 Temp 97.2 SaO2

PHYSICAL EXAM

General Appearance

no acute distress mild / moderate / severe distress
 alert anxious / lethargic

LOWER EXTREM.

tenderness / swelling
 nml inspection foot / ankle / Achilles tendon / calf / thigh
 non-tender pedal edema
 no pedal edema calf circumference R cm L cm

Joint Exam of

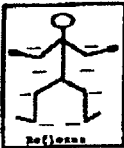
ligamentous instability
 joints nml effusion
 nml ROM click / crepitus
 limited ROM
 nml gait / weight bearing antalgic gait
 painful / unable to bear weight

VASCULAR

pale / cool extremity
 no vascular poor capillary refill
 compromise Homan's sign / venous cord
 pulses full / equal decreased / absent pulse
 femoral popliteal dors-pedis post-tib
 R-
 L-

NEURO / PSYCH

sensation intact peripheral exam
 motor intact sensory / motor deficit
 Distal 2 Woods retractors
 Hoffman - Cooper Flex
 asymmetric reflexes
 oriented x3 disoriented to person / place / time
 mood / affect nml depressed affect
 CN's nml as tested facial droop



SKIN

color nml cyanosis / diaphoresis / pallor
 warm, dry warmth / erythema
 no rash rash / embolic lesion
 lymphangitis
 ulcers

BACK / NECK

nml inspection vertebral point-tenderness
 pos straight-leg raise test on R / L at deg

EENT

eyes inspctn nml scleral icterus / pale conjunctivas
 ENT inspctn nml EOM palsy / anisocoria
 pharynx nml pharyngeal erythema

RESPIRATORY

no resp. distress respiratory distress
 breath sounds nml wheezes / rales / rhonchi

CVS

reg. rate & rhythm tachycardia / bradycardia
 heart sounds nml JVD
 murmur / gallop

ABDOMEN

non-tender tenderness / guarding / rebound
 no organomegaly hepatomegaly / splenomegaly / mass
 no bruit / mass

LABS, EKG & XRAYS

CBC normal except
WBC
Hgb
Hct
Platelets
segs
bands
lymphs
monos
eos

Chemistries normal except
Na
K
Cl
CO2
Gluc
BUN
Creat
Ca

UA normal except
WBC
RBC
 bacteria
 dip:

EKG MONITOR STRIP NSR Rate
EKG NML Interp. by me Reviewed by me Rate
 NSR nml intervals nml axis nml QRS nml ST/T

not / changed from:
X-RAYS Interp. by me Reviewed by me Discd w/ radiologist
 nml / NAD no fracture nml alignment no foreign body
 study: interp:

LE Ultrasound nml
Venogram nml

PROGRESS

Time	unchanged	Improved	re-examined

Rx given
 Discussed with Dr. Time:
 will see patient in: ED / hospital / office
 Counseled patient / family regarding: Additional history from:
 lab / rad. results diagnosis need for follow-up family caretaker paramedics
 prior records ordered
CRIT CARE TIME (excluding separately billable procedures)
 30-74 min 75-104 min min

CLINICAL IMPRESSION

Pain: Vascular Occlusion
 Pedal Edema Deep Venous Thrombosis
 Bursitis / Arthritis Lumbar Radiculopathy
 Tendinitis / Plantar Fasciitis Myofascial Strain
 probable spider bite
 HXNO

DISPOSITION home admitted transferred
Time
CONDITION unchanged improved stable

NP
 Template Complete Add on Temp

PLAINTIFF TRIAL EXHIBIT 23

**Fairfield Memorial Hospital
Emergency Department
Triage Record**

Date: 4/10/11 Time of Arrival: 16:40
Mode of Arrival: Walk-in W/C Stretcher EMS Carried
Accompanied by: wife

509617465960 04/10/11
ETHIER, PHILIP LEO
BIBEAU, GUY / OTHER, DR
04/17/1958 52 M

Name: _____ Age/DOB: _____

VITAL SIGNS: Temp: 97.2 Pulse: 88 Resp: 20 BP 181/108 O2Sat: 98%
Height _____ Weight 225

ALLERGIES: NCA **CAPILLARY REFILL AND PULSES ON RIGHT FOOT**

Mental Status <input checked="" type="checkbox"/> Alert <input checked="" type="checkbox"/> Oriented <input type="checkbox"/> Confused <input type="checkbox"/> Lethargic <input type="checkbox"/> Unresponsive	Respirations <input checked="" type="checkbox"/> Non-labored <input type="checkbox"/> Wheezing <input type="checkbox"/> Labored <input type="checkbox"/> Absent	Skin <input checked="" type="checkbox"/> Warm/Dry <input type="checkbox"/> Pale <input type="checkbox"/> Disphoretic <input type="checkbox"/> Cyanotic	Abdomen <input type="checkbox"/> Non-tender <input type="checkbox"/> Tender <input checked="" type="checkbox"/> +BS <input type="checkbox"/> -BS	LMP Date: _____ <input type="checkbox"/> N/A <input type="checkbox"/> Irregular <input type="checkbox"/> Pregnant Etc: _____	Immunizations <input type="checkbox"/> Up to Date <input checked="" type="checkbox"/> Last tetanus <u>5640 or mac</u>	Post Medical History: <input checked="" type="checkbox"/> HTN <input type="checkbox"/> SZ <input type="checkbox"/> CAD <input type="checkbox"/> DM <input type="checkbox"/> CVA <input type="checkbox"/> HIV
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CHIEF COMPLAINT: 52yr old male c/o right foot pain since 1300. Pt states he was unloading his truck when his right foot started to turn ecchymotic and c/o "pressure". Pt states pain started getting worse around 1530. Pt had cap refill with 1 sec \pm 2 pedal and post-lib pulses

"PAIN"

"PAIN"

"ECCHYMOTIC"

Hepatitis Other:
skin ca

Pain Assessment: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Location: <u>right foot</u>	Intensity: <input type="checkbox"/> Mild <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Severe	Duration: <u>1300</u>	Description: <input type="checkbox"/> Dull/Aching <input type="checkbox"/> Shooting/Stabbing <input type="checkbox"/> Burning <input checked="" type="checkbox"/> "pressure" Other _____
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Post surgeries:
ca removal

"PRESSURE"

PAIN SCALE: 0,1,2,3,4,5,6,7,8,9,10 (0 - No pain - 10- worse pain)

Medications <u>none currently</u>	TB ASSESSMENT
History of TB YES <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>	History of Exposure YES <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>
History of Symptoms YES <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>	Productive cough X more than 2 wks
Night sweats, fever/chills, Wt. loss	Loss of appetite, fatigue

Treatment Prior To Arrival:
 None
 Spinal Immobilization
 IV Site _____
 Cgrotac Monitor
 Blood Sugar

Other Injuries <input type="checkbox"/> Gunshot <input type="checkbox"/> Stab <input type="checkbox"/> Fall <input type="checkbox"/> Bike <input type="checkbox"/> Altercation	SOCIAL HISTORY Tobacco use: <u>Yes</u> No <input type="checkbox"/> Alcohol use: <u>Yes</u> No <input type="checkbox"/> Drug use: <u>Yes</u> No <input type="checkbox"/>	Type <u>1</u> Packs per day _____ Type <u>beer</u> Frequency <u>"couple beers every couple week"</u>
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Intubated: _____
 Size _____
 O2 _____
 Meds given: ASA 300mg
Hydral 300mg
ASA 400mg
 Other _____

FAMILY DOCTOR: blue granite Date of Last Visit: hunk up

Triage Condition: <input type="checkbox"/> Stable <input type="checkbox"/> Unstable <input type="checkbox"/> Potentially Unstable <input type="checkbox"/> Critical	Triage Disposition: <input type="checkbox"/> Exam Room: <u>2</u> <input type="checkbox"/> Registration <input type="checkbox"/> Waiting Area
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Religious/cultural beliefs that may affect this visit? No Yes Time to Exam Room: 16:57 Beds: 2
age RN: James A. Wolf

NS-101

RIGHT LEG & FOOT

© 1996 - 2006 T-System, Inc. Circle or check affirmatives, backlash (V) negatives.

50961 / 465960 04/10/11
ETHIER, PHILIP LEO
BIBEAU, GUY / OTHER, DR
04/17/1958 52 M

42 Fairfield Memorial Hospital
EMERGENCY PHYSICIAN RECORD
Lower Extremity Problem (5)

"PAIN"

TIME SEEN: 1259 on arrival ROOM: 1 EMS Arrival

HISTORIAN: patient spouse paramedics

HX / EXAM LIMITED BY:

HPI R/L foot pain stroke

chief complaint: pain swelling altered sensation
R/L FOOT ANKLE LEG KNEE THIGH HIP BACK

started: 1340
cold / numb / ecchymotic
to severe pain.

"COLD"

course: present
better gone now
constant sudden-onset
Intermittent episodes lasting
worse / persistent since
rather better

"ECCHYMOTIC"

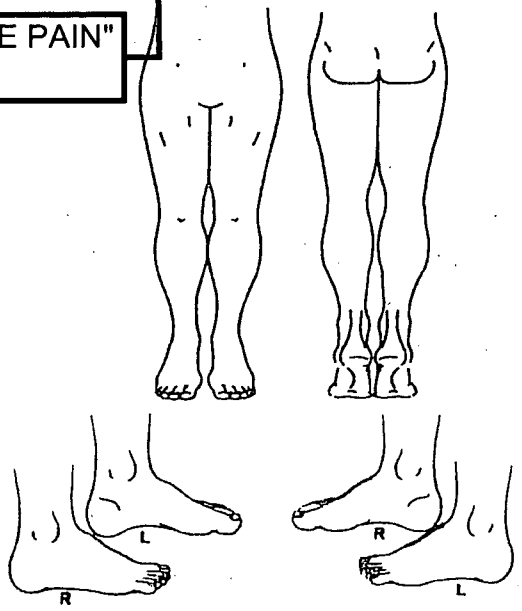
recent injury? no yes possibly
of white injury

How (context)?
unaware of

prolonged pressure on extremity
When? as above
Where? home work

location: P = Pain S = Swelling T = Tenderness E = Erythema

"SEVERE PAIN"



severity:	exacerbated by:	relieved by:
mild	walking movement	rest ice
moderate	nothing	aspirin nothing
severe		

ROS

CVS / PULMONARY
cough

"NUMB" tingling

palpitations

CONST / SKIN / LYMPH
fever

subjective / to °F

skin rash
lumps / swelling

MS
back pain

NEURO / EYE / ENT
headache
trouble with vision
sore throat
syncope
dizzy

GI / GU
abdominal pain
vomiting
diarrhea
black / bloody stools
dysuria

all systems neg except as marked

"0 WHEEZING OR PHARYNGEAL EDEMA"

PAST HX

negative
intervertebral disc disease
lumbar thoracic cervical

back injury
chronic back pain

diabetes Type 1 Type 2
diet / oral / insulin

DVT / PE risk factors
cast cancer recent surgery
leg swelling bedridden paralysis
skin cancer

heart disease
CHF MI angina ASCVD
peripheral vascular disease
high blood pressure
high cholesterol
peptic ulcer disease
gout
aortic aneurysm

Surgeries / Procedures none cholecystectomy
back surgery c-section / hysterectomy
knee surgery cardiac bypass
appendectomy TURP
skin cancer removal

Medications none see nurses note
ASA NSAID acetaminophen
BCP's

Allergies NKDA
see nurses note

SOCIAL HX smoker drug use / abuse
recent ETOH

1591

Nursing Assessment Reviewed Vitals Reviewed
 VS BP 181/108 RR 20 Temp 97.2 SoO2

PHYSICAL EXAM

General Appearance
 no acute distress mild / moderate / severe distress
 alert anxious / lethargic

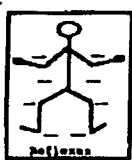
LOWER EXTREM. tenderness / swelling
 nml inspection foot / ankle / Achilles tendon / calf / thigh
 non-tender pedal edema
 no pedal edema calf circumference R cm L cm

Joint Exam of ligamentous instability
 joints nml effusion
 nml ROM click / crepitus
 nml gait / weight antalgic gait
 bearing painful / unable to bear weight

PULSES NOT NOTED

VASCULAR
 no vascular compromise
 pulses full / equal
 pale / cool extremity
 poor capillary refill
 Homan's sign / venous cord
 decreased / absent pulse
 (femoral) (popliteal) (dors-pedis) (post-tib)

NEURO / PSYCH peripheral exam
 sensation intact sensory / motor deficit
 motor intact
 oriented x3 disoriented to person / place / time
 mood / affect nml depressed affect
 CN's nml as tested facial droop



SKIN
 color nml
 warm, dry
 no rash
 cyanosis / diaphoresis / pallor
 warmth / erythema
 rash / embolic lesion
 lymphangitis
 ulcers

BACK / NECK
 nml inspection
 vertebral point-tenderness
 pos straight-leg raise test on R / L at deg

EENT
 eyes inspctn nml scleral icterus / pale conjunctivae
 ENT inspctn nml EOM palsy / anisocoria

"PROBABLE SPIDER BITE"

RESPIRATORY
 no resp. distress respiratory distress
 breath sounds nml wheezes / rales / rhonchi

CVS
 reg. rate & rhythm tachycardia / bradycardia
 heart sounds nml JVD
 murmur / gallop

ABDOMEN
 non-tender tenderness / guarding / rebound
 no organomegaly hepatomegaly / splenomegaly / mass
 no bruit / mass

LABS, EKG & XRAYS

CBC normal except
WBC _____
Hgb _____
Hct _____
Platelets _____
segs _____
bands _____
lymphs _____
monos _____
eos _____

Chemistries normal except
Na _____
K _____
Cl _____
CO2 _____
Gluc _____
BUN _____
Creat _____
Ca _____

D-Dimer _____

UA normal except
WBC _____
RBC _____
bacteria _____
dip: _____

EKG MONITOR STRIP NSR Rate _____
EKG NML Interp. by me Reviewed by me Rate _____
 NSR nml intervals nml axis nml QRS nml ST/T

not / changed from:
X-RAYS Interp. by me Reviewed by me Discd w/ radiologist
 nml / NAD no fracture nml alignment no foreign body
 study: _____ Interp: _____

LE Ultrasound nml

Venogram nml

PROGRESS

Time _____ unchanged improved re-examined

"RIGHT FOOT W/ LIVEDO RETICULARIS PATTERN - COOLER THAN LEFT FOOT"

Rx given _____
 Discussed with Dr. _____ Time: _____
 will see patient in: ED / hospital / office

Counseled patient / family regarding: _____ Additional history from:
 lab / rad. results diagnosis need for follow-up family caretaker paramedics
 prior records ordered
CRIT CARE TIME (excluding separately billable procedures)
 30-74 min 75-104 min min

CLINICAL IMPRESSION

Pain: _____ Vascular Occlusion
 Pedal Edema _____ Deep Venous Thrombosis
 Bursitis / Arthritis _____ Lumbar Radiculopathy
 Tendonitis / Plantar Fasciitis _____ Myofascial Strain
probable spider bite
 HX NO

DISPOSITION- home admitted transferred
 Time _____
CONDITION- unchanged improved stable



**FAIRFIELD MEMORIAL HOSPITAL
EMERGENCY DEPARTMENT
POLICY AND PROCEDURE**

Policy #ND107

Effective Date:

12 September 2005

Title: Nurse's Notes for Emergency
Department Patients

Reviewed/Approved By:

JC Bates, RN *JC*

Original Date: 11/91

Review Date:

31 December 2007

Page 1 of 2

PURPOSE: To provide guidelines for proper entries in the patient's medical record of nursing assessments, actions, and observations.

GENERAL GUIDELINES:

1. The Emergency Room Triage Assessment form shall be used. The heading is self-explanatory. ID labels are applied to each of the three copies of the Emergency Department Record.
2. Treatment prior to arrival must be documented, if applicable. Attach a copy of EMS documentation with further documentation in the nurse's notes of IV's, O₂, Splints, and Cardiac Monitoring.
3. Initial assessment must be documented for each patient arriving to the Emergency Department. A triage note shall be written and signed by a Registered Nurse only.
4. Skin color and temperature is self-explanatory and, if abnormal, should have further documentation in the notes.
5. Pupils should be assessed on all patients, particularly any patients suffering a neurologic event, head injuries, motor vehicle accidents, and any type of trauma, TIA, or CVA.
6. Chest sounds must be assessed on all patients presenting with colds, flu, SOB, chest pain, asthma, chest injuries, coughs/wheezes, motor vehicle accidents, burns, and any substantial trauma.
7. Abdominal assessment will be documented on all patients presenting from motor vehicle accidents, with complaints of abdominal pain, vaginal discharge, high temperatures, nausea, diarrhea, pregnancy or any injury of the torso.
8. Disposition of patients who are discharged to police will be documented with type of officer (deputy sheriff, city police, state police) released to and time released. Document time Coroner is notified for DOA, and unsuccessful CODE 99.
9. All medications (PO, IV, SubQ, Rectal, Topical, IM, etc) will be documented with time, dosage and nurse administering it. Further documentation of patient's medication outcome will be documented in the narrative section on the back of nurse's notes.

N-6

Policy #ND107 (Continued)

10. All IV solutions will be documented on nurse's notes with amount infused. Further documentation of IV site and size of catheter will be documented in narrative form on back of notes.
11. Input and Output will be documented on all appropriate patients.
12. Document that organ donation agencies have been notified on all patients who have expired in the Emergency Department.
13. The back of nurse's notes will be used for further documentation of vital signs and continued narrative.
14. Nurse's notes will be used on all patients entering the Emergency Department.
15. Entries will be made every hour or as events occur during the patient's stay in the Emergency Department.
16. Nurse's signature will be placed at the end of each sheet or when the nurse has completed the narrative.
17. A TB risk assessment shall be completed on all patients seen in the Emergency Department.

ROA-1067

PLAINTIFF TRIAL
EXHIBIT 7

11/17/77

PLAINTIFF TRIAL
EXHIBIT 9

ROA-1068

ROA-1069

PLAINTIFF TRIAL
EXHIBIT 10

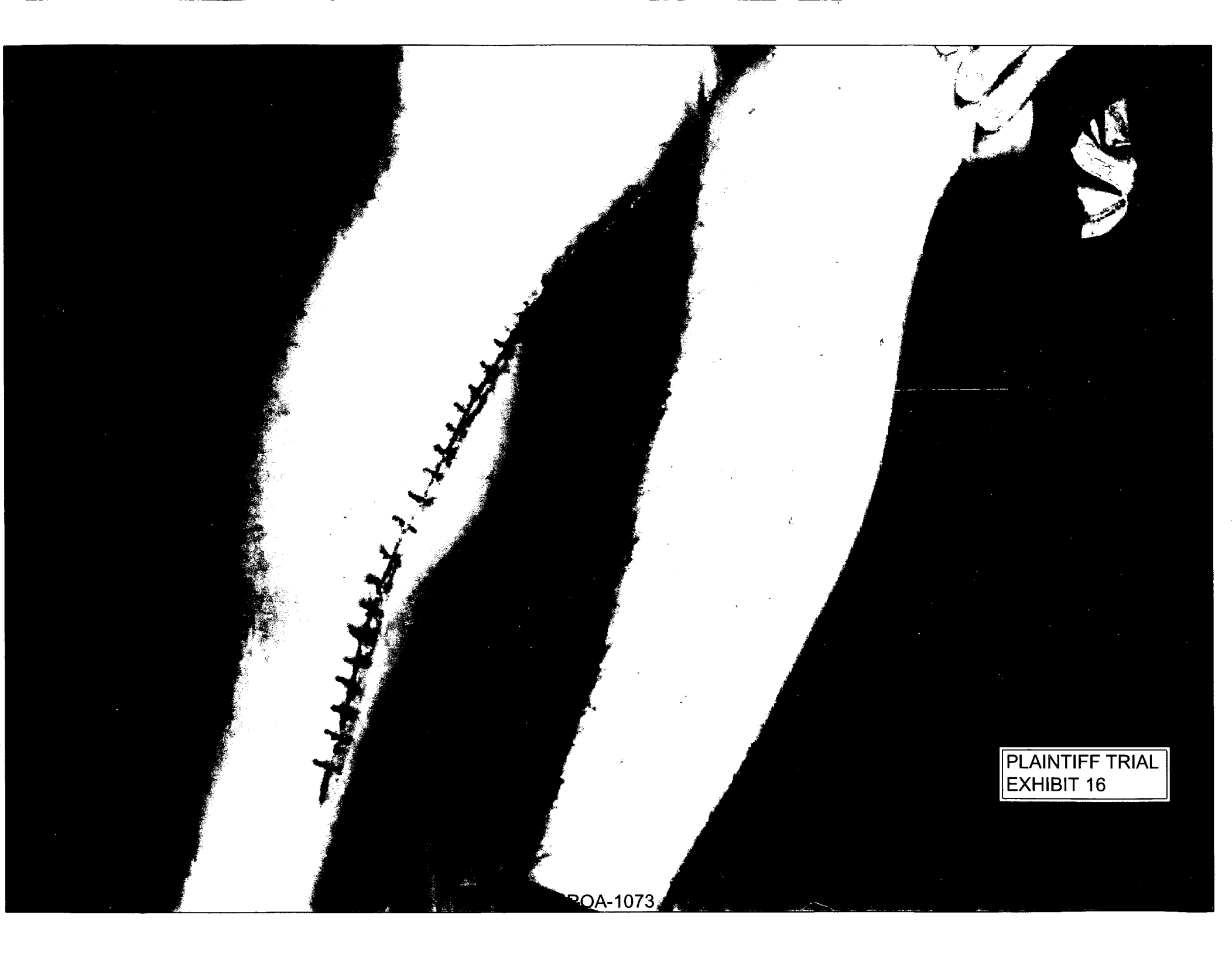
PLAINTIFF TRIAL
EXHIBIT 11

ROA-1070

ROA-1071

PLAINTIFF TRIAL
EXHIBIT 13

PLAINTIFF TRIAL
EXHIBIT 15



PLAINTIFF TRIAL
EXHIBIT 16

BOA-1073

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-001964

RECEIVED
DEC 09 2016
SC Court of Appeals

Philip Ethier and Jeanne Ethier,

Appellants,

v.

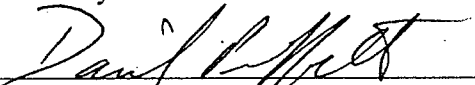
Fairfield Memorial Hospital; Guy R. Bibeau, M.D.; Tuomey
Medical Professionals, Inc; And Pee Dee Emergency Medical
Associates, PA,

Defendants,

Of whom Guy R. Bibeau, M.D., is the Respondent.

CERTIFICATE OF COUNSEL

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



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Attorneys for Appellants

November 18, 2016

ROA-1074